



STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD
Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813
HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. _____

File the original and five copies of this Complaint, by U.S. Mail or in person, with the Hawaii Labor Relations Board, Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14, and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. Complainant

(a) Name, address and telephone number.

University of Hawaii Professional Assembly
1017 Palm Drive
Honolulu, HI 96814
(808) 593-2157

Kevin Bennett and Kathleen Cole
c/o University of Hawaii Professional Assembly
1017 Palm Drive
Honolulu, HI 96814
(808) 593-2157

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

T. Anthony Gill, Esq.
Gill, Zukeran & Sgan
The Block: Richards Building
707 Richards Street, Suite 100
Honolulu, HI 96813
(808) 523-6777
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3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)

(a) Name, address and telephone number.

Kristin Kumashiro, Interim Dean of Natural Sciences, and
Board of Regents of the University of Hawaii
2444 Dole Street, Bachman Hall 202
Honolulu, Hawaii 96822
(808) 956-8207

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Carrie Okinaga, University General Counsel
2444 Dole Street, Bachman Hall 110
Honolulu, Hawaii 96822
(808) 956-2211

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining Unit (BU) - 07 University of Hawaii

5. Allegations

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

(See attached)

I am the Executive Director of Complainant University of Hawaii Professional Assembly.

I have read the above Prohibited Practice Complaint consisting of two pages and seven pages of additional allegations. I am familiar with the facts alleged therein, which facts I know to be true, except as to those matters alleged on information and belief, which matters I believe to be true.

I declare under penalty of perjury of the laws of the State of Hawaii that the foregoing is true and correct.

DATED: Honolulu, Hawaii, December 21, 2015

Kristen Hanselman

Kris Hanselman
Executive Director

Allegations

1. UHPA is and has been, at all times relevant, the exclusive representative of Unit 7.
2. Kevin Bennett, Ph.D., ("Bennett") is an Associate Professor of Biology, at UH Manoa, and a member of Unit 7. His specialty is magnetic resonance imaging ("MRI").
3. Kathleen Cole, Ph.D., ("Cole") is an Associate Professor of Biology, at UH Manoa, and a member of Unit 7. She was Chair of the Department of Biology until recently.
4. Board of Regents of the University of Hawaii is the public employer of Bargaining Unit 7.
5. Kristin Kumashiro, Ph.D, is the Interim Dean of Natural Sciences of the University of Hawaii at Manoa.
6. A letter of hire is at the center of the allegations regarding Bennett. An agreement about supplemental terms of service of a department chair is at the center of the allegations regarding Cole.
7. Both letters of hire, and agreed supplemental terms of service of chairs, are long-standing traditions in Unit 7.
8. The governing Unit 7 collective bargaining agreement does not explicitly address letters of hire, which set some initial terms and conditions for Unit 7 faculty, such as starting salary, or funds or equipment to be made available to the new hire.
9. Also, the governing Unit 7 collective bargaining agreement does not explicitly address supplemental terms of service of department chairs, such as any additional compensation, funding, perquisites, or permissions, that may be agreed as consideration for a Unit 7 member's willingness to serve as department chair.
10. Nonetheless, both types of agreement set important terms and conditions of employment for members of Unit 7.
11. On information and belief, in the past, the University has generally adhered to both letters of hire and supplemental terms of service of department chairs, and enforcement actions based upon them have been avoided. However, recently, an

unprecedented and flagrant repudiation of both sorts of agreements has occurred in the College of Natural Sciences at U.H. Manoa.

12. Complainants turn to the Board to declare, under Chapter 89, the bargainability of, and enforceability of, these two types of agreements, and for enforcement of the agreements in this instance by appropriate relief. These points appear to be matters of first impression in Unit 7.

Cancellation of Bennett's MRI project by Interim Dean Kumashiro

13. UH recruited Bennett away from Arizona State University, in early 2013, into a tenure-track position, to pursue his specialty and establish an MRI center in the UH Manoa College of Natural Sciences. As a condition of hire, UH was to provide Bennett with an MRI machine, as memorialized in Bennett's hire letter. UH duly ordered the MRI machine, but was unable to take timely delivery of it, due to UH's inability to provide space to house it. By about October, 2014, UH still had been unable to house the machine, but the vendor had decided to cease production of the MRI machines. Bennett then travelled to England, identified a substitute MRI machine from another vendor, UH agreed on the substitution, UH negotiated an end to the first purchase contract, and UH undertook a second purchase contract with the new vendor. The new machine would be easier to house. Two-and-one-half years after Bennett's hire, by July, 2015, UH and Bennett were ready to purchase and install the new MRI machine.

14. Getting the project to the verge of success required the efforts not only of Bennett, but of numerous persons and entities within UH, including Dean Bill Ditto of the UHM College of Natural Sciences, the Office of General Counsel, UH Vice President for Administration Jan Gouveia, and their staffs, and many other persons, including campus planners and other faculty members of Unit 7. Significant official and professional efforts were expended by UH officials and personnel in an effort to overcome internal obstacles, fulfill the contract of hire, and commission an MRI center at UH Manoa.

