

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
UNIVERSITY OF HAWAII)	Case No. <u>CE-07-38</u>
PROFESSIONAL ASSEMBLY,)	
Complainant,)	
and)	
BOARD OF REGENTS, UNIVERSITY)	
OF HAWAII,)	
Respondent.)	

In the Matter of)	
UNIVERSITY OF HAWAII)	Case No. <u>CE-07-39</u>
PROFESSIONAL ASSEMBLY,)	
Complainant,)	Decision No. <u>97</u>
and)	
BOARD OF REGENTS, UNIVERSITY)	
OF HAWAII,)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERS

On October 7, 1977, the University of Hawaii Professional Assembly (hereafter UHPA) filed prohibited practice charges in the above-referenced cases against the Board of Regents, University of Hawaii (hereafter BOR).

UHPA charged that the BOR had unilaterally adopted "classification and compensation policies" without negotiating in good faith, in violation of sections of Chapter 89 as well as several provisions in the contract.

On October 18, 1977, the attorney for the BOR filed a motion for particularization of the charges. The motion was granted by this Board in Order No. 149, dated October 20, 1977.

(Dec. 28, 1978)

The particularization was filed by UHPA's attorney on October 28, 1977.

The above-entitled cases were consolidated for hearings. After due notice, hearings were held before the full Board. All parties were present and were afforded the opportunity to submit exhibits and call and cross-examine witnesses.

Both parties submitted post-hearing briefs; Petitioner UHPA on July 14, 1978, and Respondent BOR on April 4, 1978.

The BOR subsequently filed a motion requesting leave to reply to UHPA's brief. This motion was granted in Board Order No. 183, issued on April 13, 1978. The Petitioner's Reply Brief was filed on September 9, 1978.

Based on the record herein and the arguments of the parties, this Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Petitioner UHPA is an employee organization, as that term is defined in Section 89-2(8) Hawaii Revised Statutes (hereafter HRS). UHPA is, and was at all times relevant, the exclusive representative of employees in bargaining unit 7 (faculty of the University of Hawaii and the community college system).

The BOR is a public employer, under Section 89-2(9), HRS, and is party to the collective bargaining agreement covering unit 7 employees.

On or about July 14, 1977, the BOR adopted two policies entitled "Classification and Compensation of

Instructional Faculty at the University of Hawaii at Hilo" and "Classification and Compensation Policy for Community Colleges."

Both of the subject policies are composed of two parts. Part I, the "classification plan," consists of descriptions of the duties, responsibilities, and minimum qualifications of each position in the plan. Part II, called a "compensation plan," consists of salary schedules.

The Petitioner contends that the adoption of the policies by the BOR without negotiation constitutes a prohibited practice under Sections 89-13(a), (1), (3), (5), (7), and (8), HRS. Respondent also asserts that the BOR has violated Sections 89-1, 89-3, 89-99(a), 89-9(d), and 89-19, HRS, and Articles I (Recognition), II (Non-Discrimination), III (Conditions of Service), IV (Tenure and Service), V (Promotion), VI (Negative Tenure and Promotion Actions), VIII (Academic Freedom and Responsibility), XV (Conflict), XVI (Entirety and Modification), XIX (Retrenchment), and XXI (Salaries) of the collective bargaining agreement between the BOR and UHPA.

Petitioners do not contest the minimum qualification requirements found in Part I of the plans. Respondent recognizes that the amounts to be paid at each range and step and the length of service necessary for the incremental and longevity steps are negotiable.

Section 304-11, HRS, states:

Faculty: The faculty of the university shall be under the direction of a president who shall be appointed by the board of regents. The board shall appoint such deans, directors, other members of the faculty, and employees as may be required to carry out the purposes of the institution, prescribe their salaries and terms of service, where such salaries and

terms of service are not specifically fixed by legislative enactment, make and enforce rules governing sabbatical leaves with or without pay, consistent with the practice of similar institutions on the mainland, and notwithstanding the laws of the State relating to vacations of the officers and employees of the State.

