

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
 )  
HAWAII FEDERATION OF COLLEGE )  
TEACHERS, American Federation )  
of Teachers, AFL-CIO, )  
 )  
and ) Case No. R-08-13  
 )  
HAWAII GOVERNMENT EMPLOYEES' ) Decision No. 25  
ASSOCIATION, Local 152, )  
HGEA/AFSCME, )  
 )  
Petitioners, )  
 )  
and )  
 )  
BOARD OF REGENTS OF THE )  
UNIVERSITY OF HAWAII, )  
STATE OF HAWAII, )  
 )  
Employer. )  
\_\_\_\_\_ )

CERTIFICATION OF EXCLUSIVE BARGAINING REPRESENTATIVE  
AND ORDER TO NEGOTIATE

A representation proceeding having been conducted pursuant to a Direction of Election in the above-entitled matter by the Public Employment Relations Board in accordance with Chapter 89, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Board, and it appearing that an exclusive bargaining representative has been selected; pursuant to the authority vested in the Board by Chapter 89, Hawaii Revised Statutes, IT IS HEREBY CERTIFIED that the HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION, Local 152, HGEA/AFSCME has been designated and selected by a majority of the personnel of the University of Hawaii and the community college system, other than faculty, of the above-named public employer, in the appropriate bargaining unit described herein, as its exclusive bargaining

representative for the purpose of bargaining collectively on questions of wages, hours, and other terms and conditions of employment.


UNIT:


Included: All administrative, technical and professional employees who are employed half time or more, except those determined to be excluded.

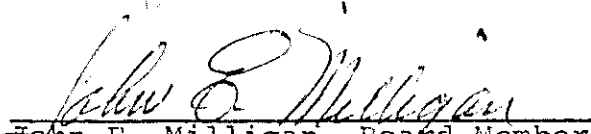
Excluded: All top management employees, including executive officer, open grants; director, office of contract training; members of Boards and Commissions; personnel in other bargaining units; part time employees; temporary employees of three months duration or less; graduate assistants; and resident assistants.

Further, IT IS ORDERED that the above-named public employer shall bargain collectively with the Hawaii Government Employees' Association, Local 152, IGEA/AFSCME and said parties shall reduce to writing and execute any collective bargaining agreement reached by them with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under Chapter 89, Hawaii Revised Statutes.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
Carl J. Guntert, Board Member

  
John E. Milligan, Board Member

Dated: January 26, 1973  
Honolulu, Hawaii

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

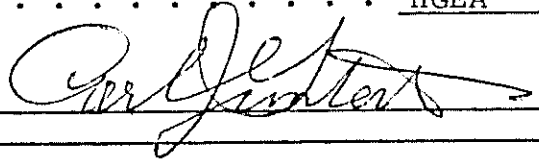
In the Matter of )  
 )  
 HAWAII FEDERATION OF COLLEGE TEACHERS, )  
 American Federation of Teachers, AFL-CIO, )  
 )  
 and )  
 )  
 HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION, )  
 Local 152, HGEA/AFSCME, )  
 )  
 Petitioners, )  
 )  
 and )  
 )  
 BOARD OF REGENTS, UNIVERSITY OF HAWAII, )  
 STATE OF HAWAII, )  
 )  
 Employer. )

Case No. R-08-13  
 Date Issued: 1/19/73

TALLY OF BALLOTS FOR THE PERSONNEL OF THE UNIVERSITY OF HAWAII  
AND THE COMMUNITY COLLEGE SYSTEM, OTHER THAN FACULTY

The undersigned Board Member certifies that the results of the tabulations of ballots cast in the representation election for exclusive bargaining representative for the Personnel of the University of Hawaii and the Community College System, other than Faculty, Unit 8, which election was conducted on January 19, 1973, were as follows:

- |  |         |
|--|---------|
| 1. Number of eligible voters. . . . .  | 808     |
| 2. Votes cast for HAWAII FEDERATION OF COLLEGE TEACHERS,<br>American Federation of Teachers (AFL-CIO). . . . . | 96      |
| 3. Votes cast for HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION,<br>Local 152, HGEA/AFSCME . . . . .                | 294     |
| 4. Votes cast for NO REPRESENTATION . . . . .  | 161     |
| 5. Valid votes counted (sum of 2, 3, and 4) . . . . .  | 551     |
| 6. Challenged ballots . . . . .  | 4       |
| 7. Valid votes counted plus challenged ballots (sum of 6 and 7) . . . . .                                      | 555     |
| 8. Challenges are (are not) sufficient in number to affect the<br>results of the election. . . . .             | are not |
| 9. A majority of the valid votes counted plus challenged ballots<br>(Item 7) has been cast for . . . . .       | HGEA    |

By 

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating

were fairly and accurately done, that the secrecy of the ballots was maintained and the results were as indicated above.

