

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-07-444
)	
UNIVERSITY OF HAWAII)	ORDER NO. 1853
PROFESSIONAL ASSEMBLY,)	
)	ORDER
Complainant,)	
)	
and)	
)	
KENNETH P. MORTIMER, President,)	
University of Hawaii, State of)	
Hawaii; DEAN O. SMITH, Senior)	
Vice President, Office of the)	
Senior Vice President and)	
Executive Vice Chancellor,)	
University of Hawaii, State of)	
Hawaii; SHARON Y. MIYASHIRO,)	
Assistant Vice President for)	
Academic Affairs, Office of the)	
Senior Vice President and)	
Executive Vice Chancellor,)	
University of Hawaii, State of)	
Hawaii; THOMAS T. BOPP,)	
Assistant Vice President for)	
Academic Affairs, Office of the)	
Senior Vice President and)	
Executive Vice Chancellor,)	
University of Hawaii, State of)	
Hawaii; DONALD C.W. KIM, Chair,)	
Board of Regents, University of)	
Hawaii; State of Hawaii; LILY K.)	
YAO, Regent, Board of Regents,)	
University of Hawaii, State of)	
Hawaii; and BOARD OF REGENTS,)	
University of Hawaii, State of)	
Hawaii,)	
)	
Respondents.)	

ORDER

In order to assist the Hawaii Labor Relations Board (Board) in issuing a ruling in this matter, Complainant is directed

to submit a proposed order, including proposed findings of fact and conclusions of law, reflecting a Board ruling in this case that:

1) The Board has jurisdiction over this complaint pursuant to §§ 89-5 and 89-14, Hawaii Revised Statutes (HRS).

2) The Board finds based on the record that there are no genuine issues of material fact presented and Complainant is entitled to judgment as a matter of law. The Board finds that Respondents initially denied Dr. Beei-Huan Chao (Chao) tenure and Dr. Chao was terminated on June 30, 1999. Respondents thereafter denied the review of the negative tenure decision by a Second Hearings Officer and an Arbitrator ruled that Respondents' denial violated the collective bargaining agreement (contract). The matter was submitted to Hearing Officer James Marsh pursuant to the contract who reviewed the tenure denial and directed the Respondents to extend Dr. Chao's probationary period for an additional year commencing July 1, 1999 and permit him to submit a new application for tenure. In reaching this conclusion, Marsh found, inter alia, that the provisions of the collective bargaining agreement or the supplemental guidelines and procedures were violated in a significant manner and further, there was a reasonable probability that such violation of procedure in the evaluation process adversely prejudiced the decision complained of. Marsh's decision was issued on December 2, 1999. Marsh later clarified that he intended that Dr. Chao be reinstated with backpay. Respondents however, reinstated Dr. Chao and placed him on leave without pay from August 1, 1999 through December 31, 1999 and returned him to duty with pay beginning on January 1, 2000. Dr. Chao was retained on the University payroll during the month of

July 1999 to compensate him for earned summer prorata pay. According to the contract, the Hearing Officer's decision is final and binding on the parties. While the Respondents interpret the Hearing Officer's remedial authority as limited literally to the specific remedies in the contract, the Board believes that absent clear limiting contractual language, inherent in the Hearing Officer's power to find the contract or guideline violation and provide a remedy to the faculty member who has been prejudiced by the employer's breach is the specific remedial authority to extend the faculty member's probationary and impliedly, to rescind his termination and award backpay for the faculty member for his wrongful termination. The Board appreciates the Respondents' argument that they are reluctant to pay Dr. Chao because he did not perform the services during the period at issue but their decision not to grant Dr. Chao tenure was found to be improper and Dr. Chao was terminated pursuant to that improper decision. Respondents' reinstatement of Dr. Chao to January 1, 2000 is contrary to the Hearing Officer's award which reinstates him to July 1, 1999. Respondents' refusal to award Dr. Chao backpay is contrary to the Hearing Officer's award and violates §§ 89-13(a)(5) and (a)(8), HRS.


3) Accordingly, the Board orders Respondents to award Dr. Chao backpay from August 1, 1999 through December 31, 1999.

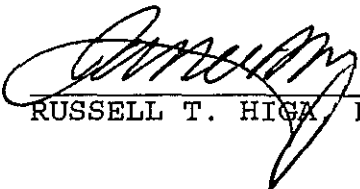
Complainant has 20 days, unless such time is extended by the Board, to draft the order and secure the approval as to form of opposing counsel thereon and to file the original and five copies of the order, accompanied by a diskette with a copy of the order, with the Board. If the form of the proposed findings of fact and

conclusions of law have not been approved, a party served with the proposed order may file objections and a copy of his proposed order, accompanied by a diskette with a copy of the order, with the Board within seven working days.

DATED: Honolulu, Hawaii, April 24, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGH, Board Member

Copies sent to:

Wade Zukeran, Esq.
Dean Choy, Esq.
Joyce Najita, IRC