

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: RA-03-204a
	)	RA-08-204b
BOARD OF REGENTS, University	)	
of Hawaii,	)	DECISION NO. 363
	)	
Petitioner.	)	FINDINGS OF FACT, CON-
	)	CLUSIONS OF LAW AND
	)	ORDER

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On January 5, 1995, 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 petition indicates that the Employer redescribed the duties and responsibilities of Position No. 37494, Personnel Clerk IV, SR-11, which was included in bargaining unit 03 (Nonsupervisory employees in white collar positions) and reclassified the position to Position No. 80315, UH Personnel Officer I. The Employer proposes to include the position in bargaining unit 08 (Personnel of the University of Hawaii and the community college system, other than faculty) because it is included in the Administrative, Professional, and Technical (APT) Classification and Compensation Plan. The Employer additionally contends that the position will report directly to the UH Administrative Officer V and will perform confidential work involving employee/employer relations and should be excluded from the bargaining unit under Section 89-6(c), HRS.

The BOR submitted the following documents with the petition:

1. Affidavit of Peggy S. Hong, System Director of Human Resources, University Personnel Management Office, regarding the Personnel Clerk IV and UH Personnel Officer I, dated January 5, 1995;

2. Position Classification Form and Position Description for Personnel Clerk IV, SR-11, BU-03 (Exhibit A);

3. Position description for UH Personnel Officer I (Exhibit B);

4. Class specifications for UH Personnel Officer I (Exhibit C);

5. Organization Chart for the University of Hawaii, Employment Training Center (Exhibit D); and

6. Letter, dated November 22, 1994, from Peggy S. Hong to Russell Okata, Executive Director of the Hawaii Government Employees' Association (HGEA), requesting concurrence with the proposed change of the Personnel Clerk IV, SR-11, BU-03 to a UH Personnel Officer I, PO 3, BU-08 and the proposed exclusion of the position (Exhibit E).

Based on the affidavit of Peggy S. Hong 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 the public employer, as defined in Section 89-2, HRS, of employees of the University of Hawaii (UH), which include employees in bargaining units 03 and 08.

The HGEA is the certified exclusive representative of the employees in bargaining units 03 and 08.

The HGEA concurs with the BOR's proposed transfer of Position No. 37494 in bargaining unit 3 to Position No. 80315 in bargaining unit 8 and subsequent exclusion and is deemed to have waived the right to a hearing thereon. Exhibit E.

The Employer asserts that the duties and responsibilities of Position No. 37494, previously a Personnel Clerk IV, are now commensurate with that of Position No. 80315, the UH Personnel Officer I classification.

According to the Position Description for the UH Personnel Officer I, the position will be located in the Administrative Services section of the Employment Training Center for the University of Hawaii Community Colleges under the general direction of the UH Administrative Officer V and works independently in handling daily operations of the personnel section. The position performs the following duties in the approximate percentages of worktime:

1. Operates, maintains and updates the Human Resources Information System and the organization's computerized personnel database; formats data bases to customize summary reports upon request; plans, organizes, controls and maintains the file system of documents and records; serves as custodian of the personnel records and employment files; reviews applications for employment to determine completeness, satisfaction of minimum qualifications



and compliance with EEO policies; collects and analyzes data for EEO reports; prepares EEO summary reports for Administrative Officer; researches, collects and analyzes data and pertinent background information and summarizes analysis for grievances, EEO complaints, workers' compensation and other personnel-related complaints; recommends the followup procedures of the complaint/claim to the Administrative Officer; researches information and prepares quarterly and annual OSHA reports and survey; recommends the approval of staff development or out-service training requests to the Assistant State Director; resolves staff development and training-related problems/discrepancies; assists the Administrative Officer in developing and implementing a new employee orientation program and other staff development related projects; distributes information on upcoming training programs and ensures that appropriate forms are completed and processed on a timely basis for training and workshops (85%);

2. Supervises student assistants in the processing of the casual, emergency, overload and overtime payrolls, ensuring compliance with applicable University policies and procedures and accurately and timely completion of payment documents; completes employment verification requests and

unemployment forms; maintains and verifies completeness of the Appraisal System and Job Performance Report (10%); and

3. Conducts other personnel related work as assigned by the Administrative Officer (5%).

According to the class specifications for the UH Personnel Officer I, positions in this class independently perform basic personnel administration work as either a personnel generalist or personnel specialist. Employees in this class are responsible for the provision of administrative support services requisite to the staffing and management of personnel assigned to the various University academic research and support programs and functions and other duties as required. Exhibit C.

#### 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:

\* \* \*

- (3) Nonsupervisory employees in white collar positions;

\* \* \*

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

The Board, in HPERB Decision No. 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1972), described Unit 08 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 groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical (hereafter APT).

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

Id. at 298.

Section 89-6(c), 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 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 employees 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.

Upon a review of the duties and responsibilities of Position No. 80315, the position will engage in a variety of personnel administrative work such as information and records management, application review, data analysis, complaint resolution and supervisory duties. Specifically, the position researches and analyzes information for grievances, EEO complaints, workers' compensation and other personnel complaints. Thus, the Board concludes that the position has access to and is involved in matters which are not intended for the eyes and ears of the rank-and-file and the unions. Serious conflicts of interest may result if the position is included in the bargaining unit. State of Hawaii, 1 HPERB 403 (1973). Consequently, under the provisions of Section 89-6(c), Hawaii Revised Statutes (HRS), the position should be excluded from Unit 08.

#### CONCLUSIONS OF LAW

The Board has jurisdiction over the subject petition pursuant to Section 89-6, HRS.

The Employer redescribed the duties and responsibilities of Position No. 37494, Personnel Clerk IV, SR-11, which was included in Unit 03 and reclassified the position as Position No. 80315, UH Personnel Officer I. As this position is included in the Administrative, Professional and Technical (APT) Classification and Compensation Plan, the position should be transferred from Unit 03 to Unit 08.




Position No. 80315, UH Personnel Officer I, is concerned with confidential matters affecting employee-employer relations and should be excluded from Unit 08 and the coverage of Chapter 89, HRS, pursuant to Section 89-6, HRS.

ORDER

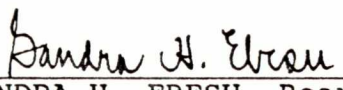
Position No. 37494, Personnel Clerk IV, which was reclassified to Position No. 80315, UH Personnel Officer I is hereby transferred from Unit 03 to Unit 08 and further, hereby excluded from Unit 08 because it is an employee concerned with confidential matters affecting employee-employer relations.

DATED: Honolulu, Hawaii, February 14, 1995.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
SANDRA H. EBESU, Board Member

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