FOR: HAWAII FEDERATION OF COLLEGE  
TEACHERS, American Federation  
of Teachers (AFL-CIO)

By William R. Abbott

FOR: UNIVERSITY OF HAWAII

By Edward K. Mackinnon

FOR: HAWAII GOVERNMENT EMPLOYEES'  
ASSOCIATION, Local 152, HGEA/AFSCME

By Edward K. Mackinnon

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
 )  
 HAWAII GOVERNMENT EMPLOYEES' )  
 ASSOCIATION, Local 152 )  
 HGEA/AFSCME, )  
 )  
 and )  
 )  
 HAWAII FEDERATION OF COLLEGE )  
 TEACHERS, American Federation )  
 of Teachers, AFL-CIO, )  
 )  
 Petitioners, )  
 )  
 and )  
 )  
 COLLEGE AND UNIVERSITY )  
 PROFESSIONAL ASSOCIATION, )  
 )  
 Intervenor, )  
 )  
 and )  
 )  
 BOARD OF REGENTS, UNIVERSITY )  
 OF HAWAII, STATE OF HAWAII, )  
 )  
 Employer. )

Case No. R-08-13  
 Decision No. 25

ORDER AFFIRMING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDATIONS  
AND DIRECTION OF ELECTION

Appearances:

For the Employer: Kenneth K. Lau, Board of Regents,  
 University of Hawaii, State of  
 Hawaii

For Petitioners: Benjamin C. Sigal, Hawaii  
 Government Employees' Association,  
 Local 152, HGEA/AFSCME

and

John Edmunds, Hawaii Federation  
 of College Teachers, American  
 Federation of Teachers, AFL-CIO

For Intervenor: David Graham, College and University  
 Professional Association (HEA-NEA)

Pursuant to Chapter 89, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Hawaii Public Employment Relations Board, a hearing was held before the Board's Hearing Officer, Stephen K. Yamashiro, commencing on August 23, 1972, to determine employee inclusions in and exclusions from Unit 8 (personnel of the University of Hawaii and the community college system).

The Hearing Officer issued his Findings of Fact, Conclusions of Law and Recommendations (hereinafter Hearing Officer's Report) on December 1, 1972. The Hawaii Government Employees' Association, within the period permitted by the rules of this Board, filed a Statement in Support of the Hearing Officer's Report with accompanying brief. Also timely filed was a statement of Exceptions to the Hearing Officer's Report and a brief by the Hawaii Federation of College Teachers (hereinafter HFCT). The College and University Professional Association filed no statement or brief.

We have reviewed the entire record, the Hearing Officer's Report, and the statements and briefs submitted by the parties and find no prejudicial error was committed. We hereby adopt the Hearings Officer's Report and the Stipulations of the Parties attached thereto and implicitly made a part thereof with the following modifications.

#### FINDINGS OF FACT

We agree with the Hearing Officer's general statement that once a graduate assistant completes his academic work he must terminate his employment. We disagree, however, with the statement that once a graduate assistant receives his degree he has no employment possibility with his department. He has no possibility of continued employment with his department as a graduate assistant. However, the record is silent as to notable

examples of graduate assistants who, once earning their degrees, have gone on to become professors in their departments.

#### CONCLUSIONS OF LAW

We find that those facts as to powers enjoyed by supervisors, discussed in the HFCT Statement, which were in the record merely bolster the conclusion that they are supervisors and that such facts do not compel or warrant a finding that said supervisors are top level managerial or confidential employees required to be excluded from the unit under the provisions of Section 89-6(c), Hawaii Revised Statutes.

The reference in the Hearing Officer's Report on page 13 to section 89-9(c) should be changed to section 89-6(c).

The Statement of Exceptions of the HFCT at page 8 is grossly misleading and blatantly misstates the law when it declares that in enacting Chapter 89 it was the legislative intent to permit only one group of supervisors, i.e., supervisory employees in blue collar positions to be "entitled to collective bargaining." Even a cursory reading of section 89-6(a), Hawaii Revised Statutes, demonstrates that all supervisory employees are entitled to participate in collective bargaining unless they are excluded by the terms of section 89-6(c). The attention of the HFCT is drawn to section 89-6(a)(4) just to illustrate the error of its statement. The entire pertinent provisions of section 89-6(a) will be set forth to demonstrate fully how incorrect the HFCT Statement is:

"Sec. 89-6. APPROPRIATE BARGAINING UNITS.

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

(1) Nonsupervisory employees in blue collar positions;

- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Nonprofessional hospital and institutional workers;
- (11) Firemen;
- (12) Policemen; and
- (13) Professional and scientific employees, other than registered professional nurses.

"Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be." (Emphasis added)

Clearly supervisors in all units are permitted or entitled to participate in collective bargaining unless excluded as heretofore noted.



ORDER

The Hearing Officer's Report is hereby adopted, as modified above, by this Board.

DIRECTION OF ELECTION

IT IS HEREBY ORDERED that an election, by secret ballot, shall be conducted among the Personnel of the University of Hawaii and the Community College System, other than faculty.

Eligible to vote are those employees who were employed during the payroll period ending December 31, 1972, including employees who did not work during the designated payroll period because they were temporarily laid off, ill or on vacation, maternity leave or other authorized leave, and also including employees serving in the military service of the United States or on leave for service in National Guard units and who appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election.