15. Bennett, in reliance on the terms of his letter of hire, had relocated his family to Hawaii, pursued his course of research, albeit with inconvenient out-of-state equipment borrowed at a cost, engaged graduate students to expand MRI research, and amply fulfilled all teaching obligations. He also applied for tenure, and, in recognition of the quality and significance of his work, was granted tenure by UH. Also, Bennett continually expended efforts, in collaboration with UH, to establish the desired MRI center at UHM.

16. In August, 2015, Dr. Kristin Kumashiro was named Interim Dean of the College of Natural Sciences, replacing Dean Ditto. A Dean is a junior manager, and is not a member of bargaining Unit 7.

17. About five weeks into her interim position, on or about September 24, 2015, Interim Dean Kumashiro informed Bennett that she was cancelling the MRI project. Interim Dean Kumashiro indicated that funds were available to purchase the system, but that she would not release them because she had decided to support other projects.

18. The cancellation of the MRI project by Interim Dean Kumashiro was not agreed to by Bennett, nor by UHPA.

19. The cancellation of the MRI project by Interim Dean Kumashiro constitutes a catastrophic impact on Bennett's career, through loss of promised and prospective research opportunities at the core of why he was recruited and chose UH, and loss of likely and prospective grants from government and foundations. The cancellation also has a significant negative impact on graduate students, and more than 20 faculty throughout the UH system, who have undertaken courses of action based on the presumed presence of the MRI resource, or who anticipated taking such actions, which will now need to be cancelled. The cancellation of the MRI project furthermore constitutes an embarrassment to the UH among federal and foundation grantors.

20. The cancellation of the MRI project by Interim Dean Kumashiro constitutes a breach of the terms of Bennett's letter of hire, as initially agreed and as ratified and amended by an extensive course of conduct, being over two-and-one-half years of collaboration between numerous UH officials aforesaid, and Bennett, and thus constitutes a breach of a collective bargaining agreement within the meaning of HRS § 89-13 (a) (8).

21. The cancellation of the MRI project by Interim Dean Kumashiro constitutes a unilateral implementation of varied terms and conditions of employment, without bargaining, and thus constitutes a violation of the duty to bargain within the meaning of HRS § 89-13 (a) (5).

22. The cancellation of the MRI project by Interim Dean Kumashiro was undertaken with improper motive and animus, such as would, in a proper forum, constitute tortious breach of contract, tortious interference with contract, or tortious interference with prospective advantage; in the context of Chapter 89, such improper motive and animus constitutes an aggravating factor, justifying extraordinary remedies by the Board.

Removal of Chair Cole by Interim Dean Kumashiro

23. Former Chair Cole had been a member of Unit 7 for many years, and then was selected to be chair by her peers in the Department of Biology, which selection was duly ratified by former Dean Ditto.

24. A department chair is a position within Unit 7. Under the Unit 7 collective bargaining agreement, as well as long-settled practices of faculty self-governance, chairs are not mere appointees of management, but are elected by the faculty to represent the faculty's interests to management, and may not be lightly removed.

25. Chair Cole, as part of her agreement to serve as chair, because service as chair takes considerable time away from research and obtaining grants, negotiated as one of the supplemental terms and conditions of her service as chair, a package of support monies, by which she would be able to continue some research and support graduate students during her term as chair. As of August, 2015, Chair Cole had been renewed in her position, and the terms and conditions of her service as chair had been honored.

26. In August, 2015, as noted above, Dr. Kristin Kumashiro was named Interim Dean of the College of Natural Sciences, replacing Dean Ditto.

27. As chair, Cole, in meetings with Interim Dean Kumashiro, advocated for Bennett and in favor of maintaining his terms and conditions of employment. Cole also advocated for the interests of the Department of Biology, during space planning for a new building. Both activities are properly within the role of a department chair.

28. About five weeks into her position, on or about September 23, 2015, Interim Dean Kumashiro removed Cole as chair, in part because of her defense of Bennett, and in part because of her advocacy of the interests of the Biology faculty in space planning.

29. The removal of Cole as chair was not agreed to by Cole or by UHPA.

30. The removal of Cole as chair caused two major results:

a. Cole lost her position and authority as chair of Biology, in violation of the will of the Unit 7 faculty in her department; and

b. Cole lost her package of support monies. In consequence of her loss of the package of support monies, Cole's graduate students lost support for their research, and Cole lost her ability to direct and fund their research, at least for some time.

31. The removal of Cole as chair constitutes a breach of a collective bargaining agreement within the meaning of HRS § 89-13 (a) (8).