Section 304-13, HRS, states, in pertinent part, that

The board of regents shall classify all members of the faculty of the university including research workers, extension agents, and all personnel engaged in instructional work as defined in section 76-16 and adopt a classification schedule conforming, as nearly as may be practical, to the schedules set forth in chapter 77. . . . The adjustments of compensation to conform with the classification shall be made in general accordance, so far as may be practical, with chapter 77, relating to state employees.

The BOR contends that the above sections, in conjunction with Section 89-9(d), HRS, grant it the authority to establish the subject plans unilaterally.

The BOR adopted the new policies because it felt that classification and compensation plans should reflect the differences between the missions and operations of the subject campuses and the University of Hawaii at Manoa (hereafter Manoa campus).

Before becoming a part of the University of Hawaii system, the community colleges were primarily technical schools, and were operated by the Department of Education. When the University of Hawaii assumed the responsibility for these schools, the compensation plan already in existence was adopted. Subsequently, another plan was adopted in 1967. This plan is the one found in the faculty handbook. There were several problems in using this plan.

The initial community college classification plan provided for range changes based on the accumulation of

credits from an accredited institution, rather than on the performance of an individual instructor. This concept is also found in Section 297-31, HRS. The old plan also never defined the responsibilities of a faculty member.

Because of these and other problems, and a general desire for revision, an informal committee to discuss a new policy was created. It was composed of UHPA representatives and university administrators, and met several times during 1976. Both Parts I and II of the policy were discussed at these meetings, although Part II was not a major concern.

Following the informal meetings, four consultation meetings with UHPA were held during 1977. At UHPA's request, meetings also were held with faculty members on all seven community college campuses.

At no time during these discussions did the BOR consider the new policy subject to negotiations.

Part I of the new community college policy incorporates some faculty suggestions from these discussions, including a change in the minimum qualifications for instructors in the trades, to facilitate recruitment in this area on the neighbor islands.

Part II of the new community college policy proposes a change for instructional personnel from a five range, fifteen step system to a five range, eight step system of pay.

The new policy also provides that

[a]dditionally, the compensation of Faculty Members may be further adjusted in accordance with the following provisions:

- A. Salary increases and other extra compensation shall be provided for in accordance with collective bargaining agreements, if any, or according to Board of Regents policy.

- B. Increments shall be provided for in accordance with applicable statutes, Board of Regents policy, or collective bargaining agreement, as appropriate.
- C. Instructional Faculty Members who are required to be on duty for the entire year shall be placed on the Group II schedule.
- D. Upon promotion, a Faculty Member will receive an amount equal to his former salary plus one increment step or the minimum salary at the next higher range, whichever is greater.
- E. Faculty Members terminating their contract in the middle of the year and those who are appointed after the beginning of a semester shall have their salary prorated for that portion of the academic year or semester of service rendered.
- F. Faculty Members whose salary is at the top of their range or whose salary exceed the top of their range shall continue to receive their salary unless otherwise provided for through a collective bargaining agreement.

Lecturers who are members of the bargaining unit shall be compensated in accordance with the collective bargaining agreement. However, lecturers who are not members of the bargaining unit shall be compensated in accordance with institutional demands and commensurate with the individual's qualifications.

In the event there is no negotiated wage increase effective July 1, 1979, then the salary amounts shown in Steps 1 through 15 of the salary schedules effective July 1, 1976, for nine (9) and eleven (11) months instructional personnel in the Community Colleges shall be utilized with appropriate temporary adjustments, such as interim or temporary steps, if necessary.

Until this new classification plan was established, the faculty at the Hilo campus and West Oahu College were bound by the same requirements in the faculty handbook as the faculty on the Manoa campus.

While the mission of the Manoa campus is that of a university with a graduate school and research objectives,

the Hilo campus and West Oahu College are viewed as four year, liberal arts undergraduate colleges, whose primary mission is to instruct, and where research is less emphasized.