IT IS FURTHER ORDERED that the Public Employer shall prepare an eligibility list in alphabetical order, containing eligible voters' names in accordance with the above description and voting places, and submit copies of such list forthwith to the Public Employment Relations Board.

IT IS FURTHER ORDERED that at least seven calendar days prior to said election the Public Employer shall cause to be posted at locations in or about the establishment ordinarily used by the Public Employer for written communications to the above-mentioned employees Notices of Election and sample ballots, which shall be furnished by the Board.

IT IS FURTHER ORDERED that eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by the Hawaii Federation of College Teachers, Local 2003, American Federation of Teachers (AFL-CIO), or the Hawaii Government Employees' Association, Local 152, HGEA/AFSCME, or No Representation.

IT IS FURTHER ORDERED that the election for all eligible employees on Oahu shall be conducted on Friday, January 19, 1973, at the Manoa Campus from 8:00 a.m. till 12 noon.

IT IS FURTHER ORDERED that all eligible employees on the neighbor islands and those eligible employees whom the public employer has informed the Board are out of the State of Hawaii shall vote by mail ballot.

PUBLIC EMPLOYMENT RELATIONS BOARD

By *Mack H. Hamada*  
Mack H. Hamada, Chairman

By *Carl J. Guntert*  
Carl J. Guntert, Board Member

By *John E. Milligan*  
John E. Milligan, Board Member

Dated: December 29, 1972

Honolulu, Hawaii

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
HAWAII GOVERNMENT EMPLOYEES'	)	
ASSOCIATION, Local 152,	)	
HGEA/AFSCME,	)	
	)	
and	)	
	)	
HAWAII FEDERATION OF COLLEGE	)	Case No. <u>R-08-13</u>
TEACHERS, American Federation	)	
of Teachers, AFL-CIO,	)	
	)	
Petitioners,	)	
	)	
and	)	
	)	
COLLEGE AND UNIVERSITY	)	
PROFESSIONAL ASSOCIATION,	)	
	)	
Intervenor,	)	
	)	
and	)	
	)	
BOARD OF REGENTS, UNIVERSITY OF	)	
HAWAII, STATE OF HAWAII,	)	
	)	
Employer.	)	

---

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATIONS

I.

FINDINGS OF FACT

Petitions for certification as the exclusive representative for the employees in Unit 8, Personnel of the University of Hawaii and Community College System, other than faculty, were filed with the Hawaii Public Employment Relations Board (hereafter HPERB) by the Hawaii Government Employees Association, Local 152, HGEA/AFSCME (hereafter HGEA) on January 5, 1971, and by the Hawaii Federation of College Teachers, American Federation of Teachers, AFL-CIO (hereafter HFCT) on February 18, 1972.

An amended petition was filed by the HFCT on July 24, 1972. On August 10, 1972, a petition to intervene was filed by the College and University Professional Association (hereafter CUPA). Each of the petitions was supported by the necessary showing of interest. The employer named in each of the petitions was the Board of Regents of the University of Hawaii or the University of Hawaii (hereafter University).

The parties entered into several stipulations excluding various personnel from Unit 8, Personnel of the University of Hawaii and Community College System, other than faculty (attached as exhibit A, B and C).

A hearing before the HPEPB Hearings Officer was convened on August 23, 1972, to resolve the disputes between the parties as to the appropriateness of the inclusions or exclusions of various positions in the bargaining unit. At the hearings the following positions were taken by the parties;

(1) University positions excluded by the HFCT and CUPA but included by the University and the HGEA:

802	Director of Computing Center
804	Director of Aquarium
810	Business Management Officer
815	General Manager of Bookstores
822	Director of Physical Planning & Construction
823	Director of Auxiliary Services
825	Director of Facilities Management
829	Director of Special Services
897	Director of Accounting Systems
813	Director of Disbursing
814.	Director of Procurement & Property Management
816	Comptroller, Contracts & Grants
830	Administrative Officer, H.I.G.
831	Administrative Officer, Institute for Astronomy
875	Assistant to the Dean, Business Affairs, School of Public Health
877	Assistant to Dean of Research, Office of Research, Administrative and Graduate Division
888	Coordinator, Institutional Research
892	Physical Facilities Planner
893	Coordinator of Research & Develop- ment, State Vocational Education Program

- (2) East-West Center (hereafter EWC) positions excluded by the HFCT but included by the University, HGEA and CUPA:

854 Executive Officer for Open Grants  
859 Director, Office of Contract  
Training  
873 Administrative Analyst II, Office  
of Administration  
902 Data Processing Officer, Office  
of Administration

- (3) Excluded by the University and the HGEA but included by the HFCT and CUPA:

Graduate Assistants  
Resident Assistants

Article IX of the Constitution of the State of Hawaii provides for the establishment of a state university. In fulfilling this mandate there has been established a system of higher education consisting of the University of Hawaii and a Community College System.

The affairs of the University System are entrusted by the State Constitution to a Board of Regents (hereafter Regents). The Regents are vested with the power to appoint a president and other faculty and employees as may be required to carry out the purpose of the University. Section 304-11, Hawaii Revised Statutes. The Regents have the power and obligation to formulate policy and to exercise control over the University.

