STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of HAWAII FEDERATION OF COLLEGE TEACHERS, Local 2003, and EDWARD BEECHERT, Individually, Petitioners, and UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, and BOARD OF REGENTS, UNIVERSITY OF HAWAII, and Its Secretary, KENNETH LAU, Respondents.	Case Nos. CU-07-11 CE-07-9 Decision No. 50

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

These prohibited practice charges against the respondents, the University of Hawaii Professional Assembly (hereafter UHPA) in Case CU-07-11 and the University of Hawaii (sometimes UH hereafter) and its Secretary, Kenneth Lau, in Case CE-07-9 were brought before the Hawaii Public Employment Relations Board (hereafter Board) by the petitioners, the Hawaii Federation of College Teachers (hereafter HFCT) and Edward Beechert, individually, on March 21, 1974.

Pursuant to Chapter 89, Hawaii Revised Statutes (hereafter HRS), this Board sitting en banc held a hearing, after due notice, on the subject prohibited practice charges on June 19 and 20, 1974. All parties were afforded full rights to call and cross examine witnesses, submit exhibits and present oral arguments and briefs to this Board.

Upon a full review of the transcripts, exhibits and briefs submitted by the parties, this Board hereby makes the following findings of facts, conclusions of law and order.

FINDINGS OF FACT

1. Petitioner HFCT is the exclusive representative of employees in unit 7, faculty of the University of Hawaii and the Community College System, and was certified as such by this Board on November 30, 1972, Case R-07-12, Decision 21.

2. Petitioner Edward Beechert is a unit 7 employee and served as HFCT's president and first chief negotiator.

3. Respondent UHPA is an employee organization as defined in Chapter 89, HRS, and is seeking to replace HFCT as the exclusive representative of employees in unit 7.

4. Respondent University of Hawaii is a public employer within the meaning of Chapter 89, HRS, representing the Board of Regents of said university and acting in its interest in dealing with public employees.

5. Respondent Kenneth Lau is the Secretary of the University of Hawaii and acts in its behalf in dealing with public employees.

6. On November 12, 1973, a proposed contract for unit 7 was agreed to between HFCT and the University of Hawaii. Said contract was rejected by a ratification vote taken among employees of unit 7 on November 25, 1973.

7. On November 28, 1973, HFCT notified the employer by letter that it had formed a new negotiating team and expressed a desire in resuming negotiations. HFCT transmitted a subsequent letter, dated December 21, 1973, indicating that

it hoped the employer would be ready with counterproposals to resume negotiations in early January, 1974.

8. On December 15, 1973, the College and University Professional Association (hereafter CUPA) and the American Association of University Professors (hereafter AAUP) formed a coalition known as UHPA.

9. On January 4, 1974, UHPA filed petitions seeking to replace HFCT as the exclusive representative of unit 7, Cases R-07-14 and RD-07-3.

10. On January 16, 1974, having received HFCT's counterproposals earlier that day, Kenneth Lau informed the HFCT that the University expected to seek official guidance from this Board as to whether it should continue to bargain with HFCT in view of its asserted good faith doubt concerning HFCT's majority status.

11. On January 21, 1974, this Board held a hearing on UHPA's petitions for representation and ordered that a certification election be held on March 13 and 15, 1974.

12. On January 29, 1974, the University filed a petition with this Board, Case DR-07-7, seeking a declaratory ruling as to whether it would be proper to continue bargaining with the HFCT.

13. On February 12, 1974, the Board issued Decision 41 in Case DR-07-7, wherein it held that, in view of its direction of election, a real question of representation existed and the University should remain neutral and not bargain with any union while the representation question was pending.

14. On March 13 and 15, 1974, the election for unit 7 was held. The results, tallied on March 25, 1974, were inconclusive.

15. On March 21, 1974, these prohibited practice charges were filed with this Board. Both complaints were signed by Edward Beechert, then President of the HFCT, on January 22, 1974.

