

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. RA-08-132 |
| |) | |
| BOARD OF REGENTS, University |) | DECISION NO. 244 |
| of Hawaii, |) | |
| |) | FINDINGS OF FACT, CONCLU- |
| Petitioner. |) | SIONS OF LAW AND ORDER |
| |) | |

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 2, 1987, the BOARD OF REGENTS of the University of Hawaii [hereinafter referred to as BOR or Petitioner] 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 the Position No. 89180, Director of Facilities Planning, be excluded from bargaining unit 8 [Personnel of the University of Hawaii and the community college system other than faculty]. This exclusion is premised upon the redescription of the position's duties and responsibilities, and the proposed reclassification of the position to Director of Facilities and Grounds whose duties and responsibilities are encompassed in the University's Executive/Managerial Classification Plan.

The BOR submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel Management, University of Hawaii [hereinafter referred to as UH], regarding Position No. 89180, dated April 1, 1987;

2. Position description for the Director of Buildings and Grounds Management (Exhibit A);

3. Class specifications for the Director of Facilities and Grounds (Exhibit B);

4. Organization charts for Buildings & Grounds Management, University of Hawaii at Manoa, Charts V-D through V-D6 (Exhibit C); and

5. Letter, dated December 2, 1986, from Sharen M. Tokura, Acting Director of Personnel, UH, to Russell Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit designation amendment (Exhibit D).

Based on the affidavit of James H. Takushi and the 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), Hawaii Revised Statutes [hereinafter referred to as HRS], of the 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 the employees in bargaining unit 8.

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

Position No. 89180 was previously entitled Director of Facilities Planning. The position has been redescribed and is proposed for reclassification as the Director of Facilities and Grounds. The position is the head of the Buildings & Grounds Management Section of the Department of Campus Operations. The position reports directly to the Director of Campus Operations and involves the planning, policy development, administration and control of the facilities and grounds maintenance of the Manoa campus, including planning and policy development, coordination of programs and direction of personnel. The position is responsible for, and performs the following duties in the approximate percentages of worktime:

1. Directing the Custodial, Landscaping and General Maintenance Sections in the establishment of goals and policies towards a clean, healthy and safe physical environment, and directing the planning, organizing and staffing of personnel to maintain the facilities (40%);

2. Directing the development of Buildings and Grounds program and financial plan (10%);

3. Directing the planning, implementation and evaluation of short and long-term landscape maintenance programs (10%);

4. Directing personnel requirements, including recruitment, hiring and training of personnel (10%);

5. Directing the development of specifications and bid documents in the procurement of goods, services and equipment, formulating and directing the establishment of a maintenance program for equipment, conducting periodic inspections of physical property and equipment to ascertain the effectiveness of the preventive maintenance programs (10%);

6. Maintaining a liaison with University officials, deans, directors, vendors and outside contractors on matters relating to buildings and grounds maintenance (5%);

7. Working in conjunction with facilities, planners and landscape architects in the design of structures and grounds to formulate objectives, standards and maintenance plans (5%);

8. Maintaining communication with labor unions on matters relating to personnel (5%); and

9. Serving on various University committees and performing other duties as directed (5%). Exhibits A and B.

Based on these duties and responsibilities, Position No. 89180 is proposed for exclusion from bargaining unit 8.

CONCLUSIONS OF LAW

The Petitioner has requested the exclusion of Position No. 89180 from bargaining unit 8 as the position is a top-level managerial or administrative 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 position . . . 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 appropriate 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 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 of the Director of Facilities and Grounds, the Board concludes that in directing and coordinating the facilities and grounds maintenance programs for the Manoa campus, the position is at the top of an on-going complex agency and assists in formulating and determining policy for that agency. In directing the work of the agency, the position exercises considerable discretion and independent judgment to determine the means, methods, and personnel to carry out agency policy and the program. 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, HRS, and previous Board decisions, excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

ORDER

Position No. 89180, Director of Facilities and Grounds, is excluded from bargaining unit 8.

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

BOARD OF REGENTS, University of Hawaii; CASE NO. RA-08-132
DECISION NO. 244
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, May 6, 1987.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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