The personnel employed by the University range over a broad spectrum of occupational groupings and includes some hybrids. There are a number of personnel in the University System who do not appropriately fall within the faculty or civil service groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical Personnel (hereafter APT).

APT's generally perform professional level duties which may be unique to the University environment. In classifying these positions personnel requirements and qualifications of the individual are combined to determine the appropriate classification. The classification assigned to a position is only valid so long as the incumbent whose qualifications were used in the classification process remains in the position.

There are five classes of APT's. Each class consists of five levels or ranks. Levels 2 through 5 generally correspond to faculty ranks 2 through 5 on the University salary schedule. Appointments are generally on the 11-month salary schedule though Education Associates and Specialists in Education are on the 9-month salary schedule.

Among the disputed positions are 19 involving APT's (See paragraph (1) page 2). These personnel, in addition to their official titles, are also known as supervisors. The term "supervisors" is used in various directives at the University to describe people with supervisory responsibilities or persons who have control over other people. Supervisors at the University generally serve in a dual capacity; on the one hand representing management, while on the other hand protecting the rights of their subordinates.

Supervisors make the initial recommendations as to the hiring of an individual. The supervisor also has the authority to recommend the firing of an individual.

Pursuant to University directives on salary administration and promotion, supervisors initiate recommendations for annual or merit increases and promotions for personnel working under him. These directives also provide that a committee system will be used to review salary and promotion recommendations. Recommendations are presently reviewed by the

supervisor's immediate superior then to the Chancellor/Provost who refers it to the personnel committee and the Director of Personnel for administrative reviews. In addition recommendations are submitted to an all University APT Personnel Committee for review.

Leaves of absence are approved by the Departmental Supervisor. The supervisor initiates the contract renewal form and submits it to the personnel office.

The informal grievance procedure calls for the aggrieved party to contact the personnel office concerning his grievance. The grievance is referred back to the supervisor if he is the one grieved against.

Supervisors have limited access to the personnel files of the APT's working under them. To gain access the supervisor must inform the personnel office of the reasons for the request. The Personnel Officer must then pass on the reasonableness of the request before access is granted. An APT may have access to personnel files other than his own when acting in an official capacity.

Also located on the Manoa Campus is the EWC. The EWC is a national institution under the umbrella of the University of Hawaii. Headed by a Chancellor, there are 7 Operational Divisions, five Problem Oriented Institutes, Open Grants and Contract Training. The heads of the Operational Division as well as two students form the Council of Directors. Policy decisions are made by the Chancellor in consultation with the Council of Directors. Each Division Head is responsible directly to the Chancellor. Each reports to the Chancellor through the Deputy Chancellor. In the absence of both the Chancellor and the Deputy Chancellor any one of the Operational Division Heads may be appointed to act as Chancellor during the absence.

The Heads of the 7 Operational Divisions of the EWC are responsible for the functioning of their divisions and the supervision of personnel assigned to them. As supervisors, the Operational Division Heads act on hiring, salary, promotion, leaves, and firing in the same manner and according to the same directive applicable to other supervisors.

The Open Grants Division of the EWC is headed by an Executive Officer. The Executive Officer is responsible for the planning and coordination of a unit of degree students and fellows who have been awarded grants outside the Problem Oriented Institutes. The Executive Officer is responsible for the advising and counseling of the Open Grant recipients in regard to their academic programs, grant terms and EWC policies. He also provides necessary services to grantees. The Executive Officer develops budgets and annual expenditure plans for open grants. The allocation is made by the Executive Officer within targets in terms of types of students and fellows.

The Office of Contract Training at the EWC is headed by a Director. The Director is responsible for the direction, overall coordination and implementation of technical programs sponsored by the Agency for International Development (hereafter AID). The Director is also responsible for coordinating international programs as requested by AID or its cooperating agencies including those of the United States, United Nations and other foreign governmental agencies. The Director is responsible for directing and coordinating programs in accordance with the provisions of the AID-University of Hawaii Contract and the guidelines set forth in AID's Manual of Orders and University administrative policy.

The Director has the duty to develop training programs and to implement identified program objectives. The Director



is also charged with the responsibility of renegotiating the basic contract and submitting annual budgets for the requisite funding.

To aid the Chancellor in the operations of the EWC there is set up an Office of Administration. Within this office two new positions have been established; Administrative Analyst II and the Data Processing Officer.

The Administrative Analyst II is responsible to the Finance Officer in the Office of Administration for budget and management analysis. The Analyst II advises and assists program officers in designing and developing budgets for projected proposals translating ideas into cost factors. During the course of his analysis he may review personnel files with regard to wages.

Where problems arise in the implementation of procedures, the Analyst would make the investigation, talking to the staff to try and determine what the problem is. He would then formulate his recommendation as to how to solve the problem.

The Data Processing Officer will be in charge of one of the four sections which make up the Office of Administration. As a section chief, the Data Processing Officer will be responsible to the Director of Administration.

The Data Processing Officer directs the application of the existing system and plans the future development of the data processing system. The Officer will be charged with the information storage, manipulation and retrieval. Among the types of data that he will be responsible for are wages. It is the basic duty of the Data Processing Officer to collect and store, not to analyze information.

