

**Settlement Agreement in HLRB CE-07-833  
Between University of Hawaii Professional Assembly  
and University of Hawaii**

- A) Whereas, the University of Hawaii Professional Assembly (“UHPA”) filed prohibited practice charge CE-07-833 with the Hawaii Labor Relations Board (“HLRB”) against the University of Hawaii (“UH” or “UH System”); and
- B) Whereas, in CE-07-833, UHPA alleges that the UH at Mānoa (“UHM”), had attempted to implement a Tobacco-Free Campus policy, and attempted modifications to the 2013-2014 Procedures for Evaluation of Faculty at UH Mānoa; and
- C) Whereas, the UH Mānoa Faculty Senate became involved in reviewing the above-mentioned policies with UHM, without notice having been given to UHPA; and
- D) Whereas, UHPA contends in CE-07-833 that both policies contain consultable and bargainable elements; and
- E) Whereas, UHPA contends that UHM failed to bargain on bargainable elements thereof, and did not correctly consult on consultable elements thereof; and
- F) Whereas, it appears that UH Maui and Kapiolani Community College, and perhaps other campuses, have also considered or implemented their own Tobacco-Free Campus policies, without notice to UHPA or UH System; and
- G) Whereas, the parties wish to settle CE-07-833, without finding of or confession of fault, in the interest of avoiding further expense or delay, in the interest of reinforcing their collective bargaining relationship, and in the interest of developing protocols to avoid repetition of the problems;

Now therefore, UH and UHPA agree as follows:

1. This settlement is composed of the following components:
  - a) The development and agreement over a Memorandum of Understanding Regarding The Role of Faculty Senates (a separate document attached as Exhibit “A”)
  - b) The development and agreement over a Memorandum of Understanding Regarding UH System Collective Bargaining Authority consistent with established UH policies and procedures (a separate document attached as Exhibit “B”)
  - c) Agreement for Stay and Dismissal of CE-07-833
  - d) Agreement to consult and/or bargain, if applicable, over any proposed changes to

## 2013-2014 Procedures for Evaluation of Faculty at UH Mānoa

e) Agreement to consult and/or bargain, if applicable, over revisions to the UH Executive Policy E10.102 Tobacco Products Policy

### 2. Agreement for Stay and Dismissal of CE-07-833.

a) Within fifteen business days following the execution of this Agreement, UHPA will move to stay CE-07-833, by indicating that the UH System has authorized agreement with the dismissal, and indicating that a tentative settlement agreement has been reached between the parties, subject to certain conditions subsequent being fulfilled; at completion of these conditions subsequent, the parties will stipulate dismissal of CE-07-833, with each party to bear its own fees and costs. Provided, however, that if the conditions subsequent are not fulfilled as below, the stay may be lifted, and litigation in CE-07-833 may be resumed.

b) The dismissal of CE-07-833 aforesaid is contingent on the parties to this Settlement Agreement having agreed on all documents required herein.

### 3. Agreement to consult and/or bargain, if applicable, over any proposed changes to 2013-2014 Procedures for Evaluation of Faculty at UH Mānoa.

The UH System will stay all campus attempts to revise any existing campuses' Five-year Review policies during the negotiations agreed to herein.

The parties agree to meet, confer, and/or bargain, if applicable, not later than May 30, 2014, to determine between them in good faith the consultable and/or bargainable elements, if any, in 2013-2014 Procedures for Evaluation of Faculty at UH Mānoa and issues raised in CE-07-833, and to draft a document resolving these issues, if one is possible, by June 30, 2014.

The function of the document will be in conformance with Decision 199 (1982), and such other considerations as the parties may propose to guide the parties, and all UH campuses, on the following points pertinent to any reconsideration of any proposed changes to their Five-year Review policies:

- in what order, and at what time in the development of a revised policy, should the UHPA and the relevant faculty senate be consulted, or notified?
- what constitutes correct consultation and notice, and by whom must it be given?
- what particular facets of the policy are purely collective bargaining matters within the jurisdiction of the UHPA to consult and/or bargain, if applicable, and which are purely academic matters within the jurisdiction of the faculty senates?
- what level of coordination or notice is required, if any, between UH System and the

relevant campus?

- what particular facets of the policy, if any, may be addressed by both the UHPA and the relevant faculty senate?
- on what topics is faculty senate authority plenary?
- such other issues as may arise during discussion.

