

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. S-07-78
)	
BOARD OF REGENTS, University of Hawaii,)	DECISION NO. 424
)	
Petitioner,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW, AND ORDER
and)	
)	
UNIVERSITY OF HAWAII PROFESSIONAL)	
ASSEMBLY,)	
)	
Exclusive Representative.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On April 3, 2001, the BOARD OF REGENTS, University of Hawaii (BOR) filed a Petition Relating to Strike Occurring or Strike About to Occur Endangering Public Health or Safety (Petition) with the Hawaii Labor Relations Board (Board). In its Petition the BOR requests that the Board designate an additional 29¹ Unit 07 positions as essential positions.

On April 5, 2001, the UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA) and Unit 07 employees of the University of Hawaii and the community college system under the BOR began their strike.

On April 9, 2001, the Board commenced the investigation on the Petition. The parties were given full opportunity to present evidence and arguments before the Board.

On April 11, 2001, the Board issued Order No. 2005 which by interim order designated ten of the positions as essential. Also, on April 11, 2001, the Board renewed its investigation to request additional information regarding the request of the School of Nursing. During the investigation, the BOR renewed its request for two positions at the Department of Psychology that had been previously withdrawn.

¹The BOR amended its petition by withdrawing two positions in the School of Nursing and Dental Hygiene, Recruitment and Retention Project at the hearing.

FINDINGS OF FACT

1. The Board affirms and incorporates herein by reference Order No. 2005, Interim Order Designating Essential Workers, dated April 11, 2001.
2. Dr. Bruce Chorpita, Associate Professor, Department of Psychology, is a licensed clinical supervisor providing mental health services to disabled children under Felix Consent Decree mandated services (Section 504 of the Vocational Rehabilitation Act and the Individuals with Disabilities Education Act). Dr. Chorpita provides care for 35 children a week. The Department of Health has requested that Dr. Chorpita be allowed to continue to work with these children who would be at severe risk should they be deprived of Dr. Chorpita's care and supervision.
3. Dr. Kelly Vitousek, Associate Professor, Department of Psychology, is the Director of the Eating Disorder Program at the Center for Cognitive-Behavioral Therapy, Department of Psychology. Dr. Vitousek provides direct patient care for three students and supervises three graduate students who provide direct care for seven patients.
4. The following 19 clinical faculty of the School of Nursing providing direct nursing care including IV therapy, dressing changes, counseling, wound care, pain management, infection control, administration of medication and surveillance of vital signs at various hospitals. These faculty each also supervise between ten and 30 nursing students who provide the services described above:
 - a. Diane Ishida, Associate Professor, Various Clinical Agencies
 - b. Laura Flannelly, Associate Professor, Various Clinical Agencies
 - c. Merle Kataoka-Yahiro, Associate Professor, Kapiolani Medical Center
 - d. Joyce Vogler, Associate Professor, Castle Medical Center
 - e. Clementina Ceria, Assistant Professor, St. Francis Medical Center
 - f. Jane Kadohiro, Assistant Professor, Diamond Head Health Center
 - g. Janet Uyehara, Assistant Professor, Kapiolani Medical Center
 - h. Maria Stark, Acting Assistant Professor, Lanakila Health Center, Various Clinical Agencies
 - i. Norma Fujise, Instructor, Queens Medical Center
 - j. Connie Gazmen, Instructor, Queens Medical Center
 - k. Sharon Morris-Pruitt, Instructor, St. Francis Medical Center
 - l. Clark Ratliffe, Instructor, Kapiolani Medical Center
 - m. Karol Richardson, Instructor, Kapiolani Medical Center
 - n. Sara Shelley Silverman, Instructor, Queens Medical Center, Various Clinical Agencies

- o. Lorrie Wong, Instructor, Queens Medical Center
 - p. Arlene Bohman, Lecturer, Queens Medical Center
 - q. Carolyn Tari-Sanchez, Lecturer, Various Clinical Agencies
 - r. Karen Tessier, Lecturer, Kuakini Medical Center, Kapiolani Medical Center
 - s. Thai Trang, Lecturer, Kaiser Medical Center.
5. Affidavits attesting to the necessity of the designation of the above-listed School of Nursing faculty members to avoid imminent or present danger to the health and safety of patients were received from Dick Lau, Vice President for Human Resources, Queens Medical Center; Fran Hallonquist, Executive Vice President, Kapiolani Health and Chief/CEO, Kapiolani Medical Center for Women and Children and Pali Momi Medical Center; Rose Mary Bucher, Vice President and Chief Nurse Executive, Kapiolani Medical Center for Women and Children; Diane Gabriel, Managing Director of In-Patient Services, Kuakini Medical Center; and, Marilyn Chong, Director of Nursing for Surgical Services, Kuakini Medical Center.²

CONCLUSION OF LAW

To the extent the medical doctors and nurses designated below perform or supervise students who provide direct patient care, the Board finds the withholding of services performed would present an imminent or present danger to the public health and safety within the meaning of HRS § 89-12.

²In a letter filed with the Board on April 16, 2001, UHPA, by and through its attorney, expressed its concerns that the affidavits submitted by the BOR do not provide particularized information as to the impacts of partial staffing on the various facilities. UHPA thus contends that the record is inadequate for the Board to fairly evaluate any proposed threat to public health or safety to support the designation of the nursing faculty.

While the Board appreciates UHPA's arguments, given that UHPA did not object to the designation of the nursing faculty and presented no evidence to rebut the BOR's presentation, and further previously stipulated in Case No. S-07-76, Board of Regents, to the designation of approximately 160 health care professionals who, similar to the nursing faculty here, regularly provide direct patient care and treatment or supervise direct patient care providers and trainees who could not provide the care in the absence of the incumbent, the Board finds that the record supports a finding that the withdrawal of direct patient care by the nursing faculty would present an imminent or present danger to public health.

ORDER

Accordingly, pursuant to HRS § 89-12, in addition to the positions designated as essential in Order No. 2005, the Board hereby designates the following positions as essential positions:

A. Department of Psychology

1. Dr. Bruce Chorpita, Associate Professor, Department of Psychology, only insofar as he provides mental health services to disabled children under Felix Consent Decree mandated services (Section 504 of the Vocational Rehabilitation Act and the Individuals with Disabilities Education Act).
2. Dr. Kelly Vitousek, Associate Professor, Department of Psychology only insofar as she provides direct patient care for three students and supervises three graduate students who provide direct care for seven patients.

B. School of Nursing

The 19 clinical faculty of the School of Nursing identified in Findings of Fact 4, above, only insofar as they provide direct nursing care or supervise nursing students who are providing direct patient care.

DATED: Honolulu, Hawaii, April 17, 2001.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Evelyn Nowaki, Esq.
T. Anthony Gill, Esq.
Joyce Najita, IRC