

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-08-94
	)	
BOARD OF REGENTS, University	)	DECISION NO. 214
of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER
Petitioner.	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On February 11, 1986, the BOARD OF REGENTS of the University of Hawaii [hereinafter referred to as BOR] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board]. In its petition, the BOR requested that Position No. 81125, Associate Athletic Director, be excluded from bargaining unit 8 (Personnel 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 the following documents with the petition:

1. Affidavit of Harold S. Masumoto, Vice President for Administration, University of Hawaii [hereinafter referred to as UH], regarding Position No. 81125, dated February 3, 1986;

2. Position description for the Associate Athletic Director, Inter-collegiate Athletics Program, UH at Manoa (Exhibit A);

3. Class specifications for the Associate Athletic Director from the University's Executive/Managerial Classification Plan (Exhibit B); and

4. Letter, dated November 26, 1985, from Harold S. Masumoto to Russell Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed exclusion of Position No. 81125 (Exhibit C).

Based on the affidavit of Harold S. Masumoto 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 bargaining unit 8.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining unit 8.

The HGEA concurs with the BOR's proposed exclusion of Position No. 81125 from bargaining unit 8 and is deemed to have waived its right to a hearing thereon. Petitioner's Exhibit C.

Position No. 81125 is located in the Inter-collegiate Athletics Program, UH at Manoa, and assists the Athletic Director in the general control, administration, supervision and coordination of the athletic department. Further, the position assumes

the responsibilities and authority of the Athletic Director in his absence.

The duties and responsibilities of the Associate Athletic Director include:

1. Working with the Athletic Director in planning and setting immediate and long-range goals, including budgetary and financial planning for the department;
  2. Monitoring and supervising the allocation, processing and maintenance of the Athletic Scholarship Program to insure compliance with N.C.A.A., W.A.C., and University regulations;
  3. Assisting in the supervision of all departmental staff;
  4. Developing and administering a system of personnel procedures for the department in accordance with State, University and departmental policies and procedures;
  5. Reviewing and approving all purchases, disbursements and other financial transactions;
  6. Assisting and promoting the scheduling of all athletic events, activities and contests; and
  7. Representing the Athletic Director at meetings with the Board of Regents, University executives and booster organizations, at mainland athletic competitions, and as required.
- Petitioner's Exhibits A and B.

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 8.

## CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 81125 from bargaining unit 8 as the position is a top-level managerial position.

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. . .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 the 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 on-going 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 of the Associate Athletic Director, the Board concludes that as the position assists the Athletic Director in directing and coordinating the administration and support activities of the Athletic Department, and assumes the responsibilities of the Athletic Director in his absence, the position is near the top of an on-going complex agency. Further, in directing the work of the agency, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy. Accordingly, the Board concludes that the position 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 bargaining unit 8 and coverage under Chapter 89, HRS.


ORDER

The Position No. 81125, Associate Athletic Director, is excluded from bargaining unit 8.

The effective date of the transfer shall not be earlier than the date of this decision.

DATED: Honolulu, Hawaii, March 10, 1986.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

  
JAMES R. CARRAS, Board Member

Copies sent to:

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