

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-177
)	
BOARD OF REGENTS, University of Hawaii,)	DECISION NO. 320
)	
Petitioner,)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
)	
and)	
)	
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO,)	
)	
Intervenor.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 8, 1990, the BOARD OF REGENTS of the University of Hawaii (UH) (BOR or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). The BOR reclassified Position No. 80191 from a UH Administrative Officer VI which was included in bargaining unit 8 (Personnel of the UH and community college system, other than faculty) to a Director of Administrative Services. Based upon the revised duties and responsibilities, the BOR contends that the position is a top-level managerial and administrative position and properly excludable under the provisions of Section 89-6(c), Hawaii Revised Statutes (HRS).

On October 25, 1990, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO (HGEA or Union) filed a

petition for Intervention in the proceedings. The HGEA opposes the exclusion of the subject position. The Board granted the HGEA's Petition for Intervention in Order No. 809, issued on October 30, 1990. A hearing was held on January 24, 1991. The parties were afforded full opportunity to present witnesses and arguments and submitted post-hearing briefs on February 20, 1991.

Based upon a full consideration of the record in this case, 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 the employees of the UH, including the employees in the bargaining unit 8.

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

Position No. 80191, previously classified as a UH Administrative Officer VI, is located in the Administrative Services Section of Campus Operations. According to the functional statement for that section, the major functions of the Director include directing personnel to provide fiscal, personnel management, procurement and property management, and computer-related support services to the other sections of the organization. Campus Operations consists of Facilities Planning and Management, Auxiliary Services, Buildings and Grounds Management, and Environmental Health and Safety. In addition, the Director

of Administrative Services provides assistance to the Director of Campus Operations in the development and implementation of finances, personnel management, budget formulation and execution, and research and analysis. BOR's Exhibit (Ex.) 1A.

The organization chart for Campus Operations indicates that Administrative Services is directly subordinate to the Director of Campus Operations and is not on the same organizational level as Campus Operations' four major program areas. HGEA Ex. 1C.

According to the position description for the Director of Administrative Services, the position serves as the chief administrative services officer with direct responsibility to the University of Hawaii at Manoa (UHM)'s Director of Campus Operations for the management of administrative services for its divisions. Campus Operations employs approximately 400 employees and the subject position manages an annual budget resource of approximately 112 million dollars, including approximately 30 million dollars in general-funded operating funds, 6 million dollars in non-general-funded operating fund and approximately 77 million dollars in capital improvement program funds. The position supervises ten employees. BOR's Ex. 1D.

Major campuswide functions provided by Campus Operations for the 300 acre UHM campus include:

1. Telephone and communications
2. Campus mail service
3. Central duplicating services

4. Parking
5. Faculty housing apartments
6. Transportation and motor pool
7. Campus security
8. Building maintenance and repairs
9. Custodial services, including rubbish disposal
10. Grounds maintenance
11. Trade shops/warehouse operations and trucking
12. Utilities - electricity, water/sewage, gas
13. Environmental health and safety, hazard waste disposal
14. Facilities planning, design and construction
15. Campus food/dining/concession services Id.

The responsibilities of the position include a wide range of administrative duties with the approximate percentages of work time allocated as follows:

1. Administration and organization - provides managerial leadership for administrative functions and serves as chief advisor/resource person to the Director as well as divisional Directors and program managers; reviews and approves program business plans and directs periodic reviews of revenue-producing units to assess their financial condition; reviews and determines the reasonableness of user fees and revenues needed to meet immediate and long-range program goals and objectives;

determines minimum working capital cash requirements to maximize the investment of available cash; coordinates the development of short- and long-range organizational plans to determine staffing and other resource requirements; assists in the development of agenda items involving changes to program policies for BOR approval; and serves as a liaison with external and internal agencies for financial and management audit reviews (40%);

2. Fiscal Management - directs and coordinates the development of divisional program and financial plans; analyzes and evaluates program budget requests; establishes priorities in accordance with the long-range University Strategic Plan and the Biennial University Agenda for Action; formulates operating budgets and determines general fund allocations to divisions; directs the preparation of expenditure plans and maintains controls to ensure effective utilization of resources; develops financial planning strategies and action plans to respond to legislative action; directs accounting, procurement, disbursement and inventory management functions and is responsible for the operation of the computerized financial information system (30%);

3. Personnel Management - directs the personnel functions of Campus Operations and acts as the director's designee for the Step I grievance procedure (25%); and
4. Miscellaneous - serves in an acting capacity during the absence of the Director of Campus Operations; attends meetings and signs documents for the Director; and serves on campus wide committees (5%).

BOR Ex. 1D.

According to the class specifications, the duties of the position involve:

professional management work involving fiscal, administrative, personnel and related support functions requisite to the administration of the instructional, research and public service objectives of a school or college. Work entails serving as the chief fiscal and budgetary officer and advisor to the Dean. . . The work is performed with wide latitude for independent judgement and discretionary action. BOR's Ex. 1E.

