

adec.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-169
)	
BOARD OF REGENTS, University)	DECISION NO. 300
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 14, 1990, the BOARD OF REGENTS, University of Hawaii (BOR or Employer), filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the BOR requested Position No. 80883, entitled UH Public Information Officer III and reclassified to Assistant Athletic Director for Administrative Services, be excluded from bargaining unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as this position is a top-level managerial position, as specified in Subsection 89-6, Hawaii Revised Statutes (HRS).

Petitioner submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of the Office of Personnel Services, University of Hawaii, regarding Position No. 80883, dated March 14, 1990;

2. Position Description for Position No. 80883, UH Public Information Officer III (Exhibit A);

3. Position Description for Assistant Athletic Director for Administrative Services (Exhibit B);

4. Table of Organization, Intercollegiate Athletics Department, University of Hawaii (Exhibit C); and

5. Letter, dated February 26, 1990, from James H. Takushi, Director of Personnel Services, University of Hawaii, to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 80883 (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 Subsection 89-2, 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, HRS, of the employees in bargaining unit 8. The HGEA concurs with the BOR's proposed exclusion of Position No. 80883 in bargaining unit 8, and is deemed to have waived the right to a hearing thereon (Exhibit D).

The Employer asserts that the duties and responsibilities of Position No. 80883 are now commensurate with that of

the Assistant Athletic Director for Administrative Services. The subject position is in the Office of Administrative Affairs, Intercollegiate Athletics Department, University of Hawaii. Additionally, the position conducts the following duties and responsibilities:

1. FISCAL AND BUDGETARY:

Serves as chief fiscal and budgetary control officer and advisor to the Director of Athletics by formulating, reviewing, presenting, and administering the final budget. Additionally, responsible for developing internal fiscal control systems.

2. PERSONNEL AND GENERAL ADMINISTRATION:

Responsible for the internal management policies and procedures including transactions preparation, processing, recordkeeping, and interpreting collective bargaining agreements with administrators. Additionally, responsible for serving as liaison with senior campus administrators, systemwide management personnel, staff, and State agencies.

3. SUPERVISION:

Supervises staff of professional, technical, and clerical personnel upon general direction from the Director of Athletics.

Accordingly, the BOR has proposed the reclassification of the subject position to Assistant Athletic Director for Administrative Services, and its exclusion from bargaining unit 8.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 80883 from bargaining unit 8 as the position is a top-level managerial position.

Subsection 89-6, HRS, specifies which employees are to be excluded from any 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, 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 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 Assistant Athletic Director for Administrative Services, the Board concludes that the position is responsible for directing the activities of a major program at the University of Hawaii. The subject position's duties include professional management work involving fiscal, administrative, and

related support functions requisite to the administration of program objectives of the Athletic Department. Additionally, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

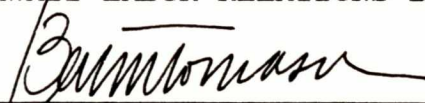
As such, the Board concludes that the position is a top-level managerial position. Consequently, under provisions of 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 8 and coverage under Chapter 89, HRS.


ORDER

Position No. 80883, Assistant Athletic Director for Administrative Services, is excluded from bargaining unit 8.

DATED: Honolulu, Hawaii, June 4, 1990.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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