

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-89
)	
BOARD OF REGENTS, University)	DECISION NO. 210
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW, AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On July 9, 1985, 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].¹ In its petition, the BOR requested that Position No. 80179, Personnel Officer I, at the University of Hawaii at Manoa [hereinafter referred to as UHM] be excluded from Unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as it is a position concerned with confidential matters 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. 80179, dated July 5, 1985;

¹On January 1, 1986, the Hawaii Public Employment Relations Board was renamed the Hawaii Labor Relations Board pursuant to Act 251, Session Laws of Hawaii 1985.

2. Position description for Personnel Officer I
(Exhibit A);

3. Letter, dated March 25, 1985 from Harold S. Masumoto to Russell Okata, Executive Director of the Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed exclusion of Position No. 80179.

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, UHM, 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 UHM which includes employees in Unit 8.

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

The HGEA initially opposed the proposed exclusion. It subsequently revised its position so as to concur with the proposed exclusion of Position No. 80179 from Unit 8. Board Order No. 559, dated September 5, 1985. Thus, the HGEA is deemed to have waived the right to a hearing on the subject petition.

The position is situated in the Personnel Management Office where it is responsible for developing a computerized personnel information data base and performing staff analyses leading to management decisions in activities such as collective

bargaining negotiations, classification and compensation review, personnel policy and procedures development.

The general duties and responsibilities of the Personnel Officer I include:

1. Responsibility for automating the University's personnel management information system and the transactional aspects of personnel administration through design of policies and procedures;

2. Liaison with the Management System's Office and Computing Center;

3. Conducting appropriate staff training sessions related to computerization of records, maintenance and enhancement of computer access for ad hoc queries and special studies;

4. Analysis of personnel records, data needs, functions, policies, procedures and related activities to make the system more responsive to campus and management needs and more cost-effective;

5. Participation in the design of research studies relating to major classification studies, salary surveys, pricing reviews and other major analytical studies related to personnel administration involving the design of questionnaires and/or conduct of data collection and research;

6. Data summarization and analyses; and

7. Preparation of summary reports and/or recommendations.

CONCLUSIONS OF LAW

Subsection 89-6(c), HRS, specifies which employees are to be excluded from any appropriate bargaining unit and coverage under Chapter 89 and provides in part:

No. . . individual concerned with confidential matters affecting employee-employer relations. . . 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 its interpretation of the legislative intent of the above-cited section, the Board, in Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), stated:

Giving the subject statutory phrase its plain and ordinary meaning, the Board believes that the Legislature intended to exclude from coverage of Chapter 89, HRS, those individuals who, in the regular course of their employment, are concerned with matters "not intended for the eyes or ears of the rank and file or their negotiating representative" affecting employee-employer relations. We are of the opinion that the confidential matters must directly produce an effect upon or influence or alter employee-employer relations.

Id. at 146.

In defining what constituted confidential matters affecting employee-employer relations, the Board noted:

As to the question of the secretness of the data, it should be noted that under our law supervisors may be included in units. Hence, confidential employees must know matters pertaining to employee-employer relations which are not made known to included supervisors. Included supervisors

may have authority to exercise independent judgment respecting hiring, transfers, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still be includable. Thus, the material with which employees must be concerned in order to be considered confidential employees under Chapter 89, HRS, must be different than that which is known by supervisors concerning such aforementioned personnel matters. . . .

The Board is of the opinion that the term employee-employer relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting employee-employer relations which are made non-negotiable by Subsection 89-9(d), HRS, but upon which the employer is required by Subsection 89-9(c), HRS, to consult with the unions. [Emphasis in original.]

Id. at 147.

As summarized in Decision No. 95, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 89-6(c), HRS:

1. Working in the regular course of one's employment with matters
2. which are not intended for the eyes and ears of the rank and file and the unions
3. and which matters are capable of producing an effect or influence upon or change in employee-employer relations
4. such work normally being performed as a subordinate to an individual who is a managerial employee who formulates and effectuates management policy in the field of employment relations.

Id. at 147.

After a complete review of the duties and responsibilities of the Personnel Officer I, the Board concludes that said

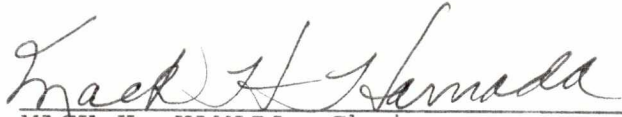
position clearly works in the regular course of employment with personnel matters pertaining to personnel management and personnel administration and records maintenance. Furthermore, the position is involved in major analytical studies relating to personnel administration research and analysis. Such studies encompass matters not intended for the rank and file and impact upon employee-employer relations. Thus, the position is concerned with confidential matters affecting employee-employer relations and should be, under the provisions of Subsection 89-6(c), HRS, and Decision No. 95, excluded from Unit 8 and coverage under Chapter 89, HRS.

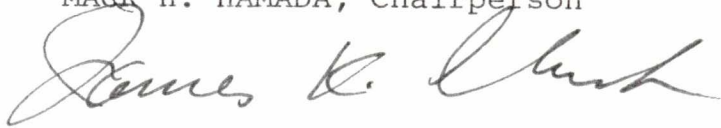
ORDER

The position of Personnel Officer I, UHM, Position No. 80179, is excluded from Unit 8.

DATED: Honolulu, Hawaii, January 27, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

BOARD OF REGENTS, Petitioner
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