

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. RA-07-75
)	
BOARD OF REGENTS, University)	DECISION NO. 197
of Hawaii,)	
)	FINDINGS OF FACT, CON-
Petitioner.)	CLUSIONS OF LAW AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On July 24, 1984, 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 the newly created position entitled Director of Academic Affairs, Office of the Chancellor, Community College System, presently vacant, be excluded from Unit 7 (Faculty of the University of Hawaii and the community college system) 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 the position entitled Director of Academic Affairs, dated July 18, 1984;
2. Executive and Managerial Position Description for the Director of Academic Affairs (Exhibit A);

3. Class specifications for the Director of Academic Affairs, UH Executive and Administrative/Managerial classification plan (Exhibit B); and

4. Letter, dated June 14, 1984, from Harold S. Masumoto to J. N. Musto, University of Hawaii Professional Assembly [hereinafter referred to as UHPA], requesting the UHPA'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 89-2(9), HRS, of employees of the UH, which includes employees in Unit 7.

The UHPA is the certified exclusive representative of employees in Unit 7.

The UHPA concurs with the BOR's proposed exclusion of the subject position from Unit 7 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

The newly created position entitled Director of Academic Affairs is an executive educational and academic managerial position, and will be responsible for providing leadership and general oversight of academic and vocational education policies,

programs and activities within the Community College System. The position's work will be performed with wide latitude for the exercise of independent judgment and initiative, as well as decision-making under broad policies, rules and regulations set forth by the BOR, President and Chancellor. Further, the position will be located in the Office of the Chancellor, Community College System, and will report to the Chancellor for Community Colleges. Petitioner's Exhibit B.

The Director of Academic Affairs will be responsible for, and perform the following duties in the approximate percentages of time:

1. Academic Leadership (70%).

(a) Providing leadership for long range academic planning;

(b) Coordinating and developing systemwide academic planning processes;

(c) Formulating policy recommendations and coordinating campus program proposal reviews;

(d) Developing systemwide budget policies and capital recommendations relating to academic affairs;

(e) Articulating academic policies, programs, courses and standards between community college campuses and other University departments; and

(f) Coordinating the formulation and implementation of the community college system biennial vocational education state plans encompassing matters of needs, funds, expenditures, evaluations and reports;

2. External Relations (20%). Consulting on matters relating to academic affairs and related activities with BOR staff, President's staff, legislative committees and staffs, State and Federal agencies, national post-secondary education organizations, and community groups and individuals; and

3. Supervisory (10%).

(a) Serving as Acting Chancellor or represent the Chancellor in an official or quasi-official capacity when designated; and

(b) Supervising academic affairs staff. Petitioner's Exhibits A and 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

As the instant case involves a newly established position, the Board must first determine the appropriate bargaining unit and thereafter determine whether the position should be excluded from the bargaining unit.

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

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

* * *

(7) Faculty of the University of Hawaii and the community college system; . . .

The Board determined the composition of Unit 7 in Decision No. 21, Hawaii Federation of College Teachers, 1 HPERB 202 (1972):

All Instructional, Research, and Specialist personnel, County Extension Agents and Home Economists, Assistants to the Deans of Social Work, Director and others whose position titles are included on Exhibit A attached herewith and those employed half-time or more, except those determined not to be eligible.

The subject position, as director, provides leadership and general oversight of academic and vocational education policies, programs and activities within the Community College System. The position's nexus with academic policies justifies its appropriate placement within Unit 7.

However, Subsection 89-6(c), HRS, specifies those positions which are to be excluded from the 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 Academic Affairs position, the Board concludes that the position is a top-level

managerial position because it is near the top of a major program and formulates or determines policy for that program. The position provides leadership and general oversight of academic and vocational education policies, programs and activities within the Community College System, including instruction, student affairs, academic aspects of public service and related activities, and accreditation activities. Further, the position serves as consultant on matters relating to academic affairs and related activities, and serves as Acting Chancellor or represents the Chancellor when designated. The Board also concludes that the position possesses wide latitude for the exercise of independent judgment and initiative, as well as decision-making under broad policies, rules and regulations set forth by the BOR, President and Chancellor. Accordingly, the Board concludes that it is a top-level managerial position. Thus, the position should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 7 and coverage under Chapter 89, HRS.

ORDER

The position of the Director of Academic Affairs, Office of the Chancellor, Community College System is excluded from Unit 7.

DATED: Honolulu, Hawaii, August 20, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson

BOARD OF REGENTS; CASE NO. RA-07-75
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



JAMES K. CLARK, Board Member



JAMES R. CARRAS, Board Member

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