Part I of the new classification plan for the Hilo campus and West Oahu College isolates high quality teaching as a requirement for promotion and tenure. Under the new policy, the duties and responsibilities of non-Manoa four-year faculty include "scholarly activities." This term has been used in place of "research," to include activities other than original research, such as editing journals. Non-Manoa faculty may now also elect to participate in high quality service work or spend time in scholarly activities.

Part II of the new salary schedule for the Hilo campus and West Oahu College shows a change from a four rank, twelve step schedule to a four rank, eight step schedule.

This new salary schedule is the current salary schedule for Manoa and Hilo campuses, without the special steps A to D.

The new policy also provides that

[a]dditionally, the compensation of Faculty Members may be further adjusted in accordance with the following provisions:

- A. Salary increases and other extra compensation shall be provided for in accordance with collective bargaining agreements, if any, or according to Board of Regents policy.
- B. Increments shall be provided for in accordance with applicable statutes, Board of Regents policy, or collective bargaining agreement, as appropriate.
- C. Extra compensation may be granted as appropriate, for additional administrative duties.
- D. Upon promotion, a Faculty Member will receive an amount equal to his former salary plus one increment step or the minimum salary at the next higher rank, whichever is greater.

- E. Faculty Members terminating their contract in the middle of the year and those who are appointed after the beginning of a semester shall have their salary prorated for that portion of the academic year or semester of service rendered.
- F. Faculty Members whose salary is at the top of their rank or whose salary exceed the top of their rank shall continue to receive their salary unless otherwise provided for through a collective bargaining agreement.

In the event there is no negotiated wage increase effective July 1, 1979, then the salary amounts shown in steps 1 through 8 for each rank of the salary schedules effective July 1, 1976 for nine and eleven month instructional personnel at Manoa shall be utilized.

The administration initially proposed changes in the existing policy through a paper, which was transmitted to UHPA for consultation. An informal committee was formed, and was composed of the president of the Hilo chapter of UHPA, the chair of the senate executive committee of the faculty senate, and one faculty member chosen by the first two members. Further consultation on the document was held with Hilo campus and West Oahu College representatives. After this input, the policy was submitted to the BOR, which adopted it in July, 1977.

CONCLUSIONS OF LAW

These cases require this Board to determine whether all or part of the policies adopted by the BOR are mandatory subjects of negotiations under Section 89-9(d), HRS. This section provides, in pertinent part:

Section 89-9 Scope of negotiations.

* * *

(d) Excluded from the subjects of negotiations are matters of classification and

reclassification, the Hawaii public employees health fund, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. . . .

In the Matter of James Takushi, Chief Negotiator, Office of Collective Bargaining, State of Hawaii, Petitioner, and Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO, and City and County of Honolulu, Intervenor, Case No. DR-11-16, Decision No. 65, this Board stated that the Legislature intended to remove some subjects from the scope of bargaining by creating the exclusions in Section 89-9(d):

This Board is of the opinion that it was clearly the intent of the Legislature when it amended Section 89-9(d), HRS, to exclude the entire health fund from the scope of negotiations that the above statutory arrangement requiring both employer and employee contributions not be altered in any way by collective bargaining.

HPERB Decision No. 65 at 10.

In the Matter of University of Hawaii Professional Assembly, Complainant, and Board of Regents, University of Hawaii, Respondent, Case No. CE-07-34, Decision No. 83, we also stated that

[l]egislative preemption of the subject of the retirement system is, in our view, evinced whenever the Legislature has spoken specifically on the subject.

HPERB Decision No. 83 at 12.

There, we concluded that the retirement age for unit 7 employees was negotiable, since it was not part of the "retirement benefits" exclusion in Section 89-9(d), and because there was no legislative preemption in the form of express statements regarding retirement age in the relevant statutes.

