

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-178
)	
BOARD OF REGENTS, University)	DECISION NO. 321
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner,)	SIONS 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 (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 alleges that Position No. 81038, previously classified as a Computer Specialist IV and included in bargaining unit 8 has been reclassified to Director of Computer and Telecommunications, Community Colleges which is encompassed within the University of Hawaii (UH) Executive/Managerial Classification Plan. As such, the BOR contends that the position is a top-level managerial and administrative position 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 Board granted the HGEA's Petition for Intervention in Order No. 808, issued on October 30, 1990. A hearing was held on February 5, 1991. The parties were accorded full opportunity to present witnesses and arguments and submitted post-hearing briefs on March 8, 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 bargaining unit 8.

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

Position No. 81038 was established as a UH Computer Specialist IV in December 1987 and included in bargaining unit 8. The position was located in the Office of Planning and Management, Office of the Chancellor for Community Colleges. The Computer Specialist IV position was filled in May 1988 for approximately a year and the position has been vacant since June 1988. Transcript (Tr.) pp. 23-24.

In 1990, the community colleges were reorganized and a separate office was created for computers and telecommunications. Tr. p. 24. The subject position was redescribed and reclassified as the Director of Computer and Telecommunications and reports directly to the Vice-Chancellor for Administrative Affairs, Community Colleges. Tr. p. 6.

According to the position description for the Director of Computer and Telecommunications, the position is in general, "responsible for serving as the chief policy maker and advisory at the Chancellorial level which affects the entire community college computing and telecommunications systems involving the formulation and execution of administrative policy, procedure, and implementation and execution with regard to the computing and telecommunications systems operations." The position is "responsible for planning, developing, establishing, directing and implementing the community college systemwide computing and telecommunications needs" (for 40% of the work time); the position serves as a community college liaison to the remainder of the UH system to coordinate efforts as needed with regard to programs, policies and future direction (20%); provides systemwide direction and coordination to the campus programs in analyzing, evaluating, integrating and resolving complex technical and programmatic issues (20%); and provides systemwide leadership and direction in the development and implementation of major computerization and telecommunications systems of community college programs (20%). BOR's Exhibit (Ex.) 1D.

According to the class specifications, the position involves "highly responsible administrative and technical work involving the planning, organizing, directing and coordinating of the community college systemwide computing and telecommunications system." BOR's Ex. 1E. According to the table of organization, the position supervises a UH Computer Specialist III position, which is presently vacant, and a UH Institutional Analyst II. BOR's Ex. 1A; Tr. p. 48.

The community college system encompasses seven campuses located throughout the State: Honolulu Community College, Kapiolani Community College, Leeward Community College, Windward Community College, Maui Community College (including Molokai, Lanai and Hana educational centers), Kauai Community College and most recently, Hawaii Community College. Tr. pp. 19-20. Excluding Hawaii Community College, the enrollment for credit students totals 21,000 which exceeds the credit enrollment at the Manoa campus. Mr. George Higa, the Vice-Chancellor for Administrative Affairs, Community Colleges, estimated the student population in the area of non-credit enrollment at 40,000 to 50,000. Tr. p. 21. The Chancellor of Community Colleges is a Senior Vice President of the UH. Tr. pp. 22-23.

The primary function of this position is to establish a long-range telecommunications plan for the transmission of academic courses to all parts of the State and a data network to link up the seven campuses. Tr. p. 68. According to Higa,

the position as revised involves 20% technical work and 80% systemwide coordination. Tr. p. 28. There is presently no master plan for telecommunications anywhere in the UH and each of the major units is responsible for developing its own telecommunications plan. Tr. p. 31. The position will be the community colleges' representative to the Council of Directors of Informational Technology and will have wide latitude in developing proposals to integrate with the state microwave network. Tr. pp. 35-37. Higa testified that the position will have full authority and discretion to carry out its responsibilities. Tr. p. 35.

James Oshiro, Personnel Officer, testified that the program was major and complex in his opinion since the scope of the program impacts on other organizational entities and geographic sites. Tr. pp. 66-69. Oshiro recommended that the position be managerial, in part, because there is no existing class that combines computers and telecommunications. More importantly, the position has the characteristics of a managerial position in that it has the authority to determine the program objectives as well as to determine the means and resources to achieve those objectives, including committing other organizations to assist in achieving the objectives. Tr. pp. 80-81.

Adele Fujita, HGEA Pay and Classification Specialist, testified that the subject position is three organizational levels removed from the UH President who is the top-level

administrator. Tr. p. 94. In Fujita's opinion, the subject position is characteristic of the existing Computer Specialist VI class which is included in Unit 8. Tr. p. 97. According to Fujita, the Office of Planning and Policy and the Management Systems Office (MSO) have systemwide responsibility for administrative data processing and telecommunications. Tr. p. 99. Moreover, the UH Computing Center is a systemwide academic support unit to provide support and guidelines in the area of academic and research telecommunications and data processing. Tr. p. 104.

Higa, however, testified that the community colleges were part of the MSO in 1983-84, but they formed their own computer consortium because MSO was not providing necessary services. The MSO now supports the fiscal information system and provides electronic mail services throughout the system. Tr. pp. 41-42. The community colleges developed their student information records system without MSO. Tr. p. 43. The Computing Center is a service bureau, basically responsible for academic computing. The community colleges have terminals at the different campuses for academic use with the main frame computer located at the Computing Center. The colleges take tapes to the Computing Center and reports are furnished to MSO which disseminates them. Tr. p. 45. According to Higa, there is very limited contact between the community colleges and the MSO and the Computing Center. Tr. pp. 45-46.

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 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.

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.

After a complete review of the duties and responsibilities of the Director of Computer and Telecommunications, Community Colleges, the Board concludes that the position will be responsible for developing the community college computing and telecommunication system. The testimony of Higa tends to establish that the position will produce a telecommunications plan and a data network to integrate the seven community college campuses. In fact, each of the UH's major units is responsible for developing its own telecommunications plan.

The issue here is whether the position is "at or near the top of an ongoing complex agency or major program" to be considered top-level managerial. While it appears that the program will involve coordinating the resources at different campuses, the Board does not believe based on the evidence presented that the program is major or that the unit is a complex agency. Although the size of the program should not by itself determine whether the position is managerial, in this case, the fact that there are only two subordinates to implement and assist the Director indicates that the program is not a major one. No evidence was presented as to the level of funding which the subject position has at its disposal. Without more

compelling evidence, the Board concludes that the program is not a major program.

CONCLUSIONS OF LAW

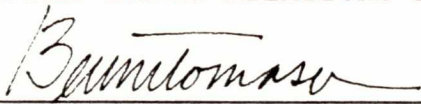
Position No. 81038 is not at or near the top of an ongoing complex agency or major program to warrant a managerial exclusion from collective bargaining.

ORDER


Position No. 81038, Director of Computer and Telecommunications, should be included in an appropriate bargaining unit.

DATED: Honolulu, Hawaii, October 25, 1991.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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