

Dec

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-07-156a
)	RA-08-156b
BOARD OF REGENTS, University)	
of Hawaii,)	DECISION NO. 280
)	
Petitioner,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
and)	
)	
UNIVERSITY OF HAWAII)	
PROFESSIONAL ASSEMBLY and)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME LOCAL 152,)	
AFL-CIO,)	
)	
Intervenors.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 27, 1988, 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 transfer of Position No. 80588, UH Educational Specialist III, from inclusion in bargaining unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) to bargaining unit 7 (Faculty of the University of Hawaii and community college system). The proposed transfer is premised upon the redescription and conversion of the position to two half-time research positions. It is the BOR's determination that the positions will execute duties and responsibilities that

are no longer characteristic of the Administrative, Professional and Technical [hereinafter referred to as APT] Classification and Compensation Plan and are consistent with the Assistant Professor I-3 or other class within the Faculty Classification and Compensation Plan.

The UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY [hereinafter referred to as UHPA] filed a Petition to Intervene with the Board on May 16, 1988. The Board granted this petition by order dated June 2, 1988. UHPA presented no opposition to the proposed transfer.

On May 23, 1988, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO [hereinafter referred to as HGEA] filed a Petition for Intervention with the Board. Said petition was granted by order dated June 2, 1988.

The Petitioner submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel, University of Hawaii [hereinafter referred to as UH], regarding Position No. 80588, dated April 27, 1988;
2. Position description for Researchers at the Center for Youth Research (Exhibit A);
3. Class specifications for faculty members (Exhibit B);
4. Organizational chart for the existing School of Social Work and the proposed and approved Social Science Research Institute (Exhibit C); and

5. Letter, dated March 1, 1988, from James H. Takushi, Director of Personnel, UH, to Russell Okata, Executive Director, HGEA, requesting the HGEA's concurrence with the proposed bargaining unit amendment (Exhibit D).

On August 3, 1988, the BOR offered into evidence the following documents previously identified at the hearing held on July 1, 1988, by motion stating that the other parties had no objections thereto:

1. Table of Organization for Social Science Research Institute;
2. Current position description of record for UH Educational Specialist III;
3. Class specification for UH Educational Specialist III;
4. Revised position description for UH Educational Specialist III;
5. BORP's Section 9-2, Classification Plans and Compensation Schedules, pp. 9-10 to 9-14;
6. Statement of functions for the Center for Youth Research; and
7. A proposal for the Youth Development and Research Center Organizational and Functional Change.

For good cause shown, the BOR's motion is hereby granted. BOR's Exhibits 1 through 7 are received into evidence.

Based on the affidavit of James H. Takushi, documents submitted in support of the petition, the evidence adduced at the hearing on this matter, oral arguments, and briefs submitted by

the parties, 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 7 and 8.

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

The UHPA is the exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 7.

Because the HGEA indicated its opposition to the proposed transfer, the instant matter went to hearing on July 1, 1988 before the full Board. Also present was counsel for the intervenor UHPA. At the start of the hearing, the BOR amended its petition to clarify that the position would be converted into two half-time positions, one at the I-3 level and the other in an instructional category, the level of which has not yet been determined. The incumbent of Position No. 80588 will occupy the proposed I-3 position.

Through the testimony of Clifford O'Donnell, Director for the Youth Development Research Center, and the immediate supervisor of the position in question, the BOR proffered the following evidence:

The BOR proposes to convert Position No. 80588, presently a position within the APT Classification and Compensation

Plan, to two half-time research positions in the Faculty, Classification and Compensation Plan.

The proposed transfer is the result of a reorganization shifting the Youth Development and Research Center from the School of Social Work to the Social Science Research Institute and renaming it the Center for Youth Research. BOR Exhibit 1. Prior to reorganization, there were two full-time positions to administer a research center which had three-and-a-half positions. This organization was perceived as being top-heavy and the directorship was changed to a half-time position. Transcript [hereinafter referred to as Tr.], p. 16.

The reorganization was undertaken to implement the recommendations of a faculty advisory committee. Before the reorganization, the Youth Development and Research Center focused on issues endemic to Hawaii. After reorganization, the Center's mission was refocused to address problems of delinquency with national, Pacific and Asian concerns; the integration of science and practice in executing its mission; the forming of partnerships with community organizations; the creation of a national network of youth research centers; and the creation of a youth information bridge between the U. S., Hawaii and Asia. Moreover, the proposed creation of two half-time full-time equivalency [hereinafter referred to as FTE] positions increases the multidisciplinary capacity of the personnel. Tr., pp. 13-17.

The recommendations of the advisory committee were approved in December of 1986 by Albert Simone, President of the

UH, and are in the process of implementation. BOR Exhibit 7, pp. 20-21; Tr., p. 18.

O'Donnell testified that the administrative duties of the current APT position, enumerated in the position description for the Educational Specialist III, are not to be performed by the two half-time FTE positions under the proposed reorganization. BOR Exhibits 2, 4; Tr., pp. 22-24, 26-30.

Further, under the proposed reorganization, one of the half-time faculty positions would be occupied by the incumbent, Dr. Michael Manos, with a classification of Assistant Professor, I-3. Tr., pp. 15-16.

O'Donnell enumerated other far ranging changes of job duties listed in the Educational Specialist III position description under the headings of Training and Consultation. In the proposed position description for the two half-time FTE positions (BOR Exhibit 4), duties of the positions are related to the research function. These functions and the approximate percentages of work time are as follows:

- (1) Conduct research related to youth in collaboration with faculty members at other universities nationally and at the University of Hawaii, 20%.
- (2) Develop grant proposals, 15%.
- (3) Disseminate information on youth research, programs, and issues through publications, consultation, workshops, conferences, and expert testimony, 30%.
- (4) Provide research and practicum opportunities for graduate students, 10%.