To assist the faculty with instruction and research, graduate students are retained on a part-time basis as graduate assistants. To qualify for the position of graduate assistant, a person must be admitted as a student at the University and a potential degree candidate in the graduate division. Assistantships are available on an annual basis for a total appointment which may not exceed four years, the time normally required to complete a doctoral program. The work of each graduate assistant is reviewed annually to determine whether he has made satisfactory progress towards completion of his graduate program. Being a student in good standing and satisfactory progress in the degree program are requisites for reappointment as graduate assistants.

The Deans of the respective colleges make the appointment of graduate assistantship upon recommendations of the Department Chairman. The appointment of all graduate assistantships must have the approval of the Dean of the Graduate Division. Formal appointments for the graduate assistant positions are made by the Regents.

The Business Affairs Circular No. 301 promulgated by the University of Hawaii establishes a separate compensation plan, Schedule A, Group IV, for graduate assistants. This new schedule provides for payments to be spread over a 12-month period. The new plan applies only to graduate students admitted into a degree program and in active pursuit of a graduate degree who are appointed as graduate assistants.

Graduate assistants are classified into two groups based on academic qualifications and experience. Those who possess a bachelor's degree from a recognized institution are placed in the G-1 level. Graduate students with a master's degree or its academic equivalent or 30 credit hours in pursuit

of an advanced degree are placed at the G-2 level. Advancement from step to step or from level G-1 to G-2 on the salary scale is on the basis of the recommendations of the department, with the approval of the Dean.

Graduate assistants work under special supervision with limited latitude for independent action. A graduate assistant may assist a professor by conducting a laboratory section, in which the work to be performed is fully defined by the professor in charge of the course, or, the graduate assistant may teach a lecture section, in which the material has been defined by the professor in charge of the section. Some graduate assistants perform as readers of examinations.

Aside from the health plan, graduate assistants do not have other fringe benefits enjoyed by APT's at the University and Professional Administration Personnel (hereafter PA's) at the EWC. Graduate assistants do not participate in the State retirement system. Nor do they have social security deducted from their compensation. In the past graduate assistants who filed a certificate verifying that teaching or other work was required to obtain an advanced degree had their salaries exempt from federal income tax. Graduate assistants may avail themselves of the student health service which is not generally available to APT's.

Graduate assistants are eligible for identification cards and parking permits designated "faculty staff." The identification cards allows the holder different library privileges.

The University employs about 2,000 students other than graduate assistants who work up to 20 hours a week during the regular session and up to 40 hours per week during the summers. These jobs are made available as part of the University Financial Aid Program.

Appointments for assistantships are renewed on a year-to-year basis. The renewal is dependent upon the assistant's maintaining his student status and making significant progress toward his degree. Upon completion of his work and the awarding of his degree, a graduate assistant must terminate his position. As a general practice, the graduate assistant is not retained in a higher position. A person being awarded an advanced degree in a department is not hired by that department as a member of the regular instructional staff. There have been occasions, where a student has been hired after the completion of his work, but only to fill a temporary position. The appointment of a graduate assistant is always temporary and terminal. He has no employment possibility with his department upon termination of his student status or his being awarded an advanced degree.

To assist the University in the operation of its residence halls, students are employed as resident assistants. The primary function of the resident assistants is to act as a live-in counselor to other dormitory residents. At present there are 7 graduate and undergraduate students acting as resident assistants.

To qualify for a position as a resident assistant, a person must be a full-time student in good academic standing. Appointments are only for the academic year with possible re-appointment during the summer session. A resident assistant's appointment would terminate, should he cease to maintain his student status.

Resident assistants receive room and board and \$150 per month for their half-time services. The resident assistant shares a double room with a regular dormitory resident. A resident assistant is not entitled to the fringe benefits

enjoyed by regular public employees. He does not qualify for the medical plans nor may he participate in the retirement system.

Resident assistants are not the only students working half time in the University dormitories. The University employs student help to fill 27 aid positions, 40 desk clerk positions, and 8 utility positions. Each of these students work no more than 20 hours per week. Employment of these students and other resident assistants is part of the University Financial Aid Program for students.

## II.

### CONCLUSIONS OF LAW

The Hawaii Public Employment Relations Act, Chapter 89, Hawaii Revised Statutes, establishes a scheme for Collective Bargaining in Public Employment. Under this law the personnel of the University of Hawaii and the Community College System, other than faculty, shall constitute an appropriate bargaining unit. Excluded from the bargaining unit are representatives of the Public Employer who are administrative officers or chiefs of a major division or an agency. Excluded along with the administrative officer or chief are his deputy, first assistant and any other top-level managerial and administrative personnel. Also excluded from coverage are part-time employees working less than twenty hours per week.

Pursuant to Agreements by the parties, disputes as to inclusions and exclusions from the bargaining unit are limited to those involving;

1. APT Officers & Directors who supervise other APT personnel
2. Executive Officer, Open Grants
3. Director, Contract Training

4. Administrative Analyst II
5. Data Processing Officer
6. Graduate Assistants
7. Resident Assistants

Exclusion of the 19 officers and directors who have other APT personnel working for them is being based on the premises that these people act on behalf of the employer in dealing with public employees and that they are also top managerial and administrative personnel within the meaning of 89-6.

