

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-188
)	
BOARD OF REGENTS, University)	DECISION NO. 328
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 March 5, 1992, the BOARD OF REGENTS, University of Hawaii (BOR or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). The Employer contends that Position No. 80079, UH Computing Center Manager, P15, has been redescribed and is proposed for reclassification to the Director of Computing Center. The BOR contends that the position should be excluded from bargaining unit 8, on the basis that it is "top-level managerial and administrative" within the meaning of Subsection 89-6(c), Hawaii Revised Statutes (HRS). In addition, the Employer alleges that the position is "confidential" and should be excluded from collective bargaining on that basis.

On March 25, 1992, 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. 871, issued on April 1, 1992. The HGEA opposes the exclusion of the position from bargaining unit 8 on the basis that there has been no material change in duties and responsibilities. As such the position's duties remain consistent with the present class of UH Computing Center Manager. A hearing was held on May 18, 1992. The parties were accorded full opportunity to present witnesses and arguments and submitted post-hearing briefs on June 15, 1992.

Based upon 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 University of Hawaii (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.

The position at issue is presently included in bargaining unit 8. The position directs the work of the UH Computing Center and is responsible for the system-wide academic computing and data communications support activities for the UH. The position is also responsible for planning, developing, establishing and maintaining computer and data communication resources, and related user and information services, to support instruction and research for the

UH. The position reports to the Vice President for Academic Affairs. BOR Exhibit (Ex.) 4.

The Computing Center is a 24-hour-a-day, 7-day-a-week, 365-day-a-year operation. Transcript (Tr.) p. 40. The Center controls the computer hardware, the mainframe, and the data infrastructure at the UH which includes the fiber optic conduits running throughout the Manoa Campus and the communication lines which link up ten campuses in the University system. Tr. p. 44. The Computing Center provides services to every campus. Tr. p. 50. The Center is an academic support unit whose overall objective is to provide computing and data communication support to the instruction, research and administrative programs, faculty, staff and students at the UH. Major activities of the Center include acquisition, management, operation of computers and peripheral devices, management of the UHNET, a data communications network providing system-wide access to local, national, and international information technology resources, etc. BOR Exhibit (Ex.) 4.

Walter Yee, the incumbent in the position, has seven branches under his direction, including administrative services, fiscal and accounting, systems and operations, technical services, telecommunications, interactive services and microcomputer support. Tr. pp. 45-47. Yee determines the allocations for the Center's annual lump-sum budget of approximately \$7 million. Tr. pp. 33, 41-42.

Yee reports to Paul Yuen, the former Vice President of Academic Affairs. Yuen testified that Yee has complete authority

to direct the work of the Center and all of its employees. Tr. p. 29. Yuen testified that Yee, like other Deans, receives a lump-sum budget and is free to use the funds in whatever way he sees fit. Tr. p. 29. The Center employs 47 BOR appointees, 32 Administrative, Professional and Technical (APT) employees, 15 civil service employees and approximately 100 students. Tr. pp. 41-42. In 1985, the BOR delegated the handling of personnel matters to the Center Manager. Yee thus has authority over appointments, terminations, and other personnel transactions for BOR appointees. Tr. pp. 48-49, 81. Yee also evaluates the probationary status of all employees within the Center. Tr. p. 49. In addition, he serves as the Step One hearings officer in the grievance procedure under the various collective bargaining agreements. Tr. p. 48.

As redescribed, the Director of the Computing Center performs the following duties and responsibilities in the approximate percentages of work time:

- (1) Develops long range and short term tactical plans to provide system-wide academic computing and data communication resources and related services to support strategic plans, participates in the development of the strategic plans of the UH and strategic plans for computing and data communications, develops, assists, establishes and maintains system-wide and campus computing and data communication resources and services, develops programs and policies to facilitate faculty, staff and student access to computers, data communications and information services (10%);
- (2) Directs, organizes and establishes activities of the Computing Center, supervises subordinate administrative and technical staff, determines policies, procedures and charge structures for operation and use of resources and services, provides overall planning, direction and control over internal budget preparation and execution, financial

planning and expenditures, personnel administration, and acquisition of hardware, software, and physical facilities (30%);

- (3) Develops, implements, manages, maintains and coordinates use of system-wide inter-campus data communication networks and all Manoa data networks, oversees subordinates supporting network efforts, works with appropriate local and national personnel and authorities to insure that data networks including links to State, national, and international networks, are developed and maintained to meet the needs of the UH, works with the Manoa Data Network Policy Commission for coordination and implementation of policies and procedures regarding system-wide campus, and user access to campus networks (20%);
- (4) Acts as liaison to UH executives and other committees on computers, telecommunication, and information technology issues, provides technical advice and recommendations and coordinates technological implementations (15%);
- (5) Serves as a member of the UH Council of Directors of Information Technology and representative to other state and national meetings and conferences (10%);
- (6) Reports directly to the President, serves as Manoa Data Network Policy Commissioner to develop and establish operational policies in areas of network access and usage, external connectivity, financing and charge-back to insure effective usage of network facilities (5%);
- (7) Reviews and approves all major acquisitions of academic computer equipment and software in the UH system, develops review and approval procedures, develops and prepares, as appropriate, procurement specifications to facilitate system-wide acquisitions of computer and data communications equipment and software, determines requirements and establishes system-wide software site licenses (5%); and
- (8) Performs other tasks as directed (5%). BOR Ex. 4.

