

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-172
)	
BOARD OF REGENTS, University)	DECISION NO. 308
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 27, 1990, the BOARD OF REGENTS (BOR or Employer), University of Hawaii, filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the BOR requested that Position No. 80461, Personnel Officer V, at the University of Hawaii at Hilo (UHH) be excluded from bargaining unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as the subject position is concerned with confidential matters as specified in Section 89-6, Hawaii Revised Statutes (HRS).

The BOR submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel, University of Hawaii (UH), regarding Position No. 80461, dated April 27, 1990;
2. Position description for UH Personnel Officer V (Exhibit A);

3. Class specifications for UH Personnel Officer V (Exhibit B);

4. Table of Organization, Office of Administrative Services, UHH (Exhibit C); and

5. Letter dated August 11, 1989, from James H. Takushi to Russell Okata, Executive Director of the Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 80461 (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, HRS, of employees of the UHH which includes employees in bargaining unit 8.

The HGEA is the certified exclusive representative of employees in bargaining unit 8.

The HGEA concurs with the BOR's proposed exclusion of Position No. 80461 from bargaining unit 8, and is deemed to have waived the right to a hearing thereon (Exhibit D).

The incumbent of the subject position works in the Office of Administrative Affairs at the UHH. The position reports directly to the Director of Administrative Affairs, in the Chancellor's Office and is responsible for providing

personnel administration and management support to the Chancellor, Provost, Deans of Colleges, and Directors. Additionally, the incumbent in the position performs the following duties and responsibilities in the approximate percentages of work time:

1. Plans, directs, and controls the UHH personnel management system; participates in planning, developing, and maintaining personnel administration policies and procedures in conjunction with the systems office; clarifies, interprets, applies, and secures compliance with applicable personnel laws, rules, regulations, policies, and procedures; effectuates policy decisions by preparing broad plans, goals, and objectives, for organizational heads to implement; and writes internal directives (45%).
2. Monitors and advises organizational heads regarding laws, directives, business manual instructions, and policy decisions that affect UHH (15%).
3. Directs staff work in personnel matters such as classification, recruitment, labor relations, employee benefits and Equal Employment Opportunity/Affirmative Action policies and regulations (20%).
4. Serves as Safety Officer for UHH; develops and directs health and safety programs for UHH in

areas such as OSHA, Workers' Compensation, etc.; represents UHH in all workers' compensation hearings; and advises organizational unit heads on these respective programs (20%).

Accordingly, the BOR has proposed the exclusion of the subject position from bargaining unit 8.

CONCLUSIONS OF LAW

Subsection 89-6, 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.

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 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 representative" 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. In almost all conceivable cases, such an employee, if he is not himself a policy maker in the field of employee-employer relations, will be a subordinate of a managerial individual who formulates policy which directly influences or affects change in employee-employer relations or who meets other criteria of a top-level manager.

Id. at 146-147.

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, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still be includable. Thus, the material with which employees 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 . . . [Cite omitted.]

The Board is of the opinion that the term employee-employer relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting 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 employment relations.

Id. at 147.

After a complete review of the duties and responsibilities of Position No. 80461, the Board concludes that the subject position is responsible for working in the regular course of employment with personnel management matters at UHH which are not intended for the eyes and ears of the rank and file and unions. These matters include areas such as recruitment, labor relations, employee benefits, health standards, safety standards, and training. The position is subordinate to the Director of Administrative Affairs, a top-level manager, responsible for the UH personnel management system. As such, the Board concludes that this position has

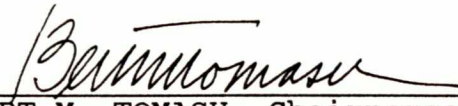
duties which encompass confidential matters affecting employee-employer relations, and should be excluded from bargaining unit 8. Further, the exclusion of the subject position is consistent with Section 89-6, HRS, and previous Board decisions.

ORDER

Position No. 80461, UHH Personnel Officer V, is excluded from bargaining unit 8.

DATED: Honolulu, Hawaii, July 30, 1990.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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