A plain reading of Chapter 89 clearly indicates that not all employees having authority to act in the interest of the public employer to deal with public employees, are to be considered employers for the purpose of exclusion from coverage of the Collective Bargaining Act. Supervisory employees as defined by 89-2(18) act in the interest of the public employer. Under Chapter 89, Hawaii Revised Statutes, supervisors are not excluded from the coverage of the Act. To the contrary, the Legislature has established separate units for supervisory personnel and in four instances supervisors have been authorized to be included with the rank and file if there is mutual agreement. There can be no doubt that under the Hawaii Public Employment Relations Act supervisors were intended to have the right to bargain collectively.

The evidence presented at the hearing clearly showed that the disputed personnel were indeed supervisors in the generic sense that they oversee the work of personnel assigned to them. The fact that the disputed APT's make recommendations concerning hiring and firing, that they have authority to recommend salary changes and promotions, that they receive grievances from their subordinates only reinforces the conclusion that these people are first level supervisors.

The recommendations made by the APT supervisors are reviewed at several levels before being transmitted to the appointing authority. At each of these levels more input and comment may be had which could affect the acceptance or rejection of the initial recommendation as it is or in a modified form.

In the administrative hierarchy at the University the disputed APT's are at the initial level occupying positions not unlike those occupied by the department chairmen in the faculty structure. In a previous ruling the HPEFB held that notwithstanding their supervisory functions department chairmen were to be included in an appropriate unit of faculty of the University System.

There was no evidence to support the position that the disputed APT's were top-level administrative or managerial personnel to justify exclusions. All evidence indicate that the disputed personnel were supervisors within the meaning of Chapter 89.

It is apparent from the plain language of the law that supervisors are entitled to organize and bargain collectively. Though the disputed personnel have indicia of supervisory authority, such authority is not sufficient to qualify as being top-level administrative or managerial personnel to justify exclusions under Section 89-9<sup>07</sup>(c), Hawaii Revised Statutes.

The EWC, headed by a Chancellor, is made up of seven operating divisions. There are five Problem Oriented Institutes, an Open Grants Division and an Office of Contract Training. There are basically three types of people studying under grants at the EWC. Grantees are either senior fellows, degree seeking students, or professional study and training people.

The Problem Oriented Institutes at the EWC allows a grantee to specialize in a specific area. Grantees in the Problem Oriented Institutes undertake a particular course of study relating to the special problems that are within the area of concentration covered by the Institute. A grantee in the Communication Institute, one of the Problem Oriented Institutes, would undergo a course of study relating to particular problems connected with communications.

2 The Open Grants Program at the EWC is not restricted to a specific area of concentration as are the Problem Oriented Institutes. In the Open Grants Program there is no special focus of attention, thus grantees choose whatever field of specialization they wish. Grantees in the Open Grants Program are not undertaking a program of professional study and training in the restricted fields covered in the Problem Oriented Institutes. The Open Grants Program is an attempt to allow people to come to the EWC who do not fit into one of the programs carried out by the Problem Oriented Institutes.

3 The Contract Training Division of the EWC carries on a different program from those carried on by the Problem Oriented Institutes and the Open Grants Division. Where the Problem Oriented Institutes and the Open Grants Division are concerned with grantees undertaking courses of study relating to professional advancement and training requiring extended periods of study, the Contract Training Division is primarily concerned with bringing to the EWC students from many different geographic areas whose training in the University School of Tropical Agriculture has been contracted for by AID. Grantees for the Problem Oriented Institutes and the Open Grants Programs are selected under policies and criteria set up by the EWC. Students under Contract Training Grants are selected under criteria set forth by the AID.



The Contract Training Division coordinates and implements technical training programs. These programs are contracted for by the AID from the EWC. Being oriented technical training, their programs do not consist of extended courses of study leading to a degree.

Each Operational Division of the EWC serves as an integral part of a structure designed to provide a special set of services. These divisions are the most important organizational segments of the EWC. Each division acts in a specific sphere of responsibility which when taken as a totality combine to make up the EWC.

The Operational Divisions constitute major divisions of the EWC and therefore the chiefs of these divisions, be he called Executive Officer or Director, should be excluded from the employees making up Unit 8.

★ Being the head of a major division is not the sole basis for excluding the Executive Officer, Open Grants, and the Directors of the Problem Oriented Institutes and for Contract Training. These Officers along with two students form the Council of Directors whose function it is to recommend policy to the Chancellor. This body is constantly consulted by the Chancellor in making policy decisions.

In addition to sitting on a policy formulating body these Officers also form the pool from which an acting Chancellor may be selected should the Chancellor and his deputy be both absent from the EWC at the same time.

The Executive Officer, Open Grants, and the Directors of the Problem Oriented Institutes and the Office of Contract Training make up an integral part of the management team on which the Chancellor relies to assist him in the effective administration of the complex organization which is the EWC.

