

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNIVERSITY OF HAWAII, BOARD OF REGENTS AND
THE UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY
HEARING OFFICER RULES AND PROTOCOLS**

This Memorandum of Understanding (“MOU”) is entered between the University of Hawai‘i Professional Assembly (“UHPA”), the State of Hawai‘i (“State”) and the Board of Regents of the University of Hawai‘i (“BOR”), regarding Article XII, Tenure and Service, Paragraph H. Negative Tenure Actions, Section 8.a.1), of the 2015-2017 Unit 7 Agreement.

WHEREAS, Article XII, Tenure and Service, Paragraph H. Negative Tenure Actions, Section 8.a.1), of the 2015-2017 Unit 7 Agreement, provides a mechanism for the BOR and UHPA to stipulate to rules and protocols for the conduct of reviews of negative tenure actions by Hearing Officers; and

WHEREAS, pursuant to HRS, §89-10(a), the parties have negotiated this MOU that memorializes the understandings and agreements between the parties on rules and protocols for the conduct of reviews of negative tenure actions by Hearing Officers.

NOW, THEREFORE, in consideration of the mutual promises contained herein the parties agree as follows:

Notwithstanding the terms and conditions contained in Article XII, H.8.a.1), the parties have agreed to implement the following Rules and Protocols for the conduct of reviews of negative tenure actions by Hearing Officers:

1. The Employer shall provide the Hearing Officer with a copy of the Faculty Member’s dossier, a copy of the relevant campus’ supplemental guidelines and procedures, the relevant Executive Policies, and a copy of the relevant Unit 7 Agreement.
2. The Union and/or the Faculty Member shall submit a written statement setting forth the specific reasons and respective positions, issues, facts, and arguments of the alleged violation or misapplication of the Unit 7 Agreement or the supplemental guidelines and procedures established or approved by the Employer and how such violation or misapplication has adversely prejudiced the Faculty Member’s application.
3. The written statement shall:
 - a. Be considered as the formal statement of the Union and/or the Faculty Member for the Hearings Officer due consideration before the hearing of oral testimony;
 - b. Be submitted to the Hearings Officer and the Employer no later than fourteen (14) calendar days prior to the scheduled hearing date;

4. The Employer shall have the opportunity to provide an oral response to the Union and/or Faculty Member's written statement at the hearing.
5. The Hearing Officer's scope of authority shall be in accordance with Article XII, Tenure and Service, Paragraph H. Negative Tenure Actions, Section 8.a.
6. The hearing shall be convened on a mutually agreeable date, place, and time. There shall be no court reporter or transcripts of the hearing.
7. The parties shall adhere to an oral presentation format without the use of witnesses. If either party determines that witnesses are necessary, the parties will engage in discussions and deliberations as to whether other alternative methods or measures can be used in lieu of witnesses. If no alternatives are agreed upon, both parties will have the ability to utilize witnesses during their presentation.
 - The witnesses shall be sworn in by the Hearings Officer;
 - Either party may cross examine witnesses; and
 - Either party may impose the witness exclusionary rule.
8. The Hearings Officer may ask questions of either party during the hearing pertinent to the written and oral testimonies.
9. The Hearing Officer's decision shall be based on the review of Faculty Member's dossier and application and whether a violation or misapplication of the Agreement or the supplemental guidelines and procedures occurred that adversely prejudiced the Faculty Member's application. No new information which was not considered in rendering the decision shall be made available or used by the Hearing Officer in the report.
10. The Hearings Officer shall issue a written report of fact, conclusion, and recommendation within thirty (30) calendar days after the submission of a hearing summary by the parties, unless otherwise stipulated by the parties. If hearing summaries are not submitted, the Hearing Officer shall issue a written report of fact, conclusion, and recommendation within thirty (30) calendar days after the close of the hearing.

The parties both mutually agree to meet and engage in meaningful dialogue and discussion in one (1) year from the date this MOU is entered into or no later than January 15, 2016, to determine whether the established rules and protocols need to be changed, amended, modified, altered, or discarded. The basis for any future changes cannot be solely based on the unsuccessful challenge or defense of a negative tenure appeal, but must be based on an unanticipated and/or controversial conduct by a Hearings Officer that negatively impacted either party's due process rights. The parties also agreed that neither party shall utilize or engage licensed and practicing attorneys to represent them during these hearings.

This MOU shall be effective July 1, 2015 through June 30, 2017 unless either party terminates this MOU by giving thirty (30) days notice.

IN WITNESS WHEREOF, the UHPA, the State and the BOR have executed this MOU.

STATE OF HAWAII
UNIVERSITY OF HAWAII

UNIVERSITY OF HAWAII PROFESSIONAL
ASSEMBLY



Its President



Its Executive Director

STATE OF HAWAII



Its Chief Negotiator