



University of Hawai'i Board of Regents' Meeting  
Bachman Hall 113  
May 20, 2009

**TESTIMONY RE COLLECTIVE BARGAINING**

Dear Chairman Landon and Members of the Board of Regents:

I am here today to express both my appreciation to President David McClain, Regent Allan Landon, and Regent Howard Karr, as well as my concern with respect to the current state of negotiations between UHPA, the State of Hawaii, and the Board of Regents.

For those who are new to the Board, UHPA initiated negotiations with the UH administration in April 2008, and formally proposed that the parties agree to interest arbitration should there be an impasse in negotiations. Both the state and the UH administration rejected that offer, and we attempted to negotiate a successor agreement through last fall. In December, UHPA filed a formal request with the Hawaii Labor Relations Board for impasse and a federal mediator was appointed. The parties have met three times with the federal mediator, and during the second meeting UHPA offered to agree to extend the identical terms of the current collective bargaining agreement through June 30, 2011. This extension would not provide any additional salary increases beyond the last adjustment on July/August 1, 2008. Although the Governor had earlier indicated her desire to reach such an agreement, prior to the time the offer was formally put on the table she rejected it. I have been told that President McClain, Regent Landon, and Regent Karr were willing to give their votes to that offer, but without the Governor's vote no agreement could be reached. In rejecting UHPA's offer, the Governor stated that "things had changed" and she could no longer make an agreement with just one of the public sector unions, she now needed a "global settlement."

At the request of UHPA, another attempt at mediation was held in the Federal Building on April 17, 2009. At that time, UHPA presented a revised salary proposal. The proposal was based on flat dollar allotments to the faculty, not added to the base salary, which would have offset the increases in premiums

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY

1017 Palm Drive · Honolulu, Hawaii 96814-1928  
Telephone: (808) 593-2157 · Facsimile: (808) 593-2160  
Web Page: <http://www.uhpa.org>



for health insurance provided through the Employer Union Trust Fund (EUTF). Unlike private sector bargaining, public sector unions are not allowed to negotiate health insurance benefits, carriers, or premiums. Only the “employer’s” contribution to the EUTF is subject to bargaining, and that topic is not subject to impasse procedure in HRS Chapter 89. Therefore, the flat dollar offer was our only way to address the projected 29.4% rate increase in the EUTF’s self-funded HMSA insurance coverage.

After UHPA made its presentation, the state’s Chief Negotiator, Marie Laderta, on behalf of the Governor, presented a “concept” proposal to UHPA. It is my understanding that President McClain and the Regents were only advised of this proposed “furlough plan” less than two days prior to our mediation. I am sure that Vice President Morton has, or can, describe this offer, but it amounted to roughly 18 ½ days of furlough per year over the next two years, or a 7.1% salary reduction across-the-board per year. We had many questions related to how the state would implement such a furlough plan for university faculty, since the concept is “no work, no pay,” especially with regard to instructional, service, and research obligations of the institution. The state had no answers to these questions, other than to say they would be worked out.

Fortunately, the state could only present this as a “concept” because neither President McClain, nor Regents Landon or Karr would give the Governor their vote, which is necessary for the “employer” to make a formal offer. This is similar to the problem the Governor has run into with respect to the refusal of the county mayors to give her one of their votes so that such a furlough offer could be made to the unions representing civil service employees, HGEA and UPW. The consequences of such a proposal would be immense on the instructional programs and the research endeavors of the university, especially those supported through external funding agencies and grants.

On May 12, 2009, the four public sector unions (HGEA, UPW, HSTA, and UHPA) currently in negotiations sent a letter to Governor Lingle requesting that we continue bargaining, “...toward resolution of successor collective bargaining agreements with the public employers through a global settlement, seeking a universal solution to the financial issues resulting from the current economic recession.” Chief Negotiator Laderta set an informal meeting with the undersigned unions to meet on Tuesday, May 19<sup>th</sup>. A day before the meeting, all of the unions were hand-delivered a package of proposals dated May 18, 2009. They were both titled “STATE PROPOSALS.”



The Governor proposed:

1. Across-the-board 10% salary reductions for all faculty members, including full-time tenured faculty, grant supported researchers, lecturers, and temporary faculty. The prior proposed furlough plan was replaced with an even larger salary reduction.
2. Elimination of the historic contract language that provides the UH administration the right to make special salary adjustments based on merit, market, retention, and equity criteria.
3. Reductions in the employer's current contribution of 60% of the premiums of the EUTF health insurance benefits, and the elimination entirely or in part of some of the employer's current support to portions of the benefits and the administrative costs of the EUTF.
4. The replacement of current language on retrenchment with a provision that allows the layoff of any faculty member, upon thirty days notice, without regard to tenure status.

All four unions were given similar proposals. However, I do not believe that the UH administration nor the county mayors actually received copies, although the Governor may have alerted them to her change in position with replacing furloughs with salary cuts.

As then may be obvious with these larger pay cuts, yesterday's informal meeting between the unions and representatives of the Governor did not lead to any agreements. Chief Negotiator Laderta did indicate that she was going to speak with the Governor and wanted to schedule a follow-up, informal meeting with the unions in June.

Speaking on behalf of UHPA, we have one desired outcome, which is to minimize the potential long term damage to the University as a result of substantial reductions in funding that would arise from declining state revenues. Further reductions in salaries, through cuts or furloughs, will only exacerbate the University's problems and drive away the very faculty resources needed to carry on instruction and research. Ultimately, shrinking revenues to the University of Hawaii will require the Regents to make difficult programmatic decisions. It is not sustainable for the UH to continue to expand its programs in the face of financial contractions.



That being said, I would like to present the Regents with a warning with respect to what is developing as a result of the current negotiations and the responsibilities of the “employer.” First of all, who is the employer of the university faculty?

Hawaii's collective bargaining law, §89-6(d)(4), provides that "for the purpose of negotiating a collective bargaining agreement, the public employer" of unit 7 will be the Governor, with three votes, the Board of Regents with two votes and the President of the UH with one vote. "Any decision to be reached by the applicable employer group shall be on the basis of **simple majority**...."

Regent Landon, Regent Karr, and President McClain are one-half of the “employer” as provided by law. The Governor cannot act without at least one of your votes in order to command a majority. It is for this reason that the state's proposals remain only as “concepts.” Therefore, one may legitimately question why the Governor is usurping your lawful authority by characterizing these two recent letters as “proposals” in bargaining.

It is a mistake to think of this bargaining table as having two sides. It has at least three: Governor-Regents-UHPA, or possibly four: Governor-Regents-President-UHPA. The structure of public sector, multi-lateral bargaining has always made the process more difficult.

Furthermore, it appears that the Governor is preparing to impose a salary cut or layoffs on the faculty. Chief Negotiator Laderta has stated that if the unions with the right to strike, HSTA, UHPA, and one unit of UPW, did not agree to a furlough by June 30<sup>th</sup> that the Governor would impose it on July 1, 2009. For her to do this without your participation and authority is arguably contrary to law, and the Constitution.

Interestingly, Hawaii's collective bargaining law, §89-2, provides that the *employer* in the case of the University of Hawaii is the *Board of Regents*. In other words, the responsibility for implementing and adhering to a collective bargaining agreement falls on the Regents, not the Governor. The Governor can no more intrude on the administration of a collective bargaining agreement with your faculty than she can intrude on the administration of a collective bargaining agreement between the mayor of a county and the county employees.

And more to the point, the collective bargaining law, §89-9(d) (5), provides that the right and obligation to relieve employees from duties "because of lack of work or other legitimate reason" resides with the public employer, i.e., the



Board or Regents, not the Governor. And, under §89-9(d) you may not bargain away that right or assign it to the Governor.

And even more strongly, the Constitution of the State of Hawaii, Article 10, Section 6, provides that "The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university." This exclusive jurisdiction to manage and operate the university resides only with the Regents, not the Governor.

This exclusive jurisdiction, or university autonomy, is subject to laws of general application, but the collective bargaining law is such a law of general application, and that law describes your authority.

With respect to collective bargaining, the Regents and the President have veto power over contractual proposals that affect university employees. The Board of Regents has sole responsibility to administer the contract with your faculty.

Under the law, the Board of Regents either has plenary authority as the employer, or veto power as co-bargainer, over all matters subject to negotiations. You have more management authority than the Governor. The Legislature can cut the UH budget and the Governor can restrict appropriated funds, but neither the Legislature nor the Governor can reach into the management of the University and tell you how to carry out your authority.

I am not here to plead for your help. UHPA is well-accustomed to defending itself against unconstitutional and illegal initiatives from the chief executive, and will do so again. However, you do have a decision to make prior to the expiration of our contract on June 30, 2009. In the negotiations that lead to the current 2003-2009 Agreement between the University of Hawaii Professional Assembly and the Board of Regents of the University of Hawaii (the legal name of the document,) we entered into an interim agreement for the period of 2003-2005. That contract included all of the language that has governed our employment relationship over the last six years, but negotiations over the provisions of Article XXI., Salaries, and Article XXII, EUTF, continued on. At the time, the Governor agreed to sign a collective bargaining agreement with the Regents and UHPA while all financial matters continued until they were settled in 2005. At that time, the salary adjustments were made retroactive to 2003. I would like the Regents to propose to UHPA such a contract settlement over the terms of contract language for the period of 2009 through 2011. I believe that we can reach a mutually acceptable settlement to



such an agreement, but it would require the vote of the Governor to become a contract. **In the absence of the Governor's vote, the Board of Regents on its own authority could direct the UH President to administer and manage faculty employment matters as if those provisions had been formally ratified.**

I strongly believe that in this time of continuing uncertainty with respect to salary and benefits, it is in the best interest of the University to have stability with respect to all other employment related issues.

I would also ask the Regents to vigorously assert their authority and autonomy under the law. I am here to urge upon you a simple thought. Do not allow the executive branch to usurp your statutory and constitutional prerogatives. In the days to come, do not passively stand by, and if necessary, challenge the Governor's positions in all appropriate venues. Ultimately, the future of the University of Hawaii rests with you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. N. Musto', written in a cursive style.

J. N. Musto, Ph.D.  
Executive Director