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STATE OF HAWAII Transaction ID 57587470

Case No. RA-07-232

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY,

Petitioner,

and

BOARD OF REGENTS, University
of Hawaii,

Intervenor.

CASE NO. RA-07-232

ORDER NO. 3076

FINAL ORDER ADOPTING THE
BOARD'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER CONTAINED
IN ORDER NO. 3071

**FINAL ORDER ADOPTING THE BOARD'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER CONTAINED IN ORDER NO. 3071**

On June 24, 2015, the Hawaii Labor Relations Board (Board) issued Order No. 3071 – Proposed Findings of Fact, Conclusions of Law, and Order. No exceptions were filed by either party, pursuant to Hawaii Revised Statutes § 91-11, and the time limit for the filing of such exceptions has passed. Accordingly, the Board hereby adopts in its entirety the attached Proposed Findings of Fact, Conclusions of Law, and Order contained in Order No. 3071, as its Final Order in this matter.

DATED: Honolulu, Hawaii, July 21, 2015.

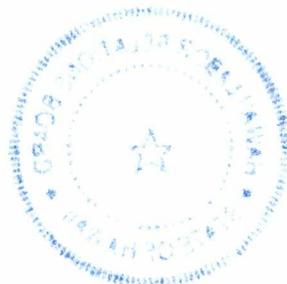
HAWAII LABOR RELATIONS BOARD



Sesnita A. D. Moepono
SESNITA A.D. MOEPONO, Member

Rock B. Ley
ROCK B. LEY, Member

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Transaction ID 57456428
Case No. RA-07-232

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY,

 Petitioner,

 and

BOARD OF REGENTS, University of
Hawaii,

 Intervenor.

CASE NO. RA-07-232

ORDER NO. 3071

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER; ATTACHMENT "A"

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I. PROCEDURAL BACKGROUND.

A. The Petition.

On October 8, 2008, Petitioner UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), the exclusive representative of all employees in Bargaining Unit 7 (Unit 7), which includes faculty of the University of Hawaii (UH) and the community colleges, filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit (Petition) with the Hawaii Labor Relations Board (Board). UHPA requested clarification of six employee positions which it alleges are dedicated to Unit 7 faculty librarian work, yet are designated by UH as bargaining Unit 8 (Unit 8) positions, which include personnel of UH and the community college system other than faculty, also known as administrative, professional and technical employees (hereinafter referred to as APT). In its October 8, 2008 Petition, UHPA indicated that the positions at issue are two (2) educational specialist positions (in the UH Systems Support Office), which are currently filled, two (2) instructional support specialist positions, one (1) metadata specialist position, and one (1) inter-library loan (ILL) acquisition specialist position requested in the 2009 supplemental Hawaii legislative budget and

subsequently filled. UHPA contends that the employees in the newly designated positions perform Unit 7 work that requires a Masters of Library Science (MLS) degree. UHPA alleges that the two educational specialist positions in question were previously librarian positions, and that the work duties and qualifications of the new positions have not changed from the prior librarian positions. Currently, two librarians (by training) occupy the newly created APT positions. UHPA further alleges that the other four positions requested in UH's supplemental budget have been renamed from "librarian" to "specialist" without significant changes in job descriptions and requirements thereof.

On October 10, 2008, the Board sent to counsel for UHPA, counsel for the UH BOARD OF REGENTS (BOR), and the Director of Hawaii Government Employees Association (HGEA) a Notice of Receipt of Petition for Clarification or Amendment of Appropriate Bargaining Unit; Notice of Deadline for Filing Petitions for Intervention (Notice), and directed that interested persons wishing to intervene in the proceedings comply with Hawaii Administrative Rule (HAR) 12-42-8 (g) (14) by filing a Petition for Intervention with the Board by 4:30 p.m. on October 28, 2008. HGEA did not file a petition with the Board to intervene in this matter.