4. Agreement to consult and/or bargain, if applicable, over revisions to the UH Executive Policy E10.102 Tobacco Products Policy.

The UH System will stay all campus attempts to implement new No-Smoking policies during the negotiations agreed to herein.

The UH System will notify UHPA whether it intends to revise the existing system-wide tobacco policy in place; specifically Executive Policy E10.102 Tobacco Products Policy; and may potentially address the below items if applicable:

- whether the Board of Regents grants authority to the campuses to revise, modify, or exceed the BoR policy on smoking on UH premises? If so, what range of policies would be permissible?
- what programs will be created to assist faculty smokers who wish to quit smoking, to do so?
- what level of funding or resources will be committed to support any such programs?
- what disciplinary or other negative consequences, if any, will faculty incur from violation of a tobacco free policy?
- what protocols of consultation, notice, and/or bargaining, if applicable (as in the Five-year Review issue) should be followed in the future between the parties?
- what role, if any, does a faculty senate play in review of a no-smoking policy?

5. General provisions

a) If the parties have not resolved both issues in 3. and 4. above by June 30, 2014, the stay shall be lifted in CE-07-833 so that unresolved issues may be litigated. Dismissals will however be entered as to any settled points.

b) Modifications of this Agreement must be in writing signed by the parties.

c) Any alleged violation of this Agreement, raised by either party, shall be subject to arbitration, which may be invoked within 30 days of the discovery of the violation by one party's letter to the other. Provided, however, that this Agreement shall not divest the HLRB of jurisdiction over CE-07-833 to the extent that undismissed and unstayed issues remain in that case.

d) Any arbitration shall be conducted as under the CBA, except that preliminary grievance steps shall not be required, with each party to bear its own fees and costs.

Dated: Honolulu, Hawaii May 8, 2014

UNIVERSITY OF HAWAII

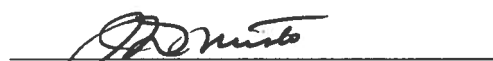


DAVID LASSNER

President

University of Hawai'i

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY



J.N. MUSTO

Executive Director

University of Hawai'i Professional Assembly



JOHN HOLZMAN

Chair

Board of Regents

University of Hawai'i

## **Memorandum of Understanding Regarding the Role of Faculty Senates April 2014**

Faculty Senates have been created by the Employer to comment on academic matters outside the scope of collective bargaining, with the goal of development of educational and research programs of the highest quality.

The parties agree that the duty of the Employer to consult with the Exclusive Representative under HRS §89-9(c) is broad enough to encompass much of the "academic" material that has in recent decades been referred to Faculty Senates, under BOR policy Section 1-10 Regents' Policy on Faculty Involvement in Academic Decision-Making and Academic Policy Development.

To avoid confusion and enhance the practice of shared governance, the parties desire to clarify the role of Faculty Senates.

1. The parties agree that the creation of Faculty Senates is desirable for the following reasons:

a) Observance of academic governance based on the organizational philosophy of shared governance through principles of democratic values and participation is a recognized practice and tradition throughout many American universities.

b) Adherence to shared governance, based on philosophical principles, can have positive outcomes for the university, in the manner contemplated by § 89-1 HRS.

c) Adaptation of the literal "industrial model" of governance inherent in the labor law, to the "academic model" of governance inherent in university tradition, can advantage the university. Compare, HLRB (formerly HPERB) Decision 25 (1974). In the words of President Harlan Cleveland in Decision 25, fitting the two models together under HRS Chapter 89 can create "something new under the sun."

d) While the Exclusive Representative and the Employer acknowledge this tradition, the fundamental rights of bargaining unit employees to be collectively represented should not be abridged.

e) The professoriate ought to be, to the extent possible, a self-governing profession, empowered to set standards for its own practice by collegial deliberation; and that the Exclusive Representative and the Employer should facilitate this.

f) The fundamental constitutional and statutory purpose of the University of Hawaii, a public institution, is to serve the people of Hawaii, consistent with best academic practice.

