

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-124
)	
BOARD OF REGENTS, University)	DECISION NO. 250
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 22, 1986, the BOARD OF REGENTS of the University of Hawaii [hereinafter referred to as BOR of 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 exclusion of Position No. 80137, UH Manager of University Bookstores, subsequently redescribed as Director of University Bookstores, from bargaining unit 8 (Personnel of the University of Hawaii and community college system, other than faculty).

The Petitioner 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. 80137, dated October 22, 1986;
2. Position description for the UH Manager of University Bookstores (Exhibit A);
3. Class specifications for the Director of University Bookstores position (Exhibit B);

4. Position Organization Chart (Exhibit C);

5. Letter, dated September 12, 1986, from Sharen M. Tokura, Acting Director of Personnel, University of Hawaii, to Russell Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit amendment; and

6. Letter, dated May 13, 1987, from James H. Takushi, Director of Personnel, UH, to Russell Okata, Executive Director, HGEA, indicating the HGEA's concurrence with the proposed bargaining unit designation amendment.* (Supplemental Exhibit)

Based on the affidavit of Harold S. Matsumoto 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 unit 8.

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

* The Petitioner indicates that the HGEA's concurrence was not obtained with the first letter, dated September 12, 1986. Concurrence was thereafter received by the Board through the May 13, 1987 letter, a copy of which was attached to the Supplemental Exhibit to Petition filed with the Board on May 19, 1987.

The HGEA is in concurrence 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.

(Supplemental Exhibit).

Position No. 80137, presently classified as UH Manager of University Bookstores reports to the Vice President for Finance and Operations and is responsible for the planning and policy development, financial management, merchandise management, personnel management, and plant management of all bookstores in the University system. This is administrative work involving the overall planning and development of an operation consisting of a bookstore on each campus. More specifically, this position performs the following duties in the approximate percentages of work time:

1. Develops policies, plans, and objectives for the entire bookstore system, as well as for the each of the eight bookstores (20%).
2. Directs the preparation of long- and short-range budgets; oversees the development of the computerized bookstore information system to control the general ledger, accounts payable, financial reporting, inventory and operational controls; directs cash flow planning, cash security measures, and investment program; directs the preparation and distribution of financial reports; monitors critical indicators of the financial status of the bookstores such as return on investment, current

ratio, inventory turnover, margins, and cash position; and ensures that the bookstores are self-supporting (20%).

3. Directs the activities of the UH Manoa Store Department Managers and Branch Store Managers within established bookstore plans, policies and procedures, to ensure that merchandise planning and operations fulfill the needs and desires of the academic community (20%).
4. Supervises the development and implementation of a personnel management program at all stores for APT, civil service and student employees (20%).
5. Manages the physical plant to ensure that the floor plans and decor of all stores contribute toward efficiency and customer comfort (20%).

The pertinent minimum qualification requirements for the UH Director of University Bookstores, from the position's class specifications, are as follows:

1. Graduation from an accredited four-year college or university with major course work in business administration;
2. Six years of bookstore experience, of which at least three years shall have been in a management capacity; and
3. Extensive knowledge of educational philosophy and organization, retail methods of accounting, retail management, and data processing. Additionally, the

candidate must possess excellent communications skills and be able to effectively supervise the work of subordinates.

(Exhibits A and B.)

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

CONCLUSIONS OF LAW

The BOR has requested the exclusion of Position No. 80137 from bargaining unit 8, as the position is a top-level managerial classification.

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 UH Manager of University Bookstores, the Board concludes, that as the position reports directly to the UH Vice President for Finance and Operations and is involved in the planning, policy development, merchandise management, financial, and plant management of a statewide bookstore operation, the

position is commensurate with that of a top-level manager 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's policy. Accordingly, the Board concludes that the position should be, under provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

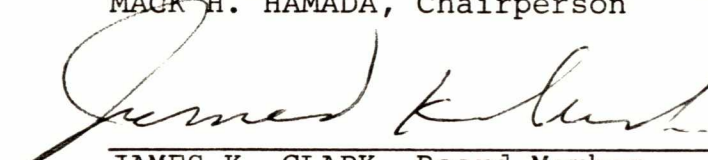
ORDER

Position No. 80137, entitled UH Manager of Bookstores and to be reclassified as the Director of University Bookstores, is excluded from bargaining unit 8.

DATED: Honolulu, Hawaii, August 31, 1987.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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