The class specifications for Director of Computing Center, BOR Ex. 5, state that the position performs highly responsible administrative and technical work in the overall planning, organizing, directing, controlling and evaluating of

system-wide academic computing and data communications to support instruction, research and administrative programs, faculty, staff and students at the UH.

Noel Ono, HGEA Pay and Classification Officer, testified that he reviewed the current and revised position descriptions for the incumbent and compared them with the class specifications for the UH Computing Center Manager. Ono testified that the revised duties still meet the concept of the included class of Director of the Computing Center as it "identifies the position as planning, directing, organizing and controlling the operations of the Center. It talks about the budgeting process, the development of the computer facility hardware, serving the programs, and conducting seminars. We believe that the responsibilities for new technologies and some of the other duties that were identified are still part of this concept, as the expert, technical head of the Computing Center." Tr. p. 130. Ono testified that both position descriptions recognize the incumbent is responsible for managing a computing facility. Tr. p. 128. Ono concluded that there was no material change in the job descriptions after reviewing the position descriptions, class specifications, functional statements, organizational charts, and the relationship of that position with other positions within the UH and the community colleges.

Ono also indicated that the Center has system-wide responsibility on Manoa campus only. Tr. pp. 120, 133. Later, Ono conceded that the subject position has system-wide responsibilities for the entire UH system. Tr. pp. 138-139. According to Ono, the Center is responsible for academic computer services and the

Management Systems Office (MSO) is responsible for administrative computing services. Tr. p. 138.

The MSO is a subunit of the Office of Planning and Policy whose primary mission is to provide computer services to the administrative units. Tr. p. 91. Most of these services require the use of the data and the hardware in the Computing Center. In order to utilize these computing and operational facilities, MSO must comply with the policies and the procedures established by the Director of the Computing Center. Tr. p. 51-52.

The Office of Planning and Policy at the UH coordinates the needs of the academic units in the instructional areas for computing services provided by the Computing Center. Tr. pp. 89-90. In addition, it is responsible for the Hawaii Interactive Television System (HITS) network which broadcasts video communications from island to island. The HITS program is separate from the Computing Center. Tr. p. 51.

James Oshiro, BOR Classifier, testified that the reclassification of this position did not arise from a significant change in the duties or a reorganization. Oshiro testified that the Director of the Computing Center position was misclassified from its inception in 1976. The position was previously included in bargaining unit 8 pursuant to a consultant's study. Tr. p. 82. Oshiro testified that in his opinion the inclusion of this position in bargaining unit 8 is inconsistent with Board decisions.

DISCUSSION

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:

* * *

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

Section 89-6, HRS, however, also 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 its interpretation of the legislative intent of the above-cited section, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated:

This Board believes that the proper 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 or 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.

* * *

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, 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 "formulation" 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 decision making process, not the participant's batting average in having his views prevail." State of New York, supra.

Id. at 144-145.

After a review of the duties and responsibilities of the position, the Board finds that the position is responsible for the management of the Computing Center, an ongoing, complex agency. As such, the position has the discretion to determine the means, methods, and personnel by which the agency or program policy is carried out. As testified to by Yuen, the instant position oversees a budget of \$7 million budget and determines requirements and allocations accordingly. In addition, the Director manages approximately 200 employees at the Center.

The BOR submits that the reclassification action did not arise from a significant change in duties or a reorganization. The Employer maintains that the Director of the Computing Center was misclassified from its inception. Oshiro testified that in his opinion the study upon which the classification was based was seriously flawed.

The Director develops, plans and maintains computing and data communication resources and services, etc. We believe that Yee develops policy and procedures, determines how the services are to be provided and directs the activities of the seven branches of the Center. Tr. 47-48. Yuen, confirmed that Yee has complete authority to manage the Center. Tr. pp. 28-29.

Based upon the position's duties and responsibilities, the Board concludes that the position possesses the requisite

degree of policy making authority to be considered a top-level managerial position. Therefore, the position should be excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

The BOR also requested the Board to exclude the subject position on the basis that it is a confidential position. In view of the foregoing basis for exclusion, the Board declines to rule on the confidential nature of the position.

CONCLUSIONS OF LAW

The Board has jurisdiction over this matter pursuant to Section 89-6, HRS.

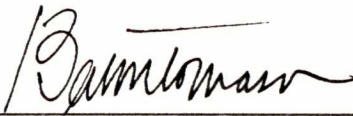
Position No. 80079, Director of the Computing Center, should be excluded from collective bargaining because it is a top-level managerial position.

ORDER

Position No. 80079, Director of Computing Center, is hereby excluded from collective bargaining.

DATED: Honolulu, Hawaii, October 29, 1992.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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