



STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD
Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813
HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. CE07-866

File the original and five copies of this Complaint, by U.S. Mail or in person, with the Hawaii Labor Relations Board, Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14, and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. Complainant

(a) Name, address and telephone number.

University of Hawaii Professional Assembly
1017 Palm Drive
Honolulu, HI 96814
(808) 593-2157

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

T. Anthony Gill, Esq.
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Page 2 of 3

3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)

(a) Name, address and telephone number.

Board of Regents of the University of Hawaii
2444 Dole Street, Bachman Hall 202
Honolulu, Hawaii 96822
(808) 956-8207

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Carrie Okinaga, University General Counsel
2444 Dole Street, Bachman Hall 110
Honolulu, Hawaii 96822
(808) 956-2211

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining Unit 07 - University of Hawaii Professional Assembly.

5. Allegations

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

(See attached)

Factual allegations

1. The University of Hawaii Cancer Center (UHCC) is a branch of the University of Hawaii, a Public Employer regulated by Chapter 89, HRS.
2. At the UHCC, the Public Employer employs a number of members of Bargaining Unit 7.
3. These unit 7 members receive compensation pursuant to the UH-UHPA collective bargaining agreement (CBA).
4. The Public Employer deducts and remits to UHPA, from the payroll for these unit 7 members, dues monies, pursuant to § 89-4.
5. However, in addition to compensation from the Public Employer, a number of Unit 7 employees at the UHCC receive significant additional compensation from another entity, the UHCC Consortium (“consortium compensation”).
6. Although the consortium compensation is paid to Unit 7 employees by virtue of their employment by the Public Employer, and because of their pursuit of the goals of the Public Employer, the consortium compensation is not on the books of, monitored by, or regulated by the Public Employer.
7. The consortium compensation is not provided for in the CBA.
8. The consortium compensation is not subject to dues deductions under § 89-4, and is omitted as a basis for contributions to the ERS.

9. The CBA permits a certain amount of outside compensated work for members of Unit 7. The consortium compensation to a particular unit member may be far in excess of what the collective bargaining agreement permits as outside income.

10. Decisions on to whom consortium compensation is awarded, and in what amounts, or on alterations thereto, are made by the UHCC Consortium. In this function, the UHCC Consortium acts independently of the Public Employer, and compensation is awarded without bargaining with UHPA.

11. To the extent the UHCC Consortium is composed of UH administrators *ex officio* or by appointment, said UH administrators are agents of the Public Employer and are wilfully evading the bargaining obligations established by Chapter 89.

12. The CBA does not delegate decision making on compensation to, and does not recognize, the UHCC Consortium. The UHCC Consortium operates outside the scope of the CBA.

13. The consortium compensation is set and provided outside any established past practice between the collective bargaining parties.

14. The UHCC Consortium exercises significant control over the operation of the UHCC, including over Unit 7 employees, in the following regards:

- A. Choices and direction of projects
- B. Determination of standards of work

- C. Material input on promotion
- D. Material input on discipline
- E. Interface with external review entities
- F. Regulation of grant applications

Count 1. Unbargained compensation of employees, by entities other than Public Employer, as breach of Chapter 89

1. Factual allegations above are reasserted and incorporated herein.
2. Wages are a topic of bargaining consigned to the collective bargaining parties by Chapter 89.
3. Wages are to be bargained collectively, not individually, as follows.
 - A. Upon certification of an "Exclusive Representative", collective bargaining replaces individual bargaining. Individual bargaining, on bargainable topics, is no longer permitted.
 - B. The Exclusive Representative has the exclusive right to bargain wages on behalf of bargaining unit employees.
 - C. The Public Employer has the exclusive right to bargain wages on behalf of the state.

D. Wages must be bargained between the Exclusive Representative and the Public Employer, not between an individual and the employer, or an individual and an outside party.

E. Payment of bargained wages, and contributions, is the responsibility of the Public Employer.

4. Failure of the Public Employer to remit to various agencies the proper contributions based on total compensation, diminishes a unit member's retirement income from ERS, deprives the ERS and possibly other agencies of funding, may subject the unit member to various liabilities, and places a financial burden on other unit members, who support the Exclusive Representative at the full, un-evaded rate. It also deprives the Exclusive Representative of income allowed by law.

5. Payment of consortium compensation to Unit 7 employees, that is not regulated or recognized by the CBA, and not the result of collective bargaining, constitutes:

A. Unilateral implementation on the topic of wages, and hence violation of the duty to bargain;

B. Violation of the duty of the Public Employer to remit to the Exclusive Representative an appropriate portion of unit employees' gross compensation pursuant to § 89-4;

C. Direct dealing between a manager and unit employees, in violation of the Exclusive Representative's right of exclusivity;

D. Violation of the statutory system establishing the Public Employer as the plenary management authority under Chapter 89;

E. Violation of statutes other than Chapter 89, where, for example, contributions to such funds as the ERS are determined at least in part by the employees' reported compensation.

6. Discovery request:

Complainant Exclusive Representative will seek authorization to conduct appropriate discovery from UH, UH collaborators, and individual Unit 7 employees, to ascertain the full extent of the extra-contractual compensation paid to Unit 7 employees at UHCC, inclusive of all sources, over last and current calendar years.

