

Decision

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-03-131a
)	RA-08-131b
BOARD OF REGENTS, University)	
of Hawaii,)	DECISION NO. 247
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
)	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 the amendment of the bargaining unit designation of Position No. 18085, Personnel Technician VI, from exclusion from bargaining unit 3 (Nonsupervisory employees in white collar positions) to exclusion from bargaining unit 8 (Personnel of the University of Hawaii and the community college system other than faculty). The amendment is premised upon a review of the position's duties and responsibilities, and the proposed reclassification of the position to University of Hawaii [hereinafter referred to as UH] Administrative and Fiscal Support Specialist, a class within the Administrative, Professional and Technical [hereinafter referred to as APT] Classification and Compensation Plan.

The BOR submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel Management, UH, regarding Position No. 18085, dated April 1, 1987;

2. Position description for the UH Administrative & Fiscal Support Specialist (Exhibit A);

3. Class specifications for the UH Administrative & Fiscal Support Specialist (Exhibit B);

4. Position organization charts, Chancellor for Community Colleges, Charts I, II, III, IV, V and V3 (Exhibits C-1 through C-5); and

5. Letter, dated February 4, 1987, from James H. Takushi, 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 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, Hawaii Revised Statutes [hereinafter referred to as HRS], of the employees of the UH, which includes employees in bargaining units 3 and 8.

The HGEA is the certified exclusive bargaining representative, as defined in Section 89-2, HRS, of the employees in bargaining units 3 and 8.

The HGEA concurs with the BOR's proposed amendment of the subject position from exclusion from bargaining unit 3 to exclusion from bargaining unit 8, and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit D.

Position No. 18085 is presently classified as a Personnel Technician VI and is located in the Office of the Chancellor for Community Colleges, Personnel Office. The position has been redescribed and is proposed for reclassification as UH Administrative & Fiscal Support Specialist. The position is responsible for the performance of professional level personnel functions as well as the overall auditing and processing of personnel transactions. Basic functions include payroll, tenure, promotion, agenda preparation for the BOR and the application of personnel policies and procedures for BOR appointees. The position performs the following duties and responsibilities in the approximate percentages of work time:

1. Transactions (30%):

Reviews, audits and coordinates all Notification of Personnel Action forms for all Community College campuses and the Employment Training Office.

2. Campus Support (20%):

Assists Director in interpreting union contract provisions and UH and BOR policies and rules;

Assists in investigating, analyzing, and recommending solutions or alternatives in resolving personnel problems;

Analyzes, revises and implements internal control procedures by reporting data, transactions and records; and

Provides assistance to faculty and staff in response to specific benefit options for health fund, vacation, sick leave and, on occasion, for basic retirement benefits.

3. Classifications (20%):

Assists Director in reviewing position classification requests to meet and conform to established specification requirements;

Assists in analyzing, evaluating and recommending classification action for positions to be established for new or vacant positions; and

Assists in reviewing organizational charts and functional statements to identify program needs and requirements in assessing classification actions.

4. Position Control (15%):

Develops, revises and maintains the position control of all appropriated positions for the Community College System.

5. Other Duties and Responsibilities (15%):

Coordinates and maintains the filing of all personnel related documents for each employee;

Provides assistance to the Director of Personnel on special projects; and

Responds to employment verification and other inquiries from outside agencies and institutions. Petitioner's Exhibit A.

The class specification for the UH Administrative & Fiscal Support Specialist indicates that this class performs entry level work for professional occupations dealing in administrative or fiscal work of limited scope and complexity. Petitioner's Exhibit B.

Based on these duties and responsibilities, the position has been proposed for reclassification within the APT Classification and Compensation Plan.

CONCLUSIONS OF LAW

The BOR has requested the amendment of the bargaining unit designation of Position No. 18085 from exclusion from bargaining unit 3 to exclusion from bargaining unit 8 as the position's duties and responsibilities are consistent with existing positions within the APT Classification and Compensation Plan.

Subsection 89-6(a), HRS, establishes 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:

* * *

(3) Nonsupervisory employees in white collar positions;

* * *

(8) Personnel of the University of Hawaii and the community college system, other than faculty; . . .

In its attempt to more specifically determine the composition of bargaining unit 8, the Board notes in Decision No. 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1973):

The personnel employed by the University range over a broad spectrum of occupational groupings and includes some hybrids. There are a number of personnel in the University System who do not appropriately fall within the faculty or civil service groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical Personnel (hereafter referred to as APT).

APT's generally perform professional level duties which may be unique to the University environment.

Id. at 298.

The Board thereafter determined that the following employees are to be included in Unit 8:

All administrative, technical and professional employees who are employed half time or more, except those determined to be excluded.

Id. at 290.

After a review of the duties and responsibilities to be performed by Position No. 18085, UH Administrative & Fiscal Support Specialist, the Board concludes that the position performs professional level personnel functions as well as overall auditing and processing of personnel transactions for the Community College campuses. Accordingly, the Board concludes that the duties and responsibilities of Position No. 18085 reflect Administrative, Professional and Technical duties within the UH system. Thus, as the BOR has proposed the reclassification of the subject position to a class within the APT system, the position would appropriately be placed in bargaining unit 8 if covered under Chapter 89, HRS.

However, this position was previously excluded from bargaining unit 3 as the position concerned with confidential matters as specified in Subsection 89-6(c), HRS.

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 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 subject UH Administrative & Fiscal Support Specialist, the Board concludes that the position clearly works in the regular course of employment with personnel matters pertaining to collective bargaining, contract administration, personnel management and records maintenance. These are 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. 18085, UH Administrative & Fiscal Support Specialist, 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 29, 1987.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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