

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-08-176
	)	
BOARD OF REGENTS, University	)	DECISION NO. 311
of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
_____	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On October 5, 1990, the BOARD OF REGENTS (BOR or Employer), University of Hawaii (UH), 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. 80316, UH Personnel Officer VI, be excluded from bargaining unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty). This exclusion is premised upon the redescription of the position's duties and responsibilities, and the proposed reclassification of the position to Associate Director of Personnel, whose duties and responsibilities are encompassed within the UH Executive/Managerial Classification Plan.

The BOR submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel, UH;
2. Position description for the Associate Director of Personnel (Exhibit A);

3. Class specifications for the Associate Director of Personnel (Exhibit B);

4. Table of Organization for the Personnel Management Office, UH (Exhibit C); and

5. Letter, dated August 29, 1990, from James H. Takushi, Director of Personnel, UH, to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting HGEA's concurrence with the exclusion of the subject position (Exhibit D).

Based on the affidavit of James H. Takushi and the 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 a public employer, as defined in Section 89-2, Hawaii Revised Statutes (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 HGEA concurs with the BOR's proposed exclusion of Position No. 80316 from bargaining unit 8 and is deemed to have waived the right to a hearing thereon (Exhibit D).

The incumbent in the subject position works in the Office of Personnel Management at the UH. This position reports directly to the Director of Personnel, and involves

assisting the director in planning, organizing, directing, and coordinating the statewide UH personnel system. This assistance includes overseeing programs in areas such as workers' compensation, labor relations, faculty immigration affairs, and special projects. More specifically, the position is responsible for, and performs the following duties in the approximate percentages of work time:

1. Workers' Compensation (30%)

Manages and coordinates the systemwide workers' compensation program; develops, recommends, reviews, evaluates, and implements, proposed changes to the workers' compensation program pursuant to State laws, rules, schedules, case precedents, etc.; provides guidance and interpretation of workers' compensation laws, regulations, and procedures to administrators and staff regarding contested hearings before appellate boards; develops and coordinates training for university staff who are responsible for management of workers' compensation cases; determines UH's strategy and position regarding the compensability of claims, benefits, awards, etc.; represents the UH at hearings before the Disability Compensation Division and the Labor and Industrial Relations Appeals Board; decides

and negotiates settlement with plaintiffs, union agents, and attorneys; and ensures that UH policies are in compliance with applicable federal laws, State laws, rules, and procedures.

2. Labor Relations (20%)

Prepares and presents legal briefs and cases at hearings before appellate boards for adjudication; serves as a hearings officer for assigned grievances; represents the UH at arbitration hearings; serves as liaison to the State Attorney General's Office regarding litigation which involves personnel matters; and advises administrators and staff on personnel issues, such as alleged discrimination and harassment cases.

3. Immigration (25%)

Develops, implements, revises, administers, and implements the systemwide UH faculty immigration policies and procedures, based on requirements of the United States Immigration and Naturalization Service and federal laws; serves as resource person on immigration visa matters and applications for labor certification petitions; advises administrators on immigration requirements for faculty members; and serves as liaison for the BOR and UH administrators to federal agencies,

State agencies, and U.S. congressional offices, regarding immigration matters.

4. Legislation (25%)

Coordinates all legislative proposals regarding personnel matters; prepares written testimony defending the UH's position on bills, resolutions, and studies; coordinates input and assesses the potential impact of legislative proposals from the respective program chiefs in the UH personnel system; and develops and directs the maintenance and custody of all related personnel bills, hearings notices, committee reports, status of bills, etc.

5. Special Projects (As required)

Serves on special committees and task forces on controversial issues on behalf of the Director of Personnel; assumes the duties and responsibilities of the Director of Personnel during his/her absence; and performs other related duties assigned.

Based on the duties and responsibilities submitted in the petition, Position No. 80316 is proposed for exclusion from bargaining unit 8.

CONCLUSIONS OF LAW

The Petitioner has requested the exclusion of Position No. 80316 from bargaining unit 8 as the position is a top-level managerial or administrative position.

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 . . . 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 Section 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 appropriate 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 of 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 Associate Director of Personnel, the Board concludes that the position is responsible for assisting the Director in planning, organizing, directing, and coordinating the statewide UH personnel system. Further, the position is at the top of an ongoing major program and helps to formulate policy for that program. Additionally, in directing the work of the program, the position exercises considerable discretion and independent judgment to determine the means, methods, and personnel to carry out the program policy. Accordingly, the Board concludes that the position is a top-level managerial and

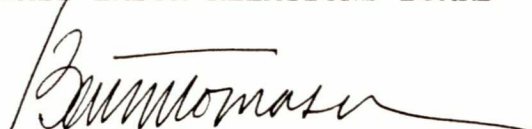
administrative position. As such, the position should be, under provisions of Section 89-6, HRS, and previous Board decisions, excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

ORDER

Position No. 80316, Associate Director of Personnel, is excluded from bargaining unit 8.

DATED: Honolulu, Hawaii, November 20, 1990.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
GERALD K. MACHIDA, Board Member

  
RUSSELL T. HIGA, Board Member

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