- (5) Participate in the ongoing activities of the Center, all under the supervision of the CYR Director, 25%.

BOR Exhibit 4.

These functions, O'Donnell testified, comport with a shift in the position functions involving the "creation" of knowledge as opposed to mere delivery, i.e., research, and the addressing of an academic audience through conferences, publications and meetings, as opposed to working with community agencies. Tr., p. 13.

On cross-examination, the HGEA raised the issue of whether the incumbent should have been permitted to sit on the advisory committee which recommended the underlying reorganization. O'Donnell testified that Dr. Manos sat on the committee as a representative of the APT position in the Center. Tr., pp. 40-43. The present APT position had previously been downgraded from Educational Specialist IV to Educational Specialist III. Tr., p. 39.

The BOR chose not to oversee the reorganization, which comports with its informal role in the process where basic structural change and additional funding are not entailed. Tr., pp. 46-47.

BOR witness, James Oshiro, UH Personnel Officer in the Office of Personnel Management, testified as to the process he went through in determining that the proposed transfer is warranted. Taking into account the new mission of the Center, the reorganization, and the duties and responsibilities of the positions pursuant thereto, he testified that he found

significant changes in the nature of the work which no longer suggested that the Educational Specialist III in the APT Plan (Section 304-13, HRS) correctly defined the functions of the positions. Tr., pp. 53-56.

Oshiro testified that the two half-time positions upon transfer would take a direct involvement in academic research versus an indirect involvement in academic research.

Faculty work is defined as direct involvement in teaching, research, and public service. Tr., pp. 64-65. Work with faculty as peers is also involved, Oshiro testified. Tr., p. 64. The position description for the proposed new positions (BOR Exhibit 4) comports with this faculty definition, Oshiro testified. Subparagraphs 3, 4, and 5 of the position description, supra, involve the teaching function. Subparagraphs 1, 2, 3, and 5 involve the research function. Subparagraphs 4 and 5 involve the public service function, Oshiro testified. Tr., pp. 66-67.

The Classification and Compensation Plan for faculty members is included as BOR Exhibit 5.

On cross-examination, the HGEA attempted to draw a parallel between the functions of the proposed positions in curriculum research development. Oshiro testified, however, that such positions are not APT positions and that, therefore, the proposed transfer could not be refused on the basis that APT positions could do research work. Tr., p. 68.

Nora Nomura, Pay and Classification Specialist for the HGEA, testified that upon her review she concluded that the

duties and responsibilities of the new positions could be executed by an Educational Specialist III. She testified that upon her review, she concludes that research occupies 20% of the position's time under both the present position description and as proposed. Tr., p. 76. Technical duties and responsibilities are also undertaken after the proposed transfer, she testified, and that the function of developing grant proposals under the proposed transfer is such an administrative or technical responsibility. Tr., p. 77. She concluded that the reorganized unit could function with two half-time APT positions. Tr., p. 78. The witness was unresponsive to UHPA counsel's questioning as to whether an APT Educational Specialist III could engage in instruction, functions, or sit with faculty as a peer. Tr., pp. 79-81.

CONCLUSIONS OF LAW

The BOR has requested the amendment of the bargaining unit designation of Position No. 80588 from inclusion in bargaining unit 8 to inclusion as two half-time FTE positions in bargaining unit 7, as the positions' duties and responsibilities are commensurate with that of the Instructional-3 (I-3) level and another level position in the instructional category.

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:

* * *

7. Faculty of the University of Hawaii and the community college system;
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 noted 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 . . .

APTs 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 included in bargaining unit 8:

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

Id. at 290.

The Board, in Decision No. 21, Hawaii Federation of College Teachers, 1 HPERB 202 (1972), determined that the composition of bargaining unit 7 included:

All instructional, research and specialist personnel, county extension agents and home economists, assistants to the deans of social work, director and others whose position titles are included on Exhibit A,

attached herewith, and those employed half-time or more, except those determined not to be eligible.

Id. at 203.

After a complete review of the duties and responsibilities to be performed by the two half-time FTE research positions as testified to by witnesses and reflected in supporting documentation, the Board concludes that the two half-time FTE positions have duties and responsibilities consistent with the Faculty Classification and Compensation Plan. The positions will assume functions reflecting a heavy emphasis on research in distinction from the heavily administrative functions and support activities executed by the Educational Specialist III position in the former organizational structure.

The shift in emphasis to research as opposed to an administrative function comports with the underlying shift in the mission of the Center for Youth Research from research delivery and service to the development of original research, and the revision in the basic mission of the Center to assume an international framework for activity. The positions will initiate and design research projects and directly supervise the research work of graduate students. Tr., pp. 32-33. Thus, as the BOR has proposed the reclassification of the position to two half-time FTE research positions, the Board concurs that the positions would be more appropriately placed in bargaining unit 7.

The fact that a possible conflict-of-interest occurred when Dr. Manos sat on the advisory committee approving the


underlying reorganization does not disturb the Board's decision as such matter does not fall within our jurisdiction.

ORDER

The bargaining unit designation of Position No. 80588 is amended from inclusion in bargaining unit 8 to inclusion as two half-time FTE positions in bargaining unit 7.

DATED: Honolulu, Hawaii, August 15, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

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