The complaint against UHPA, Case CU-07-11, alleges the following:

> "That the Respondent has, in violation of H.R.S. § 89-13(b)(1), intentionally and in bad faith interfered with the activities of Petitioner, and has, during the period from approximately December 27, 1973, through and including the date of the signing of this charge, met with representatives of the University of Hawaii administration and solicited its aid in support of UHPA's attempt to bring about a situation in which said University administration would refuse to bargain with Petitioner and/or has agreed and conspired with said administration that said administration would refuse to bargain in good faith with Petitioner in order to better enable Respondent to seek to decertify and replace Petitioner as bargaining agent."

The complaint against the University of Hawaii and its Secretary, Kenneth Lau, Case CE-07-9, alleges the following:

> "Violation of H.R.S. § 89-13(a)(1), (2), (5), in that said Respondent met with and actively encouraged a rival organization of HFCT, viz., the University of Hawaii Professional Assembly, to attempt to decertify petitioner HFCT, encouraged UHPA in its efforts in opposing HFCT, and, during the period of January 15 through 18, or thereabouts, met with UHPA's representatives and/or officers, including one John Thompson, and gave assurances to various members of bargaining unit 7 that 'the University of Hawaii will never negotiate a contract with HFCT', or words to that effect and, further, actively urged UHPA to oppose HFCT, promised UHPA more favorable treatment at the bargaining table than had been given to HFCT and authorized, either implicitly or explicitly, UHPA and/or its officers and representatives to use the foregoing statements and representations by Respondent as a bsis [basis] on which to campaign against HFCT.
>
> "Additionally, from December 20, 1974 through and including the date of the signing of this

charge, Respondent has refused to bargain collectively in good faith with the exclusive representative as required in H.R.S. § 89-9."

Petitioners filed a particularization of their charges asserting, on information and belief, that Kenneth Lau met with UHPA officials twice, that Kenneth Lau made remarks to the effact that the administration would rather bargain with UHPA rather than HFCT, and that Kenneth Lau, after being informed of possible collusion and meetings between Assistant Vice Chancellor Ashton and UHPA members, remarked that he would tell his people to be more discreet.

16. Respondents denied all of the material allegations in the charges against them.

17. On April 1, 1974, HFCT and Mr. Beechert filed objections to the conduct affecting the results of the election, incorporating the allegations set forth in the charges discussed, supra.

18. On April 19, 1974, HFCT filed a petition for declaratory ruling, Case DR-07-9, on whether the run-off election could be held prior to the resolution of the subject charges and objections to the conduct affecting the results of the election.

19. On April 22, 1974, this Board canceled the run-off election scheduled for April 24 and 26, 1974, pending disposition of the subject charges and objections.

20. The record reflects that some of the incidents complained of by petitioners did in fact occur, though the time, date, place and persons involved vary from those set forth in the particularization of their complaints. Inasmuch as each incident will be reviewed in greater detail under the following conclusions of law in determining whether respondents

committed prohibited practices within the meaning of Section 89-13, HRS, as alleged by petitioners, briefly, the incidents and persons involved are:

(1) On December 26, 1973, Geoffrey Ashton, Assistant Vice Chancellor of Faculty Affairs on a half-time basis and a faculty member on a half-time appointment, attended an informal social gathering at Werner Levi's home at the invitation of Vincent Peterson, Interim Chairman of the Faculty Senate Executive Committee and an officer of the AAUP. Approximately 8 to 10 faculty members attended the gathering, all of whom, including Messers. Levi and Peterson, are unit 7 employees. The general topic discussed was problems that collective bargaining had raised concerning the faculty of the University.

(2) On January 25, 1974, Kenneth Lau, Secretary of the University of Hawaii, met with Jerry Comcowich, executive secretary of CUPA, and Thomas Combs, president of CUPA, at his office. Both Messrs. Comcowich and Combs are unit 7 employees. The purpose of the meeting was to ascertain facts regarding CUPA's past support of HFCT in the run-off election (November, 1972) and its present support of UHPA in the upcoming election (March, 1974). Dr. Lau also asked them to testify to such facts on the University's behalf at a declaratory ruling proceeding which it intended to initiate with respect to the University's duty to continue bargaining with the HFCT.

