

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-135
)	
BOARD OF REGENTS, University of)	DECISION NO. 246
Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On May 12, 1987, the BOARD OF REGENTS [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. 80316, UH Personnel Officer VI, 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], and is subordinate to a managerial employee who formulates policy in the field of employment relations.

The BOR submitted along with the petition the following documents:

1. Affidavit of James H. Takushi, Director of Personnel Management, regarding Position No. 80316, dated May 12, 1987;
2. Position description for UH Personnel Officer VI (Exhibit A);

3. Class specifications for Position No. 80316
(Exhibit A);

4. Position organizational chart for the Personnel Management Office under the Vice-President for Administration, UHM (Exhibit C);

5. Letter, dated April 27, 1987, from James H. Takushi 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. 80316.

Based on the affidavit of James H. Takushi 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 Section 89-2, HRS, of the employees of the UHM which includes employees in unit 8.

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

The HGEA has indicated its concurrence with the proposed exclusion of the subject position from bargaining unit 8. Exhibit D. 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, reporting directly to the Director of Personnel Management. The position serves as the chief administrative advisor and manager of personnel administrative affairs at the statewide Chancellor level with responsibility for formulation and execution of administrative policy. The position's work involves responsibility for designing policies, systems, procedures and coordinating their implementation and execution with regard to directing the provision of staff support in the area of personnel and other staff support services requisite to the administrative management of University academic, research, and support programs and functions. Exhibit B.

The duties and responsibilities of the subject position include, in their approximate percentages of work time:

1. Personnel policy development and administration (35%). The position conducts analyses of existing policy and administrative guidelines and drafts new and revised statements; provides technical interpretative and consultative services to senior executives and administrators relating to personnel administration; and prepares analyses and reports as requested.

2. Workers' Compensation (30%). The position represents UHM at Workers' Compensation appeals hearings; serves as the University systems' technical advisor on workers' compensation matters; negotiates settlements on behalf of the University regarding workers' compensation claims; develops policies and procedures relating to workers' compensation for the University system; advises senior University staff on workers' compensation

laws and regulations; and oversees the development of and compliance with internal policies and procedures to insure compliance with statutory and regulatory requirements.

3. Labor Law (15%). The position serves as the University's representative before administrative boards; serves as the University's contract administrator for public employees' collective bargaining agreements, including the resolution of grievances and presentation of grievances before hearings officers and arbitrators; provides staff assistance in collective bargaining including research and analysis; and provides staff support in other personnel administration activities.

4. Immigration (10%). The position serves as the University's representative and liaison with the U. S. immigration agencies with responsibility for assisting faculty and staff in immigration matters; provides advice and interpretations of policies, rules and procedures relating to immigration and visas; advises University executives, administrators and faculty on immigration matters; and develops University policies, procedures and guidelines to insure conformity with immigration requirements.

5. Other Activities (10%). The position also assists in a variety of personnel administration activities, e.g., research, preparation of responses to inquiries, personnel studies as may be assigned by the Director of Personnel Management, and may serve as the designated representative of the Personnel Office at functions within and without the University.

Exhibit A.

Based on these duties and responsibilities, Position No. 80316 is proposed for exclusion from bargaining unit 8.

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.

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 representatives" 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, suspension, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustment and still be includable. Thus, the material with which employee 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, applications and administration) and all matters affecting the 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 employer relations.

Id. at 147.

After a complete review of the duties and responsibilities of the Personnel Officer VI, the Board concludes that said position clearly works in the regular course of employment with personnel matters pertaining to collective bargaining contract administration, personnel management and records maintenance. Furthermore, the position represents management in workers' compensation cases and other personnel proceedings and is involved in major analytical studies relating to personnel administration. 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.

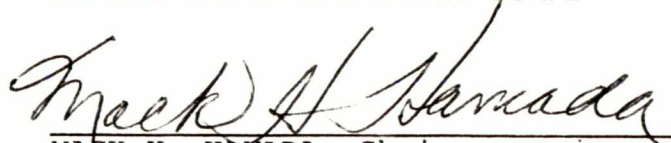
ORDER

Position No. 80316, UH Personnel Officer VI, UHM is excluded from unit 8.

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

DATED: Honolulu, Hawaii, June 16, 1987.

HAWAII LABOR RELATIONS BOARD



MACK H. HAMADA, Chairperson

In the Matter of BOARD OF REGENTS, University of Hawaii
CASE NO. RA-08-135
DECISION NO. 246
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



JAMES K. CLARK, Board Member



JAMES R. CARRAS, Board Member

Copies sent to:

James H. Takushi
Joyce Najita, IRC
Robert Hasegawa, CLEAR
Publications Distribution Center
State Archives
University of Hawaii
Library of Congress