The positions held and the functions performed by the Executive Officer, Open Grants, and the Director, Office of Contract Services require that these personnel be excluded from Unit 8 as chiefs of major divisions and top-level managerial and administrative personnel.

Two PA positions within the Office of Administration are sought to be excluded on the basis that they are employees concerned with confidential matters affecting employee-employer relations. The Administrative Analyst II and the Data Processing Officer are two new positions within the Office of Administration.

4 The Administrative Analyst II is a budget and management analyst who is supervised by the Finance Officer in the Office of Administration. The Finance Officer is among the personnel included in Unit 8. By the evidence presented the Analyst will be responsible for the examination of the expenditures and allotment of different programs and to solve procedural problems in the implementation of programs as they arise. In this capacity the Analyst may have need for access to confidential personnel information but this alone does not justify excluding him as a confidential employee. The information available to the Analyst would be similar to that available to supervisors, who in another portion of this opinion have been included in Unit 8. The type of information available to these people is available to other included personnel if they show the required need to know.

Though a peripheral case for an exemption as a managerial employee was attempted, at present the Analyst does not even qualify as a supervisor. Even if he had personnel assigned to him no showing was made which would indicate that the Analyst was a top-level managerial employee. It would indeed be odd,

even for happenings at the University, to have the Analyst shown to be a top-level managerial employee while still having him responsible to a member of the bargaining unit.

On the basis of the facts presented it must be concluded that Administrative Analyst II must be included in Unit 8.

6 The Data Processing Officer will be the head of a new section in the Office of Administration reporting directly to the Director of Administration.

By the testimony and evidence presented it appears that the Data Processing Officer will be little more than a librarian with a masters degree in information science or its equivalent. Since the functions of this Office seems to be the simple storage and retrieval of information with no correspondent duty to analyze the data, there is little basis for justifying the exclusion of this Officer as a confidential employee concerned with confidential matters affecting employee-employer relations. Although the job description for the Data Processing Officer seems to indicate more than mere custodial responsibilities, the record is completely void of facts to support such a finding.

The facts presented at the hearing leave but one choice, that being to include the Data Processing Officer in Unit 8. If this new position is filled by an incumbent who lives up to the job description and these facts are properly brought before the Board by a petition for clarification, there may be justification for excluding this position in the future.

6 We are once again confronted with the question of whether graduate assistants are public employees who are entitled to organize and bargain collectively under the provisions of Chapter 89, Hawaii Revised Statutes. We are faced with the problem of deciphering the various roles played by the graduate

assistants at the University. On one hand graduate assistants are degree seeking students, the primary consumers of the services provided by the University. In another of his roles the graduate assistant performs as a lecturer, researcher, reader, and counselor, the purveyor of services which are offered by the University. If the parts played by the graduate assistants were mutually exclusive, there would be little question of the inclusion of the assistants into a bargaining unit. The problem here is that while a graduate assistant's status as a student is not dependent upon his being a graduate assistant, a graduate assistant's status as a graduate assistant is dependent upon his having the status of a student. Not only must the graduate assistant be a student, he must also be a student accepted in the graduate division as a potential degree candidate.

The situation is not unlike that faced by the Michigan Court in Regents v. Michigan Commission, 79 LRPM 3100 (1972). In this case the Michigan Court of Appeal found that medical interns, residents and post-doctoral fellows working at the University Medical Center were not 'public employees' covered by the Michigan Collective Bargaining Law. The Court considered the interns and residents to be primarily students in pursuit of an advance degree. Because the educational and employment aspects of the relationship between interns and the University were inextricably mixed, the Court stated that to hold that interns were employees would impinge, to some degree, upon the constitutional authority of the Regents to control the educational affairs of the students.

In their relevant aspects, the provisions of the Michigan State Constitution dealing with the University of

Michigan are comparable to the provisions of the Hawaii State Constitution. Article VIII, Section 5 of the Michigan Constitution states:

"The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; ...Board of Trustees of Michigan State University; ...Board of Governors of Wayne State University; ...Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution..."

Article IX, Sections 4 and 5 of the Hawaii Constitution states:

"The University of Hawaii is hereby established as the state university and constituted a body corporate.

\* \* \*

"There shall be a board of regents of the University of Hawaii. ...The board shall have power in accordance with law 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."

In the present case the conditions of employment and conditions of continued enrollment and awarding of degrees are inextricably mixed. Should the policies and standards set up by the Regents for continued enrollment and the awarding of degrees be subject to collective bargaining, there would be a threat to the Regent's exclusive control of all matters dealing with the education of students at the University. The constitutional authority of the Regents would be impinged upon.

In setting out the statutory scheme for bargaining units, the Legislature chose units which consisted of occupational categories based on existing compensation plans. Other criteria considered were the nature of work involved and the

essentiality of service provided the public, Senate Standing Committee Report No. 745-70, April 14, 1970. The primary purpose of the APT and PA personnel is to provide staff support to allow the University to carry out its programs of higher education. Graduate assistants are enrolled at the University to get an education and prepare themselves for a professional career.