32. The removal of Cole as chair constitutes anti-union discrimination in violation of HRS § 89-13 (a) (3), or the statutory right of employees to collective action, in violation of HRS § 89-13 (a) (1) and § 89-3 (right to concerted activities).

33. The removal of Cole as chair constitutes a unilateral implementation of varied terms and conditions of employment, without bargaining, and thus constitutes a violation of the duty to bargain within the meaning of HRS § 89-13 (a) (5).

34. The removal of Cole as chair, by Interim Dean Kumashiro, was undertaken with improper motive and animus, such as would, in a proper forum, constitute tortious breach of contract, or tortious interference with contract; in the context of Chapter 89, such improper motive and animus constitutes an aggravating factor, justifying extraordinary remedies by the Board.

UHPA, Bennett, and Cole request relief as follows:

Declaratory rulings that:

a. Initial terms of hire of a member of Unit 7, including terms establishing startup-funding, procurement of equipment, or provision of space, as exemplified by Bennett's hire letter, are within the scope of bargaining established by § 89-9 (a) HRS.

b. Terms of service of a department chair in Unit 7, including terms establishing economic support for the chair or her on-going projects and needs, as exemplified by Cole's agreement, are within the scope of bargaining established by § 89-9 (a) HRS.

c. The collective bargaining parties, by agreement, may delegate negotiation of initial terms of hire of a member of Unit 7, or the terms of service of a department chair, to faculty, their academic departments, and subordinate agents of the Public Employer, as has been done traditionally in Unit 7, without depriving initial terms of their bargainability.

d. When initial terms of hire are negotiated between faculty, their academic departments, and subordinate agents of the Public Employer, pursuant to delegation, they are valid and enforceable contracts, binding on the collective bargaining parties, to the same extent as any collective bargaining agreement, may be

enforced in any way the law allows, and may not be unilaterally changed or repudiated by the Public Employer or any agent thereof.

e. When terms of service as chair are negotiated between faculty, their academic departments, and subordinate agents of the Public Employer, pursuant to delegation, they are valid and enforceable contracts, binding on the collective bargaining parties, to the same extent as any collective bargaining agreement, may be enforced in any way the law allows, and may not be unilaterally changed or repudiated by the Public Employer or any agent thereof.

Findings of fact and conclusions of law to the effect that:

a. Bennett's letter of hire is valid and enforceable.

b. Cole's terms of service as chair are valid and enforceable.

c. Interim Dean Kristin Kumashiro was without authority under the collective bargaining agreement, or law, to cancel the MRI project.

d. Interim Dean Kristin Kumashiro was without authority under the collective bargaining agreement, or law, to remove Cole as chair or remove her agreed funding.

e. The cancellation of the MRI project, and the removal of Cole as chair, by Interim Dean Kumashiro, were wilful within the meaning of HRS § 89-13 (a), being announced with conscious intention and specific knowledge of impacts, both certain and probable.

f. The Public Employer, through its agent, Interim Dean Kumashiro, acting on her own or in concert with others, wilfully and illegally committed prohibited practices, as set forth above.

g. The Public Employer's behavior, in repudiating the obligations of Bennett's letter of hire, and in the removal of Cole as chair and repudiating her terms of service, has been egregious and malicious, beyond the normal bounds of disagreement over terms and conditions of employment, so as to justify not only a conventional make-whole remedy, but other and further special remedies to be assessed against the Public Employer or its agent, Interim Dean Kumashiro, and any acting in concert with her.

Orders to the effect that:

a. The Public Employer shall forthwith expedite the purchase and installation of an MRI machine as agreed between the Public Employer and Bennett in July, 2015;

b. The Public Employer shall make Bennett whole, for all expenses incurred by him as a result of the repudiation of his terms of hire;

c. The Public Employer shall provide such additional funding as may be required to restore startup funds used to cope with the Public Employer's failure to timely provide an MRI machine;

d. The Public Employer shall offer Cole reinstatement as Chair of Biology, restore the full value of her terms of service, including funding, and take such other actions as shall make her whole;

e. The Public Employer, Interim Dean Kumashiro personally, and any persons acting in concert with her, shall pay UHPA, Bennett, and Cole their reasonable costs of action and attorneys' fees, as determined by this Board;

f. Interest at an appropriate rate shall run, from and after the date of any Order establishing a monetary liability;

g. The Public Employer shall pay for a Master, to be appointed by this Board, who shall, under authority of this Board, monitor compliance with the Board's orders, and report the same or lack of it to the Board and Complainants; and who shall recommend such other orders or sanctions as may be necessary to achieve compliance, for consideration by this Board, until such time as this Board shall determine that its Order and the terms of hire have been fully complied with;

h. The Public Employer shall post an appropriate notice, signed by the President of the University of Hawaii, at places to be determined on all campuses of the University, announcing the findings of this Board, and the sanctions imposed by this Board;

And such other and further relief as may appear to this Board to be just and equitable.