

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-03-181a
)	RA-08-181b
BOARD OF REGENTS, University)	
of Hawaii,)	DECISION NO. 312
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
<hr/>)	SIONS OF LAW AND ORDER

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On November 30, 1990, the BOARD OF REGENTS of the 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 the continued exclusion of Position No. 39182, which was previously excluded from bargaining unit 3 (Nonsupervisory employees in white collar positions), from bargaining unit 8 (Personnel of the University of Hawaii and the community college system other than faculty). The petition is premised upon a redescription of the position's duties and responsibilities and the proposed reclassification of the position to University of Hawaii (UH) Personnel Officer V, a class within the Administrative, Professional, and Technical (APT) Classification and Compensation Plan.

The BOR submitted the following documents with the petition:

1. Affidavit of James H. Takushi, Director of Personnel, UH, regarding Position No. 39182, dated November 30, 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 for the Human Resources Section, Office of the Chancellor for Community Colleges, UH (Exhibit C); and
5. Letter dated October 25, 1990, from James H. Takushi to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed transfer and exclusion of the subject position from bargaining unit 8 (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, Hawaii Revised Statutes (HRS), of the employees of the UH, which include employees in bargaining units 3 and 8.

The HGEA is the certified exclusive representative of the employees in bargaining units 3 and 8.

The HGEA concurs with the BOR's proposed exclusion of Position No. 39182 from bargaining unit 8 and is deemed to have waived the right to a hearing thereon (Exhibit D).

The BOR asserts that the duties and responsibilities of Position No. 39182 are now commensurate with that of the UH Personnel Officer V classification. The subject position works in the Office of Human Resources, within the Office of the Chancellor for Community Colleges, UH. The incumbent works under the direction of the Director of Personnel for Community Colleges, and performs the following duties in the approximate percentages of work time:

1. Administers the workers' compensation, safety, training, Fair Labor Standards Act, temporary disability, and fringe benefits (Health Fund, retirement, leave accounting, etc.) programs for the community college BOR and civil service employees; develops long and short-term goals and objectives to meet the needs of the above stated programs; develops and recommends policies or modifications to existing programs and other functional areas; advises campus administrators and technicians regarding concerns raised in these program areas; and researches and interprets State, federal, UH, contract policies,

and rules and regulations affecting these programs (30%).

2. Supervises and directs the investigation and monitoring of workers' compensation claims; determines and recommends dispensation of claims which include highly sensitive cases, i.e., stress-related and psychiatric cases, allegations of wrongful discharge, etc.; and works in conjunction with attorneys and other professionals such as vocational rehabilitation specialists, physicians, etc., to obtain case status information, and impairment ratings (25%).
3. Administers and interprets collective bargaining contracts, rules and regulations, and other procedures as they relate to the faculty employed at the community colleges; serves as grievance hearings officer and investigator on behalf of the Chancellor; participates on the Unit 7 collective bargaining team for management; maintains and amends minimum qualification requirements for faculty, which impact on recruitment, promotions, tenure and the classification plan for faculty; reviews and approves personnel forms for faculty to ensure conformity with rules, regulations, collective bargaining contracts, etc.; discusses

issues and concerns with the Division of Academic Affairs in overlapping areas of academic programming that relate to management of the human resources program of the community colleges; reviews recommended appointments of faculty from the campuses to ensure that prospective employees meet the minimum qualification requirements, and equal employment opportunity and affirmative action rules and regulations; and reviews and recommends appropriate salary placement for faculty which include exception requests for salaries exceeding the normal salary steps (25%).

4. Conducts reviews of reorganizations submitted by campuses in conjunction with the UH Personnel Management Office, Budget Office, etc.; recommends dispensation of reorganizations, position variances, position use, etc.; and conducts special studies regarding faculty classification, pricing, compensation, shortage categories, etc. (15%).
5. Supervises the subordinate UH Personnel Officer and Personnel Clerk in the performance of their duties and responsibilities; and recommends dispensation of salary placement for new appointees and other personnel actions for faculty and other employees (5%).

According to the specifications for the UH Personnel Officer V class, positions in this class generally supervise a staff of professionals responsible for providing personnel administration and management support, with systemwide responsibility or the performance of the most advanced administrative staff support work in a highly specialized functional area. These positions generally have responsibility for program management that requires the provision of advice to senior executives and administrators in which a high degree of uncertainty exists and where guidelines conflict or do not exist, and where the decisions require the exercise of seasoned judgment with direct and far-reaching impact on a systemwide program activity, its operations, and the University. Positions are usually one of two types, a personnel generalist position responsible for providing the personnel service support in all areas of personnel administration and management or a personnel specialist providing staff support in one specific personnel area.

Accordingly, the BOR has proposed the reclassification of the subject position to UH Personnel Officer V, and its conversion to an APT position excluded from bargaining unit 8.

CONCLUSIONS OF LAW

Section 89-6, 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:

* * *

(3) Nonsupervisory employees in white collar positions;

* * *

(8) Personnel of the University of Hawaii and the community college system other than faculty;. . .

Further, the Board in HPERB Decision No. 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1973), described unit 8 as follows:

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 systems are classified Administrative, Professional and Technical Personnel (hereinafter APT).

APT's generally perform professional level duties which may be unique to the University environment.

Id. at 298.

Upon a review of the duties and responsibilities of Position No. 39182, the Board concludes that the subject position performs administrative duties which are unique to the university environment.

Section 89-6, HRS, however, 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 Section 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.

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 considered includable. Thus,

the material with which employee 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.

Id. at 147.

As summarized in Decision No. 95, supra, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Section 89-6, 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 regulations.

Id. at 147.

After a complete review of the duties and responsibilities of Position No. 39182, the Board concludes that the position clearly regularly works with matters of a confidential


nature capable of affecting employee-employer relations. This work includes implementation of the workers' compensation, temporary disability, salary administration, contract administration, and fringe benefit programs for the community colleges with systemwide impact. Additionally, the subject position serves as a management representative on the collective bargaining negotiating team. As such, the subject position is clearly involved with matters which are clearly not intended for the eyes and ears of the rank-and-file and unions. Therefore, we conclude that Position No. 39182 should be, under provisions of Section 89-6, HRS, excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

ORDER

Position No. 39182 entitled Personnel Officer V, is excluded from bargaining unit 8.

DATED: Honolulu, Hawaii, March 1, 1991.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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