

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-71
)	
BOARD OF REGENTS, University)	DECISION NO. 185
of Hawaii,)	
)	
Petitioner.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On November 25, 1983, the BOARD OF REGENTS [hereinafter referred to as BOR] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board [hereinafter referred to as Board]. In its petition, the BOR requested that Position No. 80159, reclassified as Director of Internal Audit, University of Hawaii [hereinafter referred to as UH], be excluded from Unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

The BOR submitted along with the petition the following documents:

1. Affidavit of Harold S. Masumoto regarding Position No. 80159, dated November 23, 1983;
2. Executive--Administrative/Managerial Position Description for the Internal Auditor (Exhibit A);
3. Class specifications for the Director of Internal Audit from the University's Executive and Administrative/Managerial classification plan (Exhibit B); and

4. Letter, dated October 17, 1983, from Harold S. Masumoto to Russell Okata, Hawaii Government Employees' Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit exclusion (Exhibit C).

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, UH, and all documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

The BOR is the public employer, as defined in Subsection 89-1(9), HRS, of employees of the UH, which includes employees in Unit 8.

The HGEA is the certified exclusive representative of employees in Unit 8.

The HGEA concurs with the BOR's proposed exclusion of the subject position from Unit 8 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

Position No. 80159, previously Internal Auditor, has been reclassified as the Director of Internal Audit and is located in the Office of Internal Auditor. Under the supervision of the Vice President for Administration, the position performs professional and supervisory work in managing the University's internal and external audit programs, involving the independent appraisal/review of physical and administrative operations of the University through effective execution of the University Audit Plan. Petitioner's Exhibits A and B.

The Director of Internal Audit exercises independent judgment and initiative in performing its duties and responsibilities, which include:

1. Developing long and short range audit plans;
2. Planning, coordinating and directing internal financial and performance audits;
3. Developing external audit contract specifications and soliciting and analyzing bids;
4. Coordinating financial audits by independent accounting firms;
5. Exercising contractual and technical supervision over external auditing teams;
6. Evaluating and acting upon audit reports;
7. Developing and recommending systemwide audit policies and changes thereto for Presidential or BOR approval; and
8. Investigating operations and management of programs and activities for compliance with applicable state and University policies, rules and regulations and with sound management practices. Petitioner's Exhibit B.

Based on these duties and responsibilities, the position was classified within the UH's Executive and Administrative/Managerial classification plan. Petitioner's Exhibit B.

CONCLUSIONS OF LAW

Subsection 89-6(a), HRS, establishes 13 public employee bargaining units and provides in part:

- (a) All employees throughout the State within any of the following cate-

gories shall constitute an appropriate bargaining unit:

* * *

(8) Personnel of the University of Hawaii and the community college system, other than faculty; . . .

In its attempt to more specifically determine the composition of Unit 8, the Board noted in Decision 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1973):

The personnel employed by the University range over a broad spectrum of occupational groupings and includes some hybrids. There are a number of personnel in the University System who do not appropriately fall within the faculty or civil service groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical Personnel (hereinafter APT).

APT's generally perform professional level duties which may be unique to the University environment . . .

Id. at 298.

The Board thereafter determined that the following employees are to be included in Unit 8:

All administrative, technical and professional employees who are employed half time or more, except those determined to be excluded.

Id. at 290.

After reviewing the evidence submitted by the BOR, the Board concludes that the duties of the subject position reflect administrative and professional responsibilities within the UH system. Moreover, as the position was previously included in bargaining unit 8 and no evidence indicates that the position should be classified in a faculty or civil service grouping, the position would appropriately be placed in Unit 8 if included in collective bargaining.

However, Subsection 89-6(c), HRS, specifies those positions which are to be excluded from an appropriate bargaining unit and are not entitled to coverage under Chapter 89, HRS. The subsection provides in part:

No. . .top-level managerial and administrative personnel. . .shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In interpreting the exclusionary language of Subsection 89-6(c), HRS, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This Board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position against the following criteria:

1. The level at and extent to which the individual exercises authority and judgment to direct employees, determine methods, means and personnel by which the employer's operations are to be carried out; or

2. The extent to which the individual determines, formulates and effectuates his employer's policies.

Id. at 666 [footnotes omitted].

In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top-level management or administrative position, a position must:

(1) be at or near the top of an ongoing complex agency or major program and formulate or determine policy for that agency or program; or

(2) direct the work of a major program or an agency or a major subdivision thereof with considerable discretion to determine the means, methods and personnel by which the agency or program policy is to be carried out; or

(3) operate in a management capacity in a geographically separated location, such as a Neighbor Island, and be responsible for representing management in dealing with a significant number of employees.

Id. at 143.

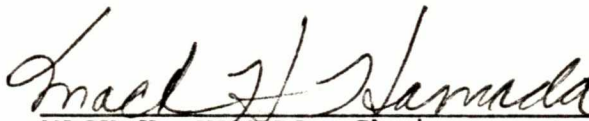
After a complete review of the duties and responsibilities to be performed by the Director of Internal Audit, the Board concludes that the position directs the work of the Office of Internal Auditor and is at the top of a program which is considered major in terms of importance to the UH. The position directs the work of the program with considerable discretion to determine the means, methods and personnel to carry out the program policy. Accordingly, the Board concludes that it is a top-level managerial and administrative position. Thus, the position should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from Unit 8 and coverage under Chapter 89, HRS.

ORDER

The position of Director of Internal Audit is excluded from Unit 8.

DATED: Honolulu, Hawaii, January 24, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson

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JAMES K. CLARK, Board Member



JAMES R. CARRAS, Board Member

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