On February 5, 1974, Dr. Lau again met with Mr. Comcowich at his office to solicit Mr. Comcowich's signiture on an affidavit which Dr. Lau had prepared and intended to use in said declaratory ruling proceeding.

(3) On February 25, 1974, John Thompson, while in the course of his campaigning for UHPA at Hilo College, made representations to the effect that the University preferred not to bargain with the HFCT. He made such a representation to Floyd Swann, secretary of HFCT's Hilo College chapter and past president of HFCT, while they were engaged in conversation at a meeting open to faculty members who wanted to meet the officers of UHPA and to discuss collective bargaining issues. Mr. Thompson also made that representation to Louis Warsh, a strong supporter of the HFCT, while they were engaged in a heated personal argument at Miyoko Sugano's office. Ms. Sugano was in her office at the time and heard the argument between Messrs. Thompson and Warsh. Ms. Sugano and Messrs. Thompson, Warsh and Swann are all faculty members in unit 7.

CONCLUSIONS OF LAW

The Board shall review each of the above incidents as reflected in the record in determining whether the alleged charges of collusion and conspiracy between UH and UHPA can be substantiated.

The Board found the testimony regarding the several incidents in dispute evasive at times, but uncontradicted when the record as a whole is considered. All parties have urged, citing various authorities, that the particular facts of this case should be viewed in the context of the "totality of circumstances" surrounding the charges. The Board agrees.

Thus, the Board is of the opinion that it would be of little, if any benefit to discuss the numerous cases cited by the parties. Our review of each case regarding interference

and coercion shows that each decision turns upon the particular facts of the case, which differ in significant respects from the facts before us. Though factually dissimilar, however, the several cases referred to herein are those which the Board considers relevant and informative in its review of the incidents in dispute because of the well-established principles enunciated therein and the persuasive rationale employed.

Ashton Incident

On December 26, 1973, Assistant Vice Chancellor Geoffrey Ashton attended an informal social gathering at Professor Levi's home. Most of the 8 to 10 faculty members who attended the gathering were UHPA supporters, including Mr. Peterson who invited Mr. Ashton to the gathering. The invitation was extended to Mr. Ashton because he had earlier indicated his willingness to meet with groups of interested faculty members to discuss the problems that collective bargaining had raised. He had served as a resource person for the University's negotiating team and participated in its caucuses.

To the best of his recollection, Mr. Ashton testified that the main topic discussed was problems concerning the management rights clause. Since the faculty felt management had let them down, he wanted to explain why the contract came out the way it did because he did not want a rift between faculty and management to become serious. He expressed his personal view that there was inherent conflict between the management rights clause and the manner of University governance. Thus, he felt that faculty would be better served by

voting no representation. He further expressed his personal opinion that HFCT's negotiating team had been ineffective and that unfortunately HFCT's first chief negotiator became angry during one of the public negotiating sessions.

Petitioners allege that Mr. Ashton's conduct, whether he encouraged a no representation vote or encouraged the formation of a rival organization filing a decertification petition, constitutes a prohibited practice under Section 89-13(a), HRS. Said section makes it a prohibited practice for a public employer or its designated representative, wilfully to:

> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter; or
>
> (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization.

