

Dec

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-08-207
)	
BOARD OF REGENTS, University)	DECISION NO. 372
of Hawaii,)	
)	FINDINGS OF FACT, CON-
Petitioner.)	CLUSIONS OF LAW AND
)	ORDER

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On November 29, 1995, the BOARD OF REGENTS (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 exclusion of Position No. 81813, P11, UH General Bookstore Manager, which was recently reclassified to Director of University Bookstores. The BOR contends that the incumbent of the position is top-level managerial and an individual concerned with confidential matters affecting employee-employer relations. The BOR requests therefore, that the position be excluded from bargaining Unit 08 and coverage under Chapter 89, Hawaii Revised Statutes (HRS) pursuant to 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 of Hawaii, regarding Position No. 81813, dated August 1, 1995;

2. Current position description for the UH Bookstore Manager III and organizational chart for the University Bookstore (Exhibit A);

3. Revised position description for Director of University Bookstores and organizational chart for Auxiliary Enterprises/Bookstore System, University of Hawaii (Exhibit B);

4. Class specifications for Director of University Bookstores (Exhibit C); and

5. Letter, dated July 10, 1995, from Peggy S. Hong to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of the Director of University Bookstores (Exhibit D).

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 which includes employees in bargaining unit 08.

The HGEA is the certified exclusive representative of the employees in bargaining unit 08.

The HGEA concurs with the BOR's proposed reclassification of UH General Bookstore Manager, P11, Position No. 81813, to Director of University Bookstores, M05-M and exclusion of the position from bargaining unit 08 and is deemed to have waived the right to a hearing thereon (Exhibit D).

According to the Position Description for the UH Bookstore Manager III, the incumbent works in the University of Hawaii Bookstore at Manoa, and performs the following duties in the approximate percentage of worktime:

- (1) Ensures the availability of specified textbooks in the right quantity and at the right time. Makes used texts available in substantial quantities at reduced prices. Provides a market for used texts for which students wish to dispose for cash. Ensures that overstocked textbooks are returned to publishers in a timely manner, or that workable arrangements are made for future use or other disposition of such books. Provides for sale a suitable assortment of general books (and magazines where appropriate), necessary classroom, studio, and laboratory supplies, health-and-comfort items and specialty merchandise bearing University insignia. Conducts various computer hardware sales programs and makes available printers and various computer peripherals. Provides retail services such as special orders, credit card acceptance and rentals. Conducts a public relations program through such means as establishment and enforcement of reasonable customer relations policies, meetings, campus visitations, newsletters, press releases and interviews. Serves as liaison between the academic departments and the bookstore with

regards to all book information. Meets with departmental chairpersons in securing timely textbook information and analyzes historical sales and enrollment information in determining economic order quantity parameters. Directs continuing programs of market analysis and publisher and vendor relations. Manages the physical plant of the Manoa Bookstore. Ensures that the store is clean, neat and well-lighted. Eliminates hazards to health and possible causes of injury. Provides for physical security. Arranges for ongoing inspections in the interest of preventing or repairing leaks, breaks, insect infestation and deterioration. Ensures that the inspection and maintenance program includes close attention to fixtures, machinery and equipment and arranges for repainting and resurfacing as necessary. Prepares bid specification for supplies and equipment up to \$100,000. Advises and executes facilities management support for the Bookstore system. Plans, executes and reviews all major construction activity. Analyzes sales, cost, and net income data. Discerns trends, reviews cash availability and implements cost control procedures. Solves exceptional problems not covered by existing policies and procedures. Ensures that all

cashiering functions are carried out in conformance with the Bookstore Manual and University regulations, that the cashiering unit is adequately staffed and trained, that sufficient change is on hand at all times, that deposits are made promptly and accurately, that cashiers and all cashiering activity are safeguarded from robbery, that adequate fixtures and equipment are available and in good repair at all times and that the cashiering floor plan conforms to requirements of the season. Supervises shipping and receiving activities, ensuring that incoming merchandise is properly inspected, verified and added to inventory records and that outgoing merchandise is properly authorized for shipment, documented, packed, addressed and sent via the most appropriate means. Supervises local deliveries, ensuring that outgoing merchandise is delivered in an accurate and timely manner, that deliveries are properly authorized and acknowledged and that the most efficient route is used. Ensures that warehouse and in-store storage areas are properly designed and managed, that documentation of incoming and outgoing merchandise is accurate and complete, that merchandise is stored in a logical manner and that the areas are clean and safe from damage or theft. Controls interior decoration and design in selling areas.

Ensures that show windows and other display areas are used to maximum advantage. Arranges for preventative maintenance and necessary repairs of Bookstore spaces and warehouse. Establishes procedures and work hours for, as well as supervises, janitorial help to ensure the cleanliness, sanitation and neat appearance of store spaces and warehouse as well as contiguous outside areas at all times (50%);

- (2) Establishes goals and objectives for the Manoa Bookstore consistent with state laws; University rules and regulations; academic programs; administrative needs and special requirements of the faculty, staff and students of the University. Develops store policies and procedures with regards to customer relations; merchandising programs and services to be provided. Directs the preparation of long and short range plans for the Manoa bookstore in support of the overall goals and objectives of the bookstore system. Assists in the preparation of long and short range budgets to support plans and current operations. Directs the procurement, merchandising, pricing and inventory analysis for all departments (20%);
- (3) Participates in personnel management processes (20%); and

- (4) Maintains management systems and procedures necessary for the execution of plans and budgets and to achieve goals and objectives. Analyzes composite statements of condition and income. Directs the implementation of overall cost control procedures and performs special duties as assigned by the Director of University Bookstores (10%).