Graduate assistants are paid on a separate salary schedule set up by the Regents on June 10, 1970. Aside from the health plan, graduate assistants do not enjoy the other fringe benefits offered by the State. Assistants are not members of the State retirement system. In spite of the broad definition of employees set forth in Chapter 88, dealing with the retirement system, and the provisions of 88-42 which states that "all persons who . . . enter or reenter the service of the State . . . shall become members at the time of their entry or reentry," graduate assistants are excluded from membership.

Graduate assistants are not regarded as employees by the Social Security Administration for the purpose of social security. FICA taxes are not deducted from the compensation given graduate assistants.

In the past graduate assistants who filed a certificate, verifying that teaching or other work performed was required in their field of study to obtain an advance degree, had their compensation exempted from federal income tax.

Although graduate assistants have many of the trappings of an employee and are responsible for carrying out certain obligations to the University, their primary role is that of a student. The decision of the NLRB in Adelphi University, 79 LRRM 1545, under a factual situation similar to that

presented, clearly shows the student status of the graduate assistants. In Adelphi the NLRB found:

"The graduate assistants are graduate students working toward their own advanced academic degrees, and their employment depends entirely on their continued status as such. They do not have faculty rank, are not listed in the University's catalogues as faculty members, have no vote at faculty meetings, are not eligible for promotion, or tenure, are not covered by the University personnel plan, have no standing before the University's grievance committee, and, except for health insurance, do not participate in any of the fringe benefits available to faculty members. Graduate assistants may be elected by the students as their representatives on student-faculty committees. Unlike faculty members, graduate assistants are guided, instructed, assisted, and corrected in the performance of their assistantship duties by the regular faculty members to whom they are assigned.

"In view of the foregoing, we find that the graduate teaching and research assistants here involved, although performing some faculty-related functions, are primarily students and do not share a sufficient community of interest with the regular faculty to warrant their inclusion in the unit."  
195 NLRB No. 107, p. 7. (Emphasis added)

Under the facts presented it is clearly shown that graduate assistants are not in the same occupational grouping nor are they paid on the same salary schedule as APT's or PA's. Graduate assistants do not have their compensation subjected to social security and federal income taxes nor are they members of the State retirement system. The compensation given to graduate assistants is treated as a grant or form of financial aid. These factors combined would justify a finding that graduate assistants are not employees within Chapter 89, and should be excluded from Unit 8. The compelling reason, however, for excluding graduate assistants is that they are primarily students. The goal of graduate assistants at the University is the receiving of an advance degree after a period of academic study. Any 'employment' relationship he may establish with the

University is dependent upon his student status and subservient to his primary goal.

Students at the University are subject to the policies and standards of enrollment established by the Regents. Should the terms and conditions of continued enrollment become subject to collective bargaining, the constitutional authority of the Regents would be interfered with. Where student status is a condition of employment, to subject the 'employment' relationship to collective bargaining would result in usurping the rights and authority of the Regents. To include graduate assistants into Unit 8 would be to ignore their primary status as students and would unduly impinge upon the rights and authority of the Regents.

A constitutional provision must be construed in connection with other provisions of the instrument, the circumstances under which it was adopted and the history which preceded it. The natural consequences of a proposed construction must be considered in determining the intent of its framers. Carter v. Gear, 16 Haw. 242, Affirmed 24 S. ct. 491, 197, US 348 (1904). Article XII, Section 2 of the Hawaii Constitution does not attempt to interfere with the authority granted the Regents by Article IX of the Constitution. To find that graduate assistants are public employees under Chapter 89 would result in an infringement upon the power granted the Regents by the Constitution.

7 Resident assistants, being students and having student status as a condition of their employment, requires us to exclude them for the same reasons graduate assistants have been excluded.



### III.

#### RECOMMENDATIONS

Based on the Findings of Fact and Conclusion of Law stated above, it is recommended that the following be excluded from Unit 8, Personnel of the University of Hawaii and Community College System, other than faculty:

854 Executive Officer, Open Grants  
859 Director, Office of Contract  
Training  
Graduate Assistants  
Resident Assistants

It is further recommended that the following be included in Unit 8, Personnel of the University of Hawaii and Community College System, other than faculty:

802 Director of Computing Center  
804 Director of Aquarium  
810 Business Management Officer  
815 General Manager of Bookstores  
822 Director of Physical Planning  
& Construction  
823 Director of Auxiliary Services  
825 Director of Facilities Management  
829 Director of Special Services  
897 Director of Accounting Systems  
813 Director of Disbursing  
814 Director of Procurement &  
Property Management  
816 Comptroller, Contracts & Grants  
830 Administrative Officer, H.I.G.  
831 Administrative Officer, Institute  
for Astronomy  
875 Assistant to the Dean, Business  
Affairs, School of Public Health  
877 Assistant to Dean of Research,  
Office of Research, Administra-  
tive and Graduate Division  
888 Coordinator, Institutional Research  
892 Physical Facilities Planner  
893 Coordinator of Research & Development,  
State Vocational Education Program  
873 Administrative Analyst II, Officer of  
Administration  
902 Data Processing Officer, Office of  
Administration

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD



---

STEPHEN K. YAMASHIRO  
Hearings Officer

Dated: December 1, 1972

Honolulu, Hawaii