In Section 304-13, HRS, the legislature has delegated the responsibility for "matters of classification and reclassification" of unit 7 employees to the BOR, subject to the condition that such classification conform, "as nearly as may be practical" to schedules for general employees contained in Chapter 77, HRS. The classification of faculty which the BOR does pursuant to the authority expressly conferred upon it by Section 304-13, HRS, is, in our opinion, removed by Section 89-9(2), HRS, from the scope of negotiations because it is a "matter of classification." The statutory intent clearly is to remove from negotiations for all public employees the subjects of classification and reclassification. Thus, a determination of whether the contested plans constitute "matters of classification and reclassification" is dispositive of these cases.

These plans are similar to what are considered to be classification plans for purposes of Chapters 76 and 77, HRS.

The University's plans would classify unit 7 members based upon their duties and responsibilities, and according to the kind, level, and qualifications of their work, in accordance with the mission of the campus with which they are affiliated. Accordingly, they concern matters of classification and as such may not be the subject of negotiation.

Chapter 77, HRS, the compensation law referred to in Section 304-13, provides the following definitions:

§77-1 Definitions.

* * *

(2) "Class" or "class of positions"
means a group of positions sufficiently
similar with respect to duties, authority,

and responsibility so that the same title may reasonably be required for, and the same salary range may apply to, each position allocated to the class. . . .

Chapter 76, HRS, the civil service law, further adds:

§76-11 Definitions.

* * *

(7) "Class" or "class of work" means the logical and reasonable grouping of duties and responsibilities and their identification with respect to

- (A) Kind or subject matter of work,
- (B) Level of difficulty and responsibility, and
- (C) Qualification requirements of the work, so that positions which conform substantially to the same class would receive like treatment in the matter of title, and such personnel processes as salary assignment; . . .

As matters of classification, the University plans are among those subjects expressly removed from the scope of bargaining by 89-9(d), HRS.

Consequently, the BOR, when creating its plans as authorized by the Legislature under Section 304-13, HRS, was under no duty to bargain over the policies.

Although the University has proposed dollar amounts for each range and step of the plans, it acknowledges, and the Board agrees, that the amounts of wages to be paid in each range and step of the new classification plans are negotiable.

Section 304-13, however, does state that:

. . . [t]he adjustments of compensation to conform with the classification shall be made in general accordance, so far as may be practical, with chapter 77, relating to state employees. . . .

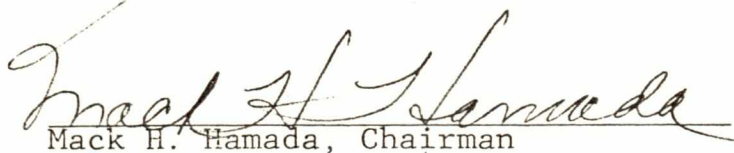
The BOR plan does contain differences from Chapter 77, notably the absence of an appeals procedure, like that found in Section 77-4.

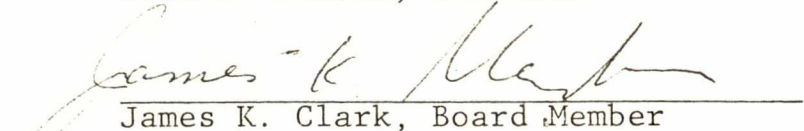
Petitioner has alleged that the new plans violate the merit system and the principle of equal work for equal pay. Neither the record in this case nor the jurisdiction of the Board permit a complete evaluation of this contention, especially since it has already been determined that the BOR has committed no prohibited practice. This Board is concerned, however, that the absence of an appeals procedure would preclude unit 7 employees and their exclusive bargaining representatives from having these contentions addressed. The only recourse for UHPA and the employees they represent to obtain the appeal rights available to other state employees is with the state legislature.

ORDER

For the reasons cited in the opinion above, the prohibited practice charges brought by the University of Hawaii Professional Assembly in Case Nos. CE-07-38 and CE-07-39 are dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: December 28, 1978

Honolulu, Hawaii