B. The Petition for Intervention.

On October 28, 2008, BOR, a public employer pursuant to Hawaii Revised Statutes (HRS) § 89-2, timely filed a Petition for Intervention in this matter, stating that BOR has an interest in maintaining its responsibility to manage UH affairs entrusted by the State Constitution and HRS Chapter 304A to the UH BOR, that BOR has been given responsibility and control over the internal management of the University and that BOR is vested with the power to formulate policy, criteria and procedures relating to University affairs, including but not limited to personnel and collective bargaining matters. Petitioner for intervention BOR asserted that any decision rendered in this proceeding will affect the rights of the BOR as a public employer under HRS Chapter 89 and the responsibility and authority vested in the BOR under the State Constitution and HRS Chapter 304A. The BOR also alleged that its intervention in this proceeding will contribute to the development of a sound record.

On October 29, 2008, the Board issued Order No. 2558, Order Granting Petition for Intervention, finding that BOR is the public employer of the instant employee positions and that BOR's interests may be impacted by a Board decision in this case, sufficient to warrant intervention.

The hearing on the merits in this matter was held before the Board over eight days: March 9, 2009, March 17, 2009, March 24, 2009, March 30, 2009, June 1, 2009, June 2, 2009, June 8, 2009 and July 27, 2009. The parties were allowed full opportunity to plead their respective positions. The parties submitted simultaneous post hearing briefs on December 15, 2009.

On March 10, 2011, counsel for UHPA filed a Motion to Supplement Record (Motion) in this matter. By Order No. 2783 filed March 22, 2011, the Board granted the March 16, 2011 Motion by BOR for an extension of time to April 4, 2011 to submit its response to UHPA's March 10, 2011 Motion. After BOR filed Intervenor Board of Regents, University of Hawaii's Opposition to Petitioner's Motion to Supplement Record Filed March 10, 2011 (Opposition) with the Board on April 4, 2011, UHPA filed Petitioner's Reply to Intervenor UH's Opposition with the Board on April 7, 2011. The Board conducted a hearing on the Motion on May 17, 2011. Based upon a review of the foregoing, on May 23, 2011, the Board issued Order No. 2791 Granting Petitioner University of Hawaii Professional Assembly's Motion to Supplement Record, to include as part of the record Exhibits "A-N" and the Declaration of Ruth Horie, a faculty librarian at UH Manoa's Hamilton Library, submitted by Petitioner.

By Stipulation Regarding Three Unfunded Positions filed with the Board on June 9, 2011, Petitioner and BOR agreed to amend Unit Clarification Petition RA-07-232 to exclude three of the six positions originally at issue in the Petition filed on October 8, 2008, because UH had no immediate plans to fill these positions. The excluded positions consist of two (2) instructional support specialist positions and one (1) metadata specialist position, all of which were unfunded and unfilled. Consequently, the following proposed Board decision in this matter pertains only to the above-referenced two educational specialist positions and one ILL acquisition specialist position.

Based on a thorough review of the evidence and the arguments presented, the Board, pursuant to HRS § 91-11,ⁱ hereby issues the following proposed findings of fact, conclusions of law, and order.

II. PROPOSED FINDINGS OF FACT.

If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of Law, then they shall be deemed as such.

1. Petitioner UHPA was, for all relevant times, an employee organization and the exclusive representative, as defined in HRS § 89-2, of public employees in Unit 7 pursuant to HRS § 89-6, including faculty of UH and the community college system, which also includes librarians. UHPA was certified as the exclusive bargaining unit representative of the UH faculty in 1974. Librarians are one of seven classes of faculty recognized by UH.
2. HGEA was, for all relevant times, an employee organization and exclusive representative, as defined in HRS § 89-2, of Unit 8 public employees who are personnel of UH and the community college system other than faculty pursuant to HRS § 89-6, referred to herein as APT personnel. APTs are classified by UH in four different pay bands (based on complexity of work and level of responsibility) and thirteen career groups (determined based on duties and responsibilities).
3. BOR was, for all relevant times, the public employer, as defined in HRS § 89-2, of employees included in Unit 7 and Unit 8. (Pursuant to HRS § 89-6 (d) (4), for purposes of negotiating a collective bargaining agreement for Units 7 and 8, the Governor shall have three votes, BOR shall have two votes, and the UH president shall have one vote.)
4. The responsibility for developing, describing and advertising Unit 7 faculty positions at UH belongs to the Deans and

Directors of each individual department at UH; there is no central oversight of UH faculty positions.

5. The 2003-2009 Collective Bargaining Agreement (hereinafter "CBA") between UHPA and the UH BOR in effect at the time of the filing of the Petition, provides a broad description of the responsibilities of the faculty, with a primary focus on teaching, research, specialized educational services and community service.
6. Pursuant to the CBA, library faculty duties may include, among other things, "equipment and facilities development and maintenance; and information systems development and implementation, including professional librarian services, or serving as a program coordinator."
7. In contrast to the decentralized oversight by UH over Unit 7 faculty positions, UH has a system-wide uniform policy regarding classifying Unit 8 APT employees at a central campus-wide level.
8. In 2008, Michele Tom (Tom), the Human Resources Specialist at the UH Manoa Campus, was the Lead Classification and Compensation Specialist for all APT positions at UH Manoa. She had held the position for a year and a half, and she had 18 years of prior experience classifying UH positions. In 2008 alone, she was responsible for classifying over 300 APT positions.
9. The UH classification policies used by Tom in determining APT positions include University Administrative Procedure A9.210, entitled Classification and Compensation Plan for Administrative, Professional and Technical (APT) Personnel. Administrative Procedure A9.210 is a system-wide procedure UH employs to ensure that all positions established involving APT duties are identified in terms of bargaining unit, pay level and type of work or career group. Although APT positions

are administrative, they are also professional positions that require bachelor's degrees at all levels.

10. Of the subject positions for which UHPA is currently seeking the Board's determination of bargaining unit status, two are designated as APT Academic Support Specialists working in the Systems Office and one is an ILL APT all located at Hamilton Library on the UH Manoa campus. As articulated in University Administrative Procedure A9.210 regarding APTs, "[t]he Academic Support Career Group consists of positions that provide support to academic programs [.]"
11. At the time of the 2009 Board hearing in this matter, the two APT Academic Support positions in question were held by employees Frederick "Fred" Allen (Allen) and Arthur Shum (Shum).
12. The first position which UHPA alleges UH converted from librarian to APT was the position held by Allen. This new, temporary APT position replaced a Unit 7 librarian position previously held by Librarian David Yin (who was also a computer programmer), who resigned in 2007. Given the option of choosing a technical candidate, such as a software engineer, for the advertised APT position, the Library instead hired Allen, a former UH faculty librarian with a MLS degree. Allen is responsible for the circulation and media scheduling module at UH Manoa's Hamilton Library. He is a systems specialist focusing on circulation support.
13. Allen was hired in September 2007; his APT position is specially funded by fees received from libraries in the UH System. The duties and responsibilities of the position were developed by then Assistant University librarian Bob Schwarzwald, the head of the Systems Office, librarian James Adamson (Adamson), and the head of Desktop Network Services, librarian Martha Chantiny (Chantiny). The position description was reviewed and approved by Tom and

designated as an APT position to provide assistance to librarians.

14. The Board is persuaded by the transcribed trial testimony given by Adamson that Allen was hired for his librarian experience. From 1999 to 2005, Allen had worked as a librarian in the librarian position later occupied (in 2005) and vacated by Librarian Yin, and he performed the same duties and had the same responsibilities in both the librarian and APT positions. The Board credits the testimony provided by Allen that prior to leaving the Manoa campus for a period of 1-2 years, he was a Systems librarian at UH.
15. The Board is further persuaded by the trial testimony of UH Manoa Systems Librarian Carol Kellett (Kellett), who is in charge of the UH cataloguing module, that having a librarian degree was a “turning point” in Allen getting hired for the circulation position.
16. Allen’s APT job position is formally entitled “Educational Specialist”, focusing on circulation support; his primary duty according to UH’s job description is to provide “support for development, maintenance & operation of library management & information system (LMIS) software”.
17. Tasks performed by Allen in his Educational Specialist position include support functions, as documented in monthly reports prepared by the Systems Office, “the UH Library Systems Operations Development Review”, for the period July 2008 through January 2009, which reflect the daily tasks performed by Allen in his APT position in the Systems Office. These include, among other duties, troubleshooting work on problems reported by community colleges regarding library fines and record errors.
18. The Board finds that a comparison of the duties listed in job position advertisements of record for librarian position number

86307T, previously held by Allen and then David Yin, and the APT Academic Specialist position number 78588T, for which Allen was rehired by UH, confirms there is no significant difference in job duties, except that the APT job requires a Bachelor of Science (BS) degree in Computer Science or Library Science, as a minimum qualification, and the librarian position requires a MLS degree, which is also listed as a “desired qualification” of the APT position. See Attachment “A.”.

19. Among the principal job duties listed for both the former Systems Librarian and current APT positions are developing, organizing and conducting training of staff.
20. The Board is persuaded by the transcribed trial testimony of UH librarian Vickery Lebbin (Lebbin) that Allen’s APT position “looks like librarian work”.
21. In January 2008, Shum, a librarian with a Master of Library and Information Science (MLIS)ⁱⁱ degree, was hired to fill the second Academic Support position that UH allegedly “converted” to APT from a faculty librarian position in the Systems Office. UH Manoa librarian, David Brier (Brier), who worked in the Systems Office in the librarian position prior to Shum, had requested a transfer, as a librarian, from the Systems office to the Reference Department in the Business, Humanities, and Social Sciences Department (BHSD) of UH’s Hamilton Library. On September 10, 2007, Brier was transferred and temporarily reassigned to BHSD, where he retained his Unit 7 faculty status while working on library collection development as a reference and instructional librarian.
22. At trial, Jean Ehrhorn (Ehrhorn), former assistant to the UH Librarian, testified that based upon the operational needs of the UH Library and the Systems Office, UH decided to establish a new temporary APT academic support position rather than a

faculty position to replace Brier in the Systems office. The duties and responsibilities for this academic support APT position were developed by Chantiny, working in conjunction with others.

23. Shum applied for and was assigned to a temporary APT position in the Systems Office that was created to address the library department's operational needs in serials and acquisitions. Shum is responsible for the acquisition module used by the UH Manoa Hamilton Library, the UH Law School Library and the UH-Hilo Library.
24. Like Allen's position, Shum's position is one of academic support; his essential duties are "to provide support for development, maintenance and operation of library management and information system (LMIA) software." Responsibilities include, among other things, "work[ing] with librarians and staff to develop functional specifications for new products and releases" and "work[ing] with librarians and staff to analyze and implement workflows."
25. At trial, Beverly McCreary (McCreary), Program Officer from the Office of Vice Chancellor for Academic Affairs at UH, testified that based on her experience and responsibilities dealing with faculty tenure and promotion matters, the job description for Shum is of an APT position and not a faculty position. McCreary also testified that the job duties are technical or practitioner duties, versus theoretical duties performed by faculty.
26. At trial, Tom testified that from her review of the description of the academic support position occupied by Shum, his position was correctly designated as an APT position.
27. Tom further testified that the monthly reports prepared by the Systems Office for the APT positions, the "UH Library Systems Operations Development Review", document that the

tasks performed by Shum, like those of Allen, are the kind performed by Unit 8 APT employees. According to Tom, none of Shum's tasks are faculty work; they are support function assignments in nature, including troubleshooting, answering inquiries from the field and creating reports.

28. The Board is persuaded by Kellett's trial testimony that Shum and Allen are responsible for the acquisition and circulation modules at (Hamilton) library respectively. Kellett testified that (as APTs) nothing has changed in their work except their job titles; they both perform librarian work.
29. The Board is persuaded by Adamson's trial testimony that both system "librarians" (Allen and Shum) conduct research work, and that the duties of their academic support positions are faculty functions.
30. The Board is further persuaded by Adamson's trial testimony that Shum serves on (library) committees and interacts with librarians as a peer.
31. The Board finds that the duties listed in the job position advertisements of record for librarian position number 86306S, previously occupied by Brier, and for APT position number 78608T, for which Shum was hired, are fundamentally the same. The most significant difference is that the APT position requires a BS degree in Computer Science or Library Science, as a minimum qualification, and the librarian position requires a MLS degree, which is also listed as a "desired qualification" for the APT position.
32. The Board finds persuasive Brier's testimony that he is unaware of any differences between the duties and responsibilities of the acquisitions and circulation positions in the Systems office prior to and after September 10, 2007.

33. In December 2007, University Librarian Paula Mochida (Mochida) reportedly announced to the UH Library Faculty Senate that she had decided, in consultation with the Library Executive Team, to recruit for “APT/non-faculty Librarians (with MLIS degrees),” to fill three positions, the heads of Access Services, ILL and Acquisitions. These positions would be “temporary and internally created, thus leaving the current faculty positions open.”
34. The third library position at issue is a permanent, full-time Interlibrary Loan Acquisitions APT position. In May 2009, this position was occupied by Ryan James (James), a recent MLIS degree graduate.
35. At trial, McCreary testified, that from her review of the duties and responsibilities listed for the ILL position, this was definitely not a faculty position. The basic educational requirement was a bachelor’s degree, and the job duties included managing invoices, complying with audit requirements, training classified staff, serving as a primary person for hiring and time sheets, and facilitating desktop delivery of materials – all requiring technical skills, which were “not theoretical in nature or faculty in nature.”
36. At trial, Mochida testified that the ILL APT’s basic function would be, “The daily management of the operations. Supervision, direct supervision of the civil service staff.”
37. At trial, Tom testified that APT positions, like faculty, can supervise other individuals. Having reviewed the description for this ILL position, Tom concluded that it was “a hundred percent APT”.
38. The Board finds that the UH job announcement in the record for the APT ILL specialist position describes duties comparable to the prior job posting for an ILL Librarian. Both positions were responsible for supervision of civil

service, APT and student assistants, staff training and updating and maintaining policy and procedure documentation relating to interlibrary loan.

39. The Board is persuaded by Lebbin's trial testimony that the responsibilities of the (previous) ILL librarian position and the current APT ILL position are the same.
40. The Board is also persuaded by Kellett's trial testimony that ILL/Acquisition work is done by librarians.
41. The Board is also persuaded by the sworn statement of Ruth Horie, a librarian at the UH Manoa library, supported by exhibits "A"- "N", which are all part of the record, that research work completed by James and presented as published papers to the Hawaii Library Association, UH's Library Forum Committee, and Hawaii Public Radio, is evidence of faculty level activities conducted by James.
42. At hearing, Mochida testified (contrary to her reported December 2007 announcement) that there is no plan or goal (by UH) to convert faculty positions to APT positions. Mochida further testified that there is no plan to create "APT, slash/non-tenure librarian" positions.
43. The Board finds that reliable evidence, in light of the whole record, establishes that UH improperly designated the three positions at issue in this case as Unit 8 positions. The duties and responsibilities of these three APT positions properly reflect faculty librarian classifications.
44. The Board finds that the three APT positions in question, all new positions, are occupied by personnel who are trained librarians (with MLS or MLIS degrees) who perform librarian services.

45. The Board finds that the three new positions at issue are bargaining Unit 7 positions.

III. PROPOSED CONCLUSIONS OF LAW.

If it should be determined that any of these Proposed Conclusions of Law should have been set forth as Proposed Findings of Fact, they shall be deemed as such.

UHPA has requested clarification of three UH positions (Position No. 78588T and Position No. 78608T, both academic support; and Position No. 78995, ILL/Acquisition specialist), which it alleges perform Faculty Librarian (Unit 7) work, yet are designated by UH as APT (Unit 8). UHPA seeks to have these positions clarified as belonging in Unit 7.

Subsection 89-6(a), HRS, establishes thirteen public employee bargaining units and provides, in pertinent part:

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

* * *

- (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[.]

* * *

Subsection 89-6(c) HRS, also states in relevant part:

- (c) The classification systems of each jurisdiction shall be the bases for differentiating . . . faculty from non-faculty.

UHPA argues that UH has taken bargaining work away from Unit 7 Faculty Librarians and designated the aforementioned three positions in bargaining Unit 8 APT. UHPA contends that the newly designated APT positions perform faculty work and duties that require a MLS degree (a basic requirement of a faculty librarian). UHPA alleges that the two APT educational specialist positions were previously designated as librarian positions, and that the work duties and qualifications have not changed. Also, the APT ILL/Acquisition Specialist work was previously designated in two positions with librarian duties; i.e. ILL Librarian and Acquisition Librarian.

BOR asserts that bargaining unit 8 is appropriate for the UH employees who now occupy the positions at issue here, because these employees perform professional support duties and functions determinative of their current designation. BOR further argues that UH has the authority to establish job positions that meet its operational needs, and by creating APT positions UH is not eliminating bargaining unit 7 faculty positions to deny employee benefits and salaries.

The process of deciding whether a position is faculty or APT is “difficult and ultimately subjective.” Bd. of Regents, Univ. of Haw. v. Univ. of Haw. Prof'l Assembly, 3 HLRB 588, 597, Dec. 200 (1984). Pursuant to its statutory authority under HRS § 89-5, however, it is for the Board to make ultimate decisions on the unit placement of employees. The Board’s grant of authority is statutorily explicit, as follows:

- (i) In addition to the powers and functions provided in other sections of this the board shall:
 - (1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the applications of section 89-6 to specific employees and positions;

Further, pursuant to HRS § 89-6 (g):

Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a

hearing upon due notice, make a final determination of the applications of section 89-6 to specific employees and positions.

The Board has previously found as follows:

Faculty are traditionally defined as all professional workers primarily engaged in instruction, research, or professional service, **or in those various activities directly supporting, organizing, or administering instructional, research and public service programs.** (Emphasis added). In the Matter of Board of Regents and University of Hawaii Professional Assembly, et. al., 2 HPERB 515, 528, Dec. 132 (1980) (BOR).

Based on the record, the Board concludes that at UH's Hamilton Library, the library management and information systems are divided into three modules, with Kellett in charge of cataloging, Allen in charge of circulation and Shum in charge of acquisitions at the time of the Board hearing. Prior to the creation of the latter two new positions by UH as APTs (and not as conversions of faculty positions to APT as UHPA has suggested), all three modules were headed by faculty librarians. Currently, to run their respective modules, Allen and Shum do not support any other librarians. To the extent they provide support for other UH faculty to pursue the academic mission of UH, that support work is a core function of UH faculty librarianship work. In fact, "directly supporting" instruction and research is a core faculty librarian function which defines faculty status. BOR, 2 HPERB at 528, Dec. 132 (1980). Based on the record, the Board agrees with UHPA that the duties listed in both the APT and the prior Systems librarian job descriptions and job announcements are not only identical, they are consistently faculty librarian work.

In addition, the Board concludes that the record shows that James, who holds the ILL position, performs faculty librarian work, which includes research and publication activities. The documentary evidence supports the testimony given by the UHPA witnesses and undercuts the testimony of BOR witnesses regarding faculty versus APT status of the three positions at issue. In short, the Board concludes that the Systems and ILL positions at issue here perform faculty librarian work. UH improperly designated faculty librarian positions as APT positions, when it created the new positions to do the Systems and ILL library work.

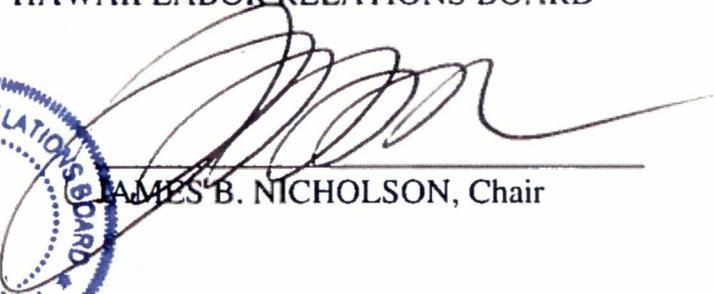
ORDER

Based on the foregoing Proposed Findings of Fact and Conclusions of Laws, the Board hereby determines that Position Nos. 78588T, 78608T, and 78995 are bargaining unit 7 positions.

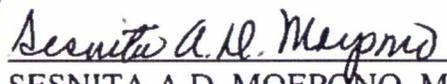
DATED: Honolulu, Hawaii, June 24, 2015.

HAWAII LABOR RELATIONS BOARD

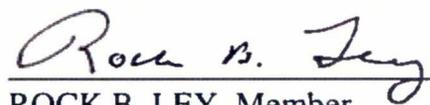




JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

FILING OF EXCEPTIONS

Any party adversely affected by the Proposed Findings of Fact, Conclusions of Law and Order may file exceptions with the Board pursuant to HRS § 91-9, within ten days of the service of a certified copy of this document. The exceptions shall specify which proposed findings or conclusions are being excepted to, with full citations to the factual and legal authorities therefore. A hearing for the presentation of legal arguments will be scheduled should any party file exceptions, and the parties will be notified thereof.

Copies sent to:

T. Anthony Gill, Esq.
Christine Tamashiro, Esq.

HRS § 91-11 provides as follows:

Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

While Board Members Moepono and Ley did not participate in the hearings in this case, they have reviewed the entire record, including the pleadings, transcripts, and exhibits filed herein.

ⁱⁱ The MLIS degree is comparable to the MLS degree.

Comparison of APT and Librarian Positions

Item	Ad for Educational Specialist (78588T) (June 30, 2008)	Ad for Librarian 86307T (NTE 6/30/06-canceled)
	DUTIES	DUTIES
1	Provide support for development, maintenance & operation of library management & information system (LMIS) software.	Under general direction of the Head of Systems, provide support for the development, maintenance and operation of the state-wide library management and information system (LMIS) application software.
2	Support consortium sites, including Univ. of Hawaii (UH) campus libraries, Haw. Medical Library, B. P. Bishop Museum, Haw. State Archives.	These activities support campus libraries throughout the University of Hawaii, and encompass the Hawaii Medical Library, the Bernice Pauahi Bishop Museum, and the Hawaii State Archives among other libraries in the State of Hawaii.
3	Analyze problems with the UH library management system, and determine source of problems.	1) analyzing problems with the University of Hawaii state-wide library management system, and determining source of problems;
4	Work with librarians and staff to develop functional specifications for new products and enhancements to existing code and analyze and implement improved workflows.	2) working with librarians and staff to develop functional specifications for new products and enhancements to existing code, and staff workflows
5	Perform pre-and post-installation quality assurance testing on all new products and releases.	3) performing quality assurance testing on all new products and releases;
6	Develops, organizes and conducts training for library faculty, staff & students.	4) developing documentation and conducting training for staff.
7	Plans, schedules, and/or coordinates with appropriate consortium committees the phases of application software patches & upgrades & additions or changes to program functionality.	See Items 1 and 2.
8	Researches available products that enhance or extend LMIS functionality, prepares cost estimates and proposals.	See Item 4.
9	Participates in detailed analysis of subsystems, e.g., Circulation or Interlibrary Loan and assists in systems level analyses, e.g., in preparation for RFPs.	See Items 1 and 2.

Comparison of APT and Librarian Positions

Item	Ad for Educational Specialist (78588T) (June 30, 2008)	Ad for Librarian 86307T (NTE 6/30/06-canceled)
10	Creates, modifies and updates end-user documentation and departmental/internal procedures manuals.	See Item 6.
11	<p>Minimum Qualifications:</p> <p>Baccalaureate degree in Information Computer Science or Library Science.</p>	<p>Minimum Qualifications:</p> <p>ALA accredited MLS or international equivalent.</p>
12	Two years of progressively responsible professional experience with responsibilities for support for automated library management system application software; or equivalent education/training or experience.	Previous experience using an automated Library Management System.
13	Considerable working knowledge of principles, practices and techniques in the area of library information management system application module support as demonstrated by the broad knowledge of the full range of pertinent standard and evolving concepts, principles and methodologies.	Knowledge and experience with USMARC (note: a format for cataloging in libraries). Strong computer skills including a basic understanding of hardware and software applications including knowledge and experience with client server architecture and/or PC architecture.
14	Considerable working knowledge and understanding of applicable federal and state laws, rules, regulations and theories and systems associated with library consortia, library system functional applications such as Circulation, Interlibrary Loan, etc.	See Item 13. Addl. Min. qualification: Demonstrated aptitude for learning new technologies, and a commitment to library service.
15	Demonstrated ability to resolve wide ranging complex problems through the use of creative reasoning and logic to accurately determine the cause of the problems and the resolution of the problems in an effective, innovative and timely manner.	Inherent in many of the requirements.
16	Demonstrated ability to interpret and present information and ideas clearly and accurately in writing, verbally and by preparation of reports and other materials.	Ability to translate technical concepts into terms understandable by library support staff. Excellent verbal and written communication skills.

Comparison of APT and Librarian Positions

Item	Ad for Educational Specialist (78588T) (June 30, 2008)	Ad for Librarian 86307T (NTE 6/30/06-canceled)
17	Demonstrated ability to establish and maintain effective working relationships with internal and external organizations, groups, team leaders and members, and individuals.	Outstanding interpersonal skills. Demonstrate ability to work in a team environment.
18	Demonstrated ability to operate a personal computer and apply word processing software.	Strong computer skills including a basic understanding of hardware and software applications including knowledge and experience with client server architecture and/or PC architecture.
19	For supervisory work, demonstrated ability to lead subordinates, manage work priorities and projects, and manage employee relations.	See Item 17. Addl. Min. Qualification: Demonstrated ability to meet assignment deadlines.
20	Any equivalent combination of education and/or professional work experience which provides the required education, knowledge, skills and abilities as indicated.	
21		Ability and willing to work early morning or evening hours, weekends and/or holidays as scheduled.
	Desirable Qualifications:	Desirable Qualifications:
22	ALA accredited MLS or international equivalent.	see Item 11.
23	Ability to translate technical concepts into terms understandable by library support staff.	See Item 16.
24	Knowledge and experience with USMARC and/or standard Student Registration system(s).	See Item 13.
25	Previous experience using Voyager Library Management System. (note: Voyager is an integrated library system developed by Endeavor Information Systems, Inc.)	Experience working with Endeavor Information Systems Incorporated Voyager software.
26	Experience working in a UNIX System environment (Sun Solaris preferred).	Experience working in a UNIX System environment (Sun Solaris preferred).

Comparison of APT and Librarian Positions

Item	Ad for Educational Specialist (78588T) (June 30, 2008)	Ad for Librarian 86307T (NTE 6/30/06-canceled)
27	Experience working in an academic research library in technical services or IT unit.	One-year library experience, preferably in an academic research library.
28	Working knowledge of Microsoft Access, Excel, project management and/or fiscal software.	Working knowledge of at least one of the following: Microsoft Access, Oracle SQL, PERL, PHP or XML.
29	Some knowledge of, or familiarity with Oracle SQL, MySQL or PERL.	See Item 28.
30	Demonstrated aptitude for learning new technologies.	See Item 14.
31	Knowledge and experience with client server architecture, authentication and/or proxy server applications.	See Item 13.
32	Demonstrated ability to meet assignment and project milestones and deadlines.	See Item 19.
33	Able and willing to work early morning or evening hours, weekends and/or holidays as scheduled.	See Item 28.
34	Working knowledge of HTML, PHP, XML and associated software (e.g. Dreamweaver).	See Item 6.
35	Demonstrated ability to employ word processing, spreadsheet and presentation software to prepare reports, analyze data and create documentation and training materials.	See Item 26.
36	Work experience using the Circulation administration and/or system administration module(s) of the Voyager Library Management System to configure functions and modify settings.	See Item 26.
37	Work experience using Circulation, ILL and/or Electronic Reserve functions of the Voyager Library Management System.	See Item 26.
38	Salary: \$3,582/month	Pay range: \$36,720 to \$54,360
	\$ 42,984.00	