## Exhibit "A" to Settlement Agreement

2. The parties mutually agree to work with the Faculty Senates to identify those topics that:
  - a) are consigned to the Faculty Senates and for which no formal UHPA consultation is required;
  - b) are consigned to UHPA and for which no Faculty Senate consultation is allowed;
  - c) are overlapping and therefore amenable to consultation or advice from both Faculty Senates and UHPA. In these overlapping situations, UHPA and Faculty Senates would be provided with simultaneous notification of any request for advice by the UH. UHPA would retain its full authority for consultation under HRS Chapter 89 on these overlapping matters.

The parties agree to develop this list, referred to as Exhibit C, by December 1, 2014. Any topic not affirmatively assigned in Exhibit C shall not be presumed to be consigned to the Faculty Senates.

3. The Employer and the Exclusive Representative further agree to the following:
  - a) The responsibility to ensure the Faculty Senates receive appropriate charges, inquiries, or matters for consideration, and that their jurisdiction is not inappropriately broadened beyond the terms of this Memorandum of Understanding, lies with the Employer, at the UH System level. UH System shall ensure that the managerial employees in the academic units for which Faculty Senates are organized, correctly and timely report delegation of matters to the Faculty Senates, and that delegations are also correctly and timely reported to the Exclusive Representative.
  - b) The Employer agrees that if it plans to seek advice from the Faculty Senates regarding any development of a policy over a topic not included in the list referred to in ¶2 (Exhibit "C"), that the Employer will provide notice to the Exclusive Representative and will refrain from submitting it to the Faculty Senates until consultation with Exclusive Representative is complete or referral to the Faculty Senates is agreed upon by the parties. This paragraph does not limit or modify the Exclusive Representative's rights and the Employer's obligations under HRS Chapter 89 with respect to consultation and/or bargaining as appropriate.
  - c) On matters as to which the Faculty Senates initiate action concerning topics not included in the list referred to in ¶ 2 (Exhibit "C"), the Employer shall ensure that such actions are reported promptly to the Exclusive Representative.
  - d) In the event that the Employer and the Exclusive Representative cannot agree on whether a matter is within the delegation to a Faculty Senate per ¶ 2, the Exclusive Representative may grieve the topic pursuant to the collective bargaining agreement at Step Two. If the grievance is not resolved at Step Two, and the Exclusive Representative timely requests arbitration thereof, the Employer and the Exclusive Representative shall instruct the

Exhibit "A" to Settlement Agreement

Faculty Senate that its deliberations on the grieved topic shall be disregarded pending the Arbitrator's decision.

e) The parties may add to or subtract from the list developed in ¶ 2 at any time in writing under mutual signature.

4. Board of Regents policies regarding Faculty Senates shall be conformed to this Memorandum of Understanding.

Dated: Honolulu, Hawaii May 8, 2014

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**Memorandum of Understanding Regarding UH System  
Collective Bargaining Authority  
April, 2014**

The parties agree as follows:

The Collective Bargaining Agreement is the result of bargaining between the formal Public Employer established by statute under HRS §89-6 and the Exclusive Representative. Currently, individual campuses are not recognized by law as employers for the purpose of negotiating a collective bargaining agreement.

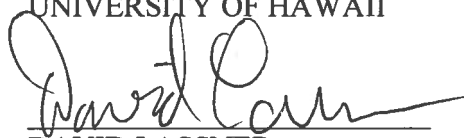
Individual campuses of the University of Hawaii are delegated limited authority by the Board of Regents and the President to approve certain personnel actions as defined in the University's Executive Policy E9.112 Delegation of Authority for Personnel Actions and they do not have the authority to bargain, modify, or construe the CBA independently of the UH System.

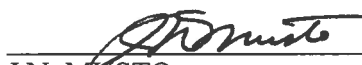
The Exclusive Representative is not required to accept at face value any campus' claim that it has authority to bargain, modify, or construe the CBA independently of the UH System, absent a specific grant of authority in writing, directed to the Exclusive Representative, by the UH System.


The Exclusive Representative is not required to meet with, deal with, or respond to initiatives by or from outside attorneys or other non-UH-employed agents, purporting to represent the UH System, who are not members of the staff of the UH General Counsel, without a confirming letter from the office of the UH General Counsel or President that clearly states the authority of the attorney or agent to act for the UH System.

The Exclusive Representative may move to disqualify attorneys or other non-UH-employed agents who attempt to appear on behalf of the UH System at the HLRB, or in arbitration, or like venues, without written confirmation as above.

Dated: Honolulu, Hawaii May 8, 2014

UNIVERSITY OF HAWAII  
  
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