



February 22, 2016

MEMORANDUM VIA E-MAIL

TO: Randolph G. Moore, Chair
Board of Regents

David Lassner, President
University of Hawai'i

Robert Bley-Vroman, Chancellor
University of Hawai'i at Mānoa

Kristeen Hanselman, Executive Director
University of Hawai'i Professional Assembly

FROM: Robert Cooney, Chair
Mānoa Faculty Senate

RE: **Resolution Supporting Full Disclosure of the University of Hawai'i's Noncommittal to the Mutually Agreed Upon Conditions in Faculty Letters of Hire**

The Mānoa Faculty Senate approved the **Resolution Supporting Full Disclosure of the University of Hawai'i's Noncommittal to the Mutually Agreed Upon Conditions in Faculty Letters of Hire** at the February 17, 2016 Senate meeting with 43 votes in favor, 3 opposed and 1 abstained. The resolution is attached.

The Senate Executive Committee (SEC) reviewed the issue and presented a resolution to the Senate at the February 17, 2016 Senate meeting. You can access additional information pertaining to this resolution at the following links:

- Documents Index
http://www.hawaii.edu/uhmfs/documents/2015_16/20160217_reso_faculty_letters_of_hire.html
- Minutes Index
http://www.hawaii.edu/uhmfs/minutes/2015_16/index.html#sec

Please feel free to contact me if you have any questions or need additional information.

Handwritten signature of Robert Cooney in black ink.

Robert Cooney, Ph.D., *Mānoa Faculty Senate Chair*

Handwritten signature of Ashley Maynard in black ink.

Ashley Maynard, Ph.D., *Mānoa Faculty Senate Secretary*



Presented to the Mānoa Faculty Senate by the Senate Executive Committee (SEC) for a vote of the full Senate on February 17, 2016. A resolution supporting full disclosure of the University of Hawai'i's noncommittal to the mutually agreed upon conditions in faculty letters of hire. Approved by the Mānoa Faculty Senate on February 17, 2016 with 43 votes in support of approval, 3 votes against approval and 1 abstention.

**RESOLUTION SUPPORTING FULL DISCLOSURE OF THE UNIVERSITY OF HAWAII'S
NONCOMMITTAL TO THE MUTUALLY AGREED UPON CONDITIONS IN
FACULTY LETTERS OF HIRE**

WHEREAS, faculty letters of hire are viewed nationally as contractual obligations, upon which recruited faculty base their career and life decisions to accept a position at a university, to relocate their families, and to develop their research and teaching careers at the university; and

WHEREAS, letters of hire specify agreed upon conditions of employment including salary, faculty classification, duties, eligibility for tenure, commitments of space and resources to supply "tools of the trade" often referred to as the "startup package"; and

WHEREAS, in a recent case¹ before the Hawai'i Labor Relations Board, the University of Hawai'i has asserted positions that potentially affect all faculty, beginning with a letter of hire "*is not a collective bargaining agreement subject to Chapter 89 [the UHPA contract] or the [Hawai'i Labor] Board's jurisdiction*"², implying that any dispute that arises will not be resolvable through normal channels available to faculty and must be taken to civil court; and

WHEREAS, the University of Hawai'i has further asserted that any letter of hire expires at the end of an UHPA contract as indicated by the argument: "*Even if a letter of hire is subject to Chapter 89 and the Board's jurisdiction, such agreement expired pursuant to statute and collective bargaining provisions, and is no longer effective*"² based on interpreting a letter of hire as a supplemental agreement to the contract (i.e., "*supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement*"²); and

WHEREAS, the University of Hawai'i maintains, regardless of the mutually agreed upon terms specified in the letter of hire or negotiated relative to those conditions after hire, that the employer can, at any time, change the conditions of the work a faculty member does without consulting the faculty member or UHPA; and

WHEREAS, the University of Hawai'i maintains, regardless of a prior commitment to establish a new research facility, upon which a faculty member based their decision to move to UH, that "*Decisions involving the 'scope and direction of the enterprise' is a management right*"² and can be terminated at any time without consultation of the faculty or UHPA; and

WHEREAS, the University of Hawai'i maintains, regardless of the mutually agreed upon terms specified in the letter of hire, that they do not have to provide a facility to do the work or provide the equipment promised in a letter of hire as argued by "*Even if the letter of hire is construed as an effective collective bargaining*



agreement, the decision to purchase [the equipment specified in the letter of hire] is a management right”, implying that the commitments are unenforceable³; and

WHEREAS, the University has asserted that the facilities development is the sole responsibility of the Principal Investigator to wit “it was [the faculty member] and not the University, that was expected to ‘develop’ and ‘startup a preclinical imaging facility’”⁴ without acknowledging the responsibility of the University to ensure the provision of adequate facilities to support or honor contractual obligations in a timely manner; and

WHEREAS, the University of Hawai‘i asserts, regardless of the mutually agreed upon terms specified in the letter of hire, that a dean can at any time unilaterally change the conditions of work outlined in a letter of hire, irrespective of any prior commitment made by the University³; and

WHEREAS, both prospective and current faculty careers may be adversely affected by the University’s position not to honor the mutually agreed upon terms in a faculty letter of hire³;

THEREFORE, BE IT RESOLVED, that the Mānoa Faculty Senate recommend that faculty, including department chairs and search committees, provide full disclosure to prospective candidates that based on the current legal position of the University, their letters of hire may be subject to changes at any time without consultation of the faculty member or UHPA; and

BE IT FURTHER RESOLVED, that the University of Hawai‘i treat letters of offