



UHPA Policy on Representing Faculty Members
Effective: June 30, 2018

Definitions.

- “Negotiation of collective bargaining agreements” includes all direct or indirect negotiations or communications between bargaining teams or committees or designees thereof, discussions within the UHPA team or between the team and its supervisory bodies, communications aimed at explanation or ratification of a tentative agreement, educational outreach to Faculty Members, news releases or public productions, efforts to ensure legislative appropriation, and generally all processes to obtain a favorable contract.
- “Representation on case work” or “representation” includes all assistance, guidance, aid, counseling, mediation, advice, education, settlement, or advocacy, performed by UHPA staff or contractors, on behalf of Faculty Members, individually or in groups, regarding workplace issues, whether or not pertinent to a specific contractual provision, and whether or not pertinent to litigation; but not involving negotiation of a collective bargaining agreement, political action, or public policy action.
- “Litigation” refers to dispute resolution processes involving a third-party (non-UH) decider, such as contractual arbitration, labor board hearings, or court processes, and prerequisite steps and preparation, whether or not the process proceeds to a final decision. Compared to most other projects, litigation typically demands the highest level of staff and outside professional attention, imposes the most budgetary stress, and proceeds on a relatively-rigid timetable with highest priority.
- “Faculty Member” refers to all members of Bargaining Unit 7, Faculty of the University of Hawai‘i, as defined by law; generally, Unit 7 only includes persons working half-time or more.
- Faculty Members include:
 - “UHPA members” (who join UHPA, pay membership dues, and are eligible for union-only benefits);
 - “Non-members”, also known as “agency fee payers” (who do not join UHPA, and who therefore are non-members, but who voluntarily pay agency fees to UHPA);
 - Non-members who request a rebate of political and ideological expenditures (a subset of Non-members, as traditionally permitted by Hawaii and federal law); and
 - Non-member non-payers, or simply “non-payers” (who decline to pay an agency fee, and also are ineligible for representation on case work, unless they pay reasonable costs of representation, as explained below).

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

Policy.

- Part 1. UHPA will not discriminate between Union members and non-members in the negotiation of Collective Bargaining Agreements.
- Part 2. UHPA will not discriminate between Union members and non-members in providing representation on case work. Union members and non-members, other things equal, shall receive the same level of representation.
- Part 3. UHPA reserves the right to decline representation on case work to Faculty Members who are non-payers.

Representation is UHPA's largest expense. UHPA has no source of funding other than Faculty Members' dues or agency fees, and representation, particularly litigation, rapidly consumes resources. Most Faculty Members understand that funding a share of the common defense is a natural part of collective action, and is a mutual obligation. One who declines to contribute should not expect to be defended.

A. On matters not involving litigation, UHPA will consider reasonable costs of representation to be paid under either of the following conditions:

- 1. From and after June 27, 2018, the Faculty Member has consistently paid membership dues, or dues equivalents as an agency fee, with no more than a single lapse of 90 days, after beginning University employment;
- 2. The Faculty Member has paid UHPA, by lump sum in cash or equivalent five (5) years of back dues, or back dues for each month of employment to date in which dues or fees were not paid, whichever is less, AND has executed a binding commitment to have dues or dues equivalents deducted from pay for a future of five years or the duration of employment, whichever is less.

UHPA staff may discuss issues with Faculty Members who have not paid, in order to ascertain the nature and urgency of the issues, the forum for decision-making, whether the Faculty Member's case is meritorious, the likely time and resource commitments necessary to resolve the issues and any other factors bearing on whether representation would be appropriate if payment were tendered.

B. On matters involving litigation. UHPA will consider reasonable costs of representation to be paid under either of the following conditions:

- 1. From and after June 27, 2018, the Faculty Member has consistently paid membership dues, or dues equivalents as an agency fee, with no more than a single lapse of 90 days, after beginning University employment;
- 2. The Faculty Member has qualified under A.2, AND has paid UHPA an advanced fees-and-costs retainer of five thousand dollars (\$5,000.00), AND has executed a binding commitment to pay one half (½) of UHPA's litigation fees and costs for staff time, attorneys, arbitrators, transcripts, witness fees, and the like, AND has secured payment of such fees and costs through means agreeable to UHPA, which may include posting of a

sum in escrow, payroll deduction, letter of credit, deduction from an account or credit card, etc. Should the litigation be concluded before the exhaustion of the retainer, any remainder will be remitted to the Faculty Member.

The splitting of litigation fees and costs between UHPA and a Faculty Member as in B.2 recognizes that litigation frequently has value both to the Faculty Member and the broader bargaining unit.

UHPA reserves the right to withdraw from ongoing representation of a Faculty Member if the Faculty Member violates an agreement to pay reasonable costs.

- Part 4. UHPA reserves the right to decline to represent a Faculty Member if the case is without merit, is without sufficient odds of success to justify the cost, is inconsistent with UHPA's understanding of the collective bargaining agreement, is beyond the financial capacity of UHPA, or for other non-arbitrary reasons that are consistent with the traditional duty of fair representation under Hawaii law.
- Part 5. UHPA will consider a non-member voluntary agency fee payer to have paid reasonable costs of representation even if the non-member agency fee payer has requested and received a § 89-4 ("Hudson") rebate. UHPA will maintain its § 89-4 accounting and rebate procedure, unless legal changes make doing so imprudent.
- Part 6. UHPA recognizes the right of Faculty Members, pursuant to state law, to bring their own grievances under the Collective Bargaining Agreement, subject to the right of UHPA to sit in to defend the Collective Bargaining Agreement. However, UHPA does not permit Faculty Members to proceed to the contractual arbitration stage of grievance resolution without UHPA consent or representation. Arbitration outcomes can decisively affect the meaning of the Collective Bargaining Agreement. Private non-UHPA representation of grievants in arbitration would be inconsistent with the legal authority and sole prerogative of UHPA as Exclusive Representative under law to interpret and enforce the Collective Bargaining Agreement on behalf of Faculty, and the Exclusive Representative's duty to the Public Employer to negotiate and administer the Collective Bargaining Agreement in good faith.
- Part 7. UHPA will evaluate requests for arbitration without regard to union membership or non-membership, provided that UHPA will ensure that the Faculty Member has paid or will pay reasonable costs, as set forth above, before submitting the request to the UHPA Board of Directors.

Note: Procedures for implementation of § 89-4 payroll deductions are in flux at the adoption of this policy, and UHPA reserves the right to revise or update this policy as the State makes changes to its practices, or as United States case law evolves.