7. Relief sought:

A. Corrected contributions on behalf of the Unit 7 employees to the ERS and any other affected agencies

B. Declaratory judgment and order to the effect that the Public Employer may not compensate Unit 7 employees, except through bargained wages and benefits, and ordering bargaining on the topic of extra-contractual compensation by the UHCC Consortium

C. An award of dues to UHPA based on all income paid to the Unit 7 employees during a germane retroactive period, and prospectively, pursuant to § 89-4

D. A penalty or fine against the Public Employer in an amount calculated to discourage violation of Chapter 89 henceforth

E. Costs of suit, including attorneys' fees

Count 2. Supervision and direction of employees by entities other than Public Employer, as breach of Chapter 89

1. Factual Allegations above are reasserted and incorporated herein.

2. The UHCC has a unique system of governance in which the Public Employer is only partially in charge of employer-side responsibilities. In fact, the UH system may be unable to effectively monitor or direct UHCC, because the organization is not solely responsible to the University.

3. Workload, discipline, standards of promotion, manner of direction of employees, and other topics included in "terms and conditions of employment" are bargainable.

4. The UHCC Consortium exercises significant control over bargainable topics, and consultable topics, but the Exclusive Representative has no ability under existing interpretations of Chapter 89 to bargain with the Consortium or consult with the Consortium.

5. The Public Employer and the Exclusive Representative (and no other parties) are empowered by law to negotiate these topics.

6. It is a violation of the scope of bargaining, and a violation of the duty to bargain imposed on the parties, for bargainable topics concerning unit employees to be dealt with, other than between the exclusive representative, and the public employer.

7. Relief sought:

A. UHPA seeks a declaratory ruling and order to the effect that when the Public Employer shares governance authority with an entity other than as defined in statute, the Exclusive Representative is entitled to full Chapter 89 rights with that non-public entity, in addition to its rights with the Public Employer.

In the alternative, UHPA seeks a declaratory ruling and order that when a Public Employer operates a public facility in collaboration with another entity, that other entity is deemed to be a component or agency of the Public Employer under Chapter 89.

B. UHPA seeks a declaratory ruling regarding whether the duty of fair representation extends to problems arising from co-employers, such as the UHCC

Consortium

C. Costs of suit, including attorneys' fees

Count 3. Use of UHCC hire letters to unilaterally set conditions of work, contrary to the CBA, and contrary to past practice in Unit 7

1. Factual allegations above are reasserted and incorporated herein.
2. Initial salaries for faculty hired into Unit 7 are usually not directly specified by the CBA.
3. The Exclusive Representative and the Public Employer have traditionally agreed to permit academic departments, acting as collegial bodies, and their college administrators, to set initial terms of hire for members of Unit 7.
4. This has been in observance of the academic tradition of peer self-governance.
5. Allowing unit members and subordinate branches of the Public Employer to set initial terms of hire for unit employees, has been one of the accommodations made by the collective bargaining parties in recognition of the need for adaptation of industrial practices to the academic environment ("Creating something new under the sun that isn't part of previous collective bargaining experience and isn't part of previous university governance experience either...." UH President Cleveland, HPERB Decision I-21 (1972))
6. This traditional behavior by both collective bargaining parties has resulted in a settled past practice on a bargainable topic.

7. Deviations from past practice on bargainable topics may not be unilaterally implemented.

8. The UHCC has deviated from settled past practice by, to a degree not common in the rest of the University, unilaterally promising and allocating funds, facilities, and equipment, in letters of hire, to incoming unit members, without the collaboration of peer faculty or the Exclusive Representative.

9. Accordingly, the Public Employer, through its agent the UHCC, has committed a refusal to bargain.

10. Relief sought:

A. Order requiring proposed letters of hire to be submitted to the Exclusive Representative prior to issuance, unless and until language is bargained to cover the topic of letters of hire.

B. Costs of suit, including attorneys' fees

Count 4 Assigning administrative duties or titles to unit members; unit clarification

1. Factual allegations above are reasserted and incorporated herein.

2. Assignments of top-level managerial duties, titles, or powers, to unit members, creates a labor law conflict of interest. A single person cannot both be in the bargaining unit, and routinely discharge top-level managerial duties. The conflict of

interest requires that the person abandon either the managerial or the bargaining unit duties.

3. Deans are persons excluded from Unit 7 under Decision 21.

4. A previous prohibited practice charge, RA-07-240, was filed, and settled, regarding the inappropriate assignment of administrative duties to a unit 7 member.

5. Notwithstanding the settlement of that matter, the UHCC, or the UHCC Consortium, has wilfully continued to assign inappropriate administrative duties or titles to Unit 7 Members.

6. Discovery requested:

Allowance of discovery under subpoena, to conduct a full review of titles and duties assigned to Unit 7 personnel in the UHCC.

7. Relief requested:

A. Entry of an order to the effect that the Public Employer shall cease and desist from assigning administrative duties to Unit 7 personnel, and correct all such inappropriate assignments and titles

B. Costs of suit, including attorneys' fees

C. A penalty sufficient to deter the UHCC from continuing to violate