According to the BOR's witness James Oshiro, the position as redescribed no longer merely administers its function within existing parameters but is delegated the authority to initiate and implement new policies for Campus Operations. The position has wide latitude in its decisionmaking. Transcript (Tr.) pp. 12-13. The position will be involved in the long-range planning of the program. Tr. p 15. Further, the position would set the priorities for the organization by its budget allocation authority. Tr. p. 19. The director has delegated the responsibility to the subject position to make the fiscal decisions

involving the allocation or reallocation of funds. Tr. pp. 20-21.

The position has been vacant since 1986 when the previous incumbent retired. It is currently filled on a 40% basis. Tr. pp. 17-18.

Allan Ah San, Director of Campus Operations, also confirmed that the Director of Administrative Services has the final say on funding and in effect influences the final outcome of any decision to be implemented. Tr. pp. 36-37. Ah San testified that the position would be privy to confidential personnel matters and would be involved in employee relations. Tr. pp. 30-32. Two major areas of control include the expenditure of funds and the allocation of resources in terms of personnel for particular projects. Tr. p. 45.

On cross-examination, Ah San indicated that he was ultimately responsible for budget decisions, but he would rely upon the subject position for day-to-day operations since his attention is directed elsewhere. Tr. pp. 55-56.

Adele Fujita, HGEA Pay and Classification Specialist, testified that organizationally, she considers the subject position to be comparable to section heads who are generally includable within the respective bargaining units. Tr. p. 64. In her opinion, based on the subject position description, the Director of Campus Operations directs the functions of Campus Operations and the program managers direct the programs. The subject position merely supports the program managers and the Director of

Campus Operations in day-to-day operations. Tr. pp. 66-67.

Fujita believes that the position should be classified as a UH Administrative Officer VII, rather than a Director of Administrative Services since the position does not report to a dean of a college as stated in the applicable class specifications. Tr. pp. 68-70. The existing positions in the class of Directors of Administrative Services at UHM all report to a dean of a college and not to a program. Tr. p. 70.

The class specifications for UH Administrative Officer VII states that the work involves the highest level of advanced and supervisory staff work of substantial complexity and scope. The work involves responsibility for providing overall policy advice and assistance on funding and administrative management to a Director/Dean, in charge of the largest and most complex organizations or programs in the University system. HGEA Ex. 2.

DISCUSSION

Section 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 and 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 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.

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term policy is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term policy which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at page 3005:

We will first discuss the 'policy' criterion and later the other three criteria. It would appear desirable to first consider the term 'policy'. Policy is defined in a general sense as 'a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions'. In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term 'formulate' as used in the frame of reference of 'managerial' would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data

necessary for the development of a policy proposal [Footnotes omitted.]

* * *

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decisions technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. 'It is not whether a person definitely establishes policy but rather the individual's regular participation in the policy-making process which determines managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decisionmaking process, not the participant's batting average in having his views prevail.' State of New York, supra.

Id. at 144-145.

The BOR contends that Position No. 80191 should be excluded from collective bargaining because it falls within the foregoing criteria. The Board finds the evidence in the record supports this conclusion. Mr. Ah San, Director of Campus Operations, testified as to the breadth and complexity of the Campus Operations program and that he has delegated the authority to control allocations to the Director of Administrative Services. In this way, the power to make the responsible fiscal decisions carries with it the indirect ability to determine policy, and set priorities and control the direction of the agency through the allocation and reallocation of funds. According to the testimony

and evidence in the record, the position possesses the independence and discretionary judgment to direct resources, in terms of money and personnel, to achieve the program's objectives. By this control, the position will participate regularly in the decision-making process to develop long-range plans and goals for the program and the University.

The HGEA contends that the position's placement within the University system as a whole suggests that the position is comparable to a section head rather than a top-level manager or administrator. The Board reiterates that it is not the organization chart which is determinative of whether a position is considered top-level managerial but rather, the functions and duties of the position which control. The mere fact that the class specifications for the Director of Administrative Services indicates that the position in that class reports to an academic dean of a school or college is not a persuasive argument that this position should not be excluded. Given the posture of the evidence in this case which strongly indicates that the position possesses the authority to formulate or determine policy or regularly has meaningful participation in such process for the agency or program, we conclude that the position is a top-level managerial and administrative position. The HGEA also argues that the position should not be excluded since the authority to make final decisions rests with the Director of Campus Operations and is only delegated to the subject position. The Board finds that Ah San's testimony is clear that such authority will rest

with the subject position and the fact that such authority is delegated, is not sufficiently material for the Board to find to the contrary.

Although the BOR argues and evidence suggests that this position could be excludable on the basis that it is a confidential employee involved in labor relations matters and privy to confidential information not available to the supervisors or unions, we reserve ruling on that issue as it was not properly raised by the petition nor was the HGEA apprised that it was an issue in this case. Hence, the Board reserves any ruling on the matter of whether the position is excludable on that basis.

CONCLUSIONS OF LAW

The Board has jurisdiction over this matter. Position No. 80191 directs the work of a major program with considerable discretion to determine the means, methods, and personnel by which the agency policy is to be carried out.

ORDER

Position No. 80191, Director of Administrative Services, should be excluded from collective bargaining under the provisions of Section 89-6(c), HRS, as a managerial employee.

DATED: Honolulu, Hawaii, October 25, 1991.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson

BOARD OF REGENTS, University of Hawaii and HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO; CASE NO.
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