According to the revised Position Description for the proposed Director of University Bookstores, the position will work in the University of Hawaii Bookstore at Manoa and provide management for all bookstores in the University system. The position performs the following duties in the approximate percentage of worktime:

- (1) Develops policies, plans and objectives for the system as a whole and for each of the eight stores. Assembles basic data and proposals for long and short-range plans. Makes final decisions. Provides guidance to ensure compliance with State law; University policies and regulations; academic programs; administrative needs and the expectations of faculty, staff and students (20%);
- (2) Directs the preparation of long and short-range budgets; the development of a computerized Bookstore Information System to control the general ledger, accounts payable, financial reporting, inventory control and operational controls; directs cash flow planning, cash security measures and

- investment program; directs the preparation and distribution of financial reports and monitors critical indicators of financial health. Ensures that the stores are self-supporting (20%);
- (3) Directs the activities of branch store managers and Manoa store department managers to ensure that merchandise planning and operations fulfill the needs and desires of the academic community within established Bookstore plans, policies and procedures (20%);
- (4) Supervises the development and conduct of a personnel management program for University Administrative, Professional, and Technical employees (APT), Civil Service employees and student employees at all stores to include determination of staffing levels, plans and procedures for augmentation during rush periods, orientation and specialized training in retail operations, professional development and career planning, internal coordination of functions, equitable treatment, individual recognition, working conditions conducive to job satisfaction and maintenance of appropriate records (20%); and
- (5) Manages the physical plant to ensure that the floor plans and decor of all stores contribute to efficiency and customer comfort, through smooth traffic flow, informative and attractive signs and

proper selection of fixtures; ensures that all stores are clean, neat and well-lighted; eliminates hazards to health and possible causes of injury; provides for physical security through alarm systems, secure locking devices, window screens, mirrors and similar devices; arranges for ongoing inspections to prevent or repair leaks, breaks, insect infestation and deterioration; and ensures that the inspection and maintenance program includes close attention to fixtures, machinery and equipment and arranges for repainting and resurfacing as necessary (20%).

According to the class specifications for the Director of University Bookstores, the position is involved in the overall planning, development and coordination of the entire bookstore operation, which includes a bookstore on each campus. The position is responsible for developing broad objectives, long and short-range plans, policies and procedures; directing the preparation of long and short-range budgets; coordinating and controlling expenditures in accordance with the approved budget; directing the development, maintenance and implementation of a computerized bookstore information system, cash flows and security, investment programs and financial reports; administering the merchandise planning operations; coordinating the development of a personnel management program to ensure proper training and orientation of personnel to meet the peak operational rush periods, staffing

requirements, inventory controls and store security and managing and overseeing the operations of the Manoa bookstore.

In managing the Manoa bookstore, the position will supervise a staff of professional and clerical personnel through subordinate managers and department heads and assure the responsibility for overall administration of the bookstore. The position will exercise wide discretion based upon extensive knowledge and experience in bookstore operations, retail management, merchandising, accounting, data processing and personnel management. The position's work will be reviewed by the Vice President for Finance and Operations for results achieved relative to financial stability of the operations and meeting the needs of the academic community.

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(c), HRS, however, specifies that top-level managerial and administrative personnel as well as individuals concerned with confidential matters affecting employee-employer relations are to be excluded from any appropriate bargaining unit and coverage under Chapter 89. In interpreting the exclusionary

language of Section 89-6(c), HRS, as it relates to confidential employees, 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 145-147.

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 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 affect 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.

The BOR contends that the subject position should be excluded on the basis that it is a confidential position. According to the position description, the position supervises the development and conduct of a personnel management program for employees at all of the stores, to include, inter alia, the development of staffing levels, plans and procedures for augmentation during rush periods, orientation and training, equitable treatment and maintenance of appropriate records. Exhibit B. In addition, the class specifications provide that this class coordinates the development of a personnel management program to ensure proper training and orientation of personnel to meet

needs and managing and overseeing the operations of the Manoa bookstore. Exhibit C.

Based upon this record, the Board finds the record is insufficiently detailed to conclude that the position regularly works with matters which are capable of producing an effect or influence upon employee-employer relations.

In interpreting the exclusionary language of Section 89-6(c), HRS, as it pertains to top-level managerial and administrative personnel, 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 or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

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 Employee's 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 on-going 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.

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 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 Position No. 81813, the Board finds that the position will exercise independent judgment and authority in setting policies and formulating strategies, goals and objectives to insure support of academic programs in response to the needs of the academic community, and the timely delivery of education-related goods and services on all campuses. As such, the Board concludes that the subject position is a top-level managerial position. Consequently, under the provisions of Section 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 8 and coverage under Chapter 89, HRS.

CONCLUSIONS OF LAW

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


The Director of University Bookstores is a top-level managerial position and should be excluded from collective bargaining.

ORDER

Position No. 81813 is hereby excluded from collective bargaining unit 08 and coverage of Chapter 89, HRS.

DATED: Honolulu, Hawaii, February 23, 1996.

HAWAII LABOR RELATIONS BOARD

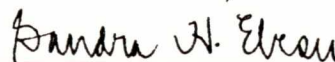


BERT M. TOMASU, Chairperson

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RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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