The record discloses that Mr. Ashton did urge a vote for no representation. However, the Supreme Court has made it clear that an employer has the right to express opinions and to persuade its employees to join or not to join a union under the First Amendment as part of the exercise of his freedom of speech and freedom of assembly, provided such expression or persuasion is not coupled with coercion. NLRB v. Virginia Electric & Power Company, 314 U.S. 469, 9 LRRM 405 (1941); Thomas v. Collins, 323 U.S. 516, 15 LRRM 777 (1945)

Section 89-13(a)(1), HRS, is patterned after Section 8(a)(1) of the National Labor Relations Act. Congress was dissatisfied with the NLRB's rulings in the free speech area based on Section 8(a)(1) and enacted more definitive language under Section 8(c) to clarify that an employee is interfered with, restrained or coerced when the employer expresses views, argument or opinion only if the expression contains a threat

of reprisal or force or promise of benefit. Southwire Co. v. NLRB, 383 F.2d 235, 65 LRRM 3042 (5th Cir. 1967) More recently and more explicitly, the Supreme Court defined the scope of permissible employer communications. NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969)

Mr. Ashton's urging of a no representation vote clearly falls within the scope of permissible employer communications. There was no showing that Mr. Ashton made any threat of reprisal or promise of benefit. On the contrary, the record shows that he came at the invitation of the faculty members themselves. Furthermore, his urging of a no representation vote had little effect, if any, since most of the faculty members present at the gathering subsequently supported UHPA openly.

With respect to Mr. Ashton's personal views regarding the ineffectiveness of HFCT's negotiating team, the Board finds the rationale of the Seventh Circuit persuasive. Mallory & Co. v. NLRB, 389 F.2d 704, 67 LRRM 2119 (7th Cir. 1967) Therein, the Court stated:

> "But an employer does not commit an unfair labor practice by expressing an opinion or even a prediction that dire economic consequences will befall his employees if they choose a union to represent them. [Citations omitted.] Thus the determination whether an employer's statement to his employees during an organizational campaign is a direct or subtle threat of employer reprisal or is instead a prognastication of disastrous consequences, which the union and not the employer will bring about, raises the threshold question as to existence of a section 8(a)(1) violation. Sometimes this determination can be made by looking at the questioned statements alone. At other times, as the instant case, the questioned statements do not of themselves clearly indicate whether they are protected or proscribed. In such situations, the statements must be considered in light of the totality of employer communications. Under the test just advanced, if a statement

> cannot be interpreted as a subtle suggestion that the employer will seek to thwart unionization by visiting economic disadvantage upon his employees, but rather that such consequences may result from unionization itself, the statement is immune from statutory ban.[2]

> "[2]Under the test set forth in the text, so long as an employer's predictions relate to consequences likely to occur due to union activity, he may properly base his opinions on past events or personal experience if such are truthfully depicted."

Mr. Ashton's remarks must be assessed against the backdrop of widespread faculty unrest in view of the rejection of the proposed contract. Unit 7 remains the only unit without a collective bargaining agreement. Mr. Ashton actively participated in unit 7 negotiations on behalf of the University administration. His remarks that the contract came out the way it did because of inherent conflict between the management rights clause and the manner of University governance and the ineffectiveness of HFCT's negotiating team were his opinions based on past events and personal experience.

The record does not support petitioners' allegation that Mr. Ashton encouraged the formation of a rival union. His attendance at the informal social gathering of faculty members, even though most of them were UHPA supporters, does not, in and of itself, show that he favored UHPA in any way. It is clear that he favored a no representation vote. Additionally, his willingness to meet with interested faculty members to discuss problems that collective bargaining has raised was an "open" invitation which showed his general concern arising from the rejection of the contract. To the contrary, it appears that Mr. Ashton might have similarly attended

a gathering of faculty members who were HFCT supporters, if requested. No such request was made, however, which would tend to support a finding of a prohibited practice if he were to decline because he favored UHPA.

Moreover, discussions regarding the possible formation of an UHPA coalition predated the Ashton incident. The Board's records show that UHPA was formally established on December 15, 1973, at the time when one year had already elapsed since HFCT was certified as the exclusive representative, no valid contract was in force and a rival organization was not barred from filing a petition for election.

In view of the totality of circumstances, the Board is convinced that Mr. Ashton's conduct, unaccompanied by any threat of reprisal or promise of benefit, did not constitute a violation of Section 89-13(a)(1) or (2), HRS, as alleged by the HFCT and Mr. Beechert.

Whether Mr. Ashton was expressing his personal views or that of the administration is immaterial in the instant case. However, Mr. Ashton is cautioned that his views and opinions can readily be misconstrued as those of the administration because of his position as Assistant Vice Chancellor for Faculty Affairs and his involvement in negotiations. He should bear this in mind in the future and not engage in conduct which may make the University suspect and be damaging to harmonious employer-employee relations. We obviously recognize his rights of freedom of speech and assembly, but he has a concomitant duty, as part of the administration, to represent the views of the administration and to seek its approval prior to any undertaking regarding collective bargaining, rather than singularly embarking on a mission of his own.

Meetings with Lau

On January 25, 1974, Secretary Kenneth Lau met with Jerry Comcowich and Thomas Combs at his office to ascertain facts regarding CUPA's prior support of HFCT and its present support of UHPA and to request them to testify to such facts on the University's behalf. At the time of the meeting, the University intended to file (it subsequently did on January 29, 1974) a declaratory ruling petition as to whether or not it should continue to bargain with the HFCT in view of its asserted good faith doubt of HFCT's majority status.

The established rules regarding the permissibility of managerial questioning such as that which took place here concentrate on whether the questioning could reasonably be expected to induce fear of reprisal in the mind of the employees. NLRB v. O. A. Fuller Supermarkets, Inc., 374 F.2d 197, 64 LRRM 2541 (5th Cir. 1967) Interrogation, not itself threatening, has not been held to be an unfair labor practice unless it meets certain fairly severe standards. Bourne v. NLRB, 332 F.2d 47, 56 LRRM 2241 (2nd Cir. 1964) Even if the questioning involved union activities, it has not been deemed an unfair labor practice if the questioning was not conducted in manner or context reasonably productive of fear of reprisal and, there is no background of employer discrimination. NLRB v. Mississippi Products, 213 F.2d 670, 34 LRRM 2341 (5th Cir. 1954)

It is obvious from the record that Messrs. Combs and Comcowich were not questioned because they were unit 7 employees nor questioned about their personal support of UHPA. They were questioned because they were leaders of CUPA and were known to be such by Dr. Lau prior to the meeting. They were questioned about their organization's past support of

HFCT in the run-off election during 1972, and its present support of UHPA in the upcoming election. The specific purpose of the interrogation was made known to them. The nature of the information sought was not for the purpose of taking any action against them or their organization, but for the purpose of preparing evidence for a declaratory ruling proceeding before this Board concerning the University's obligation to continue bargaining with HFCT.

The interrogation by Dr. Lau was not itself threatening nor was it accompanied by any promise of benefit. In response to questioning during the instant hearing, Mr. Combs replied as follows:

> "Q When you were at this meeting with Dr. Lau, did he made [make] any offer to you -- any promise to you as to what the University might do in any respect if you testified as he has requested?
>
> A None whatsoever.
>
> Q Did he indicate to you that there might be some adverse reaction of the University in the event -- towards CUPA or you, if you refused to testify?
>
> * * *
>
> A There was nothing in this nature. Nothing. I felt no threat or cohersion of any kind." (Tr. 129, 130 -- June 20, 1974)

Furthermore, the interrogation was not conducted in a manner or context reasonably productive of fear of reprisal, but in an atmosphere of doubt and uncertainty, as evidenced by the following testimony of Mr. Combs:

> "Q Did he indicate to you, that is Dr. Lau, indicate to you during the conversation that the University did not want to bargain with HFCT?
>
> A No, he did not indicate that. He indicated that they were in doubt.

Q For what reasons were they in doubt?

* * *

A The impression I got from Dr. Lau was he was now unsure as to who represented the majority of the faculty. He was seeking guidance as to who did represent this and what he should do." (Tr. 130 -- June 29, 1974)

In view of the nature, purpose and scope of the interrogation and the persons being interrogated as discussed above, the Board finds that the interrogation falls within the scope of permissible managerial questioning. Even though the inquiries were made by Dr. Lau, the Secretary of the University of Hawaii, at his office, the interrogation was not threatening nor was there any threat of reprisal or promise of benefit made by Dr. Lau.

On February 5, 1974, Dr. Lau again met with Mr. Comcowich for the purpose of securing his signature on an affidavit (prepared by Lau) which was to be used in the declaratory ruling proceeding. Although the Board considers Dr. Lau's effort to secure Mr. Comcowich's signature on the affidavit prepared by him in poor taste, since Comcowich could have been subpoenaed to testify if necessary, there was no evidence whatsoever that Dr. Lau's action induced fear of reprisal or promise of benefit. Comcowich refused to sign the affidavit.

Petitioners allege that Dr. Lau's persistent conduct in soliciting testimony from a rival organization both encouraged a rival organization and interfered with the functioning of the HFCT. Petitioners further allege that such conduct affected the results of the election.

Whether the two incidents in which Dr. Lau met with CUPA officials can be construed as persistent conduct need

not be pursued. The contention that Dr. Lau's conduct encouraged a rival organization is without merit. UHPA had already filed petitions seeking to replace HFCT as the exclusive bargaining representative and the Board had acted on said petitions by directing an election. At most, Dr. Lau's conduct shows that when the University became aware of the UHPA petitions, it properly questioned whether it should continue to bargain with the HFCT.

As to the petitioners' remaining allegations, we are unable to determine how Dr. Lau's conduct could have interfered with the functioning of HFCT and affected the results of the election. The questioning of two employees, known to be leaders of CUPA which is supporting UHPA, could hardly have affected their choice in the election nor have any impact which affected the results of the election. Interference with HFCT's functioning resulted, not because of Dr. Lau's conduct, but because of UHPA's petitions, which were supported by the necessary 30 percent showing of interest. The University's duty to bargain with the HFCT was obviated in the face of the Board-ordered election on January 21, 1974.

Accordingly, the Board finds no evidence in the record to substantiate HFCT's and Mr. Beechert's allegation that Dr. Lau's conduct was in violation of Section 89-13(a), HRS, or affected the results of the election.

Incidents at Hilo College

On February 25, 1974, John Thompson, while visiting Hilo College during his campaigning for UHPA, made representations to the effect that he had it on good authority from high-placed University officials that the University preferred

not to bargain with the HFCT. He made such representations to Floyd Swann and Louis Warsh. Mr. Thompson served as convenor of the HFCT committee which prepared proposals for negotiations and had met various HFCT members, including Messrs. Warsh and Swann, while serving in this capacity.

Mr. Thompson testified that he did make such representations, but that he based them on what persons, other than University officials, had said and on his personal assessment of past negotiations and the current standstill in negotiations. To the extent that his statements implied that the University had indicated a preference not to negotiate with the HFCT, they were misrepresentations and he admitted as much during the instant hearing.

Thus, HFCT's and Mr. Beechert's allegation that the representations made by Mr. Thompson show employer preference and interference cannot be supported, since his remarks are not attributable to the University. Mr. Thompson's rather dubious statements appear to be no more than campaign puffing directed at Mr. Warsh, while they were engaged in a heated personal argument, and no more than needling, in the case of Mr. Swann, because of Mr. Swann's prior and present affiliation with the HFCT.

There remains the question of whether Mr. Thompson's conduct may have affected the results of the election. In addition to Messrs. Warsh and Swann, the record shows that Mr. Thompson's statements had been heard by only one other faculty member, Miyoko Sugano. Ms. Sugano was in her office at the time Messrs. Thompson and Warsh were arguing in her office. However, Ms. Sugano and Messrs. Warsh and Swann all testified that Mr. Thompson's statements did not, in any way,

prevent them from making a free choice in the election. His remarks, known only to three faculty members out of a bargaining unit of approximately 2,500, obviously could not have had any impact, much less a significant impact, on the outcome of the election.

Thus, in light of the context in which Mr. Thompson's statements were made and their de minimus effect, if any, on the election, the Board is of the opinion that there is insufficient evidence on which to base a Section 89-13(b)(1), HRS, violation or a finding that the election should be set aside.

Turning now to the Section 89-13(a)(5), HRS, charge of refusal to bargain, as alleged by the HFCT and Mr. Beechert in their complaint, we note that the petitioners did not address themselves to this charge in their memorandum of law. The record shows that such a charge is clearly unsupportable.

On February 12, 1974, the Board ordered the University not to bargain with any union while the question of representation was pending. The University's duty to bargain with the HFCT had been obviated by the Board-ordered election on January 21, 1974. Thus, the University's refusal to bargain as alleged by the HFCT must have occurred prior to that date. Such an inference is supported by the signatory date on the complaint, January 22, 1974, although the complaint was not filed until March 21, 1974. The Board's Rule 3.02 sets a time limitation in which to file a complaint, i.e., 90 days of the alleged violation. Thus, the period in question during which the University allegedly refused to bargain is between December 21, 1973, or thereabouts, to January 21, 1974.

The sequential facts occurring during that span, and immediately prior thereto, do not show that the University refused to bargain with the HFCT as alleged. On November 28, 1973, after the rejection of the contract, the HFCT notified the University that it had formed a new negotiating team, which was formulating proposals for negotiations. It also indicated at that time its interest in resuming negotiations in the near future. On December 21, 1973, HFCT sent another letter to the University indicating its willingness to resume negotiations in early January, 1974, and its hope that the employer would be ready with counterproposals at that time. It was not until January 16, 1974, that HFCT delivered its counterproposals to the University, via Secretary Lau. The University did not refuse to bargain at any time prior to that date, despite the fact that there had been no negotiations.

On January 16, 1974, after receiving HFCT's counterproposals earlier that day, Secretary Lau informed the HFCT that the University intended to file a declaratory ruling petition seeking a determination as to whether it should continue to bargain since a representation question had been raised. UHPA had filed petitions seeking to replace HFCT as the exclusive representative of unit 7 on January 4, 1974. At HFCT's urging, to the extent that it expressed an intent to file a prohibited practice charge against the University unless the University agreed to file a declaratory petition on the matter, the University subsequently filed such a petition for declaratory ruling with this Board on January 29, 1974.

In the absence of any contrary evidence, the above facts lead us to conclude that the refusal to bargain charge against the University is without merit.

In summary, the Board finds, on the basis of the foregoing, that there was no violation of Section 89-13(a)(1), (2), or (5), HRS, nor a violation of Section 89-13(b)(1), HRS, by any of the respondents. The conduct complained of does not constitute proof of collusion and conspiracy between the UH and UHPA. Inasmuch as HFCT's and Mr. Beechert's objections to the conduct affecting the results of the election embrace the same conduct alleged in the subject prohibited practice complaints, the Board also finds that said objections cannot be sustained. A nullification of the election is not warranted.

ORDER

The Board, in view of the foregoing, hereby:

(1) dismisses all of the charges alleged by petitioners HFCT and Edward Beechert in their complaints against the UH and its secretary, Kenneth Lau, in Case CE-07-9, and UHPA in Case CU-07-11;

(2) overrules the objections filed by the HFCT with respect to conduct affecting the results of the election in Case R-07-14;

(3) certifies as valid the inconclusive results of the election which were tallied on March 25, 1974;

(4) directs a run-off election to be held at such time and under such circumstances as mutually agreed among the parties and the Board; and

(5) directs the parties to meet at the Board's office on August 22, 1974, at 9:00 a.m. to commence work on the details to be embodied in an agreement which will govern the conduct of the run-off election.

In the absence of such agreement or a failure to reach an agreement within a reasonable time after August 22, 1974, the election shall be held at such time and under such circumstances as determined by the Board.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

John E. Milligan, Board Member

James K. Clark, Board Member

Dated: August 12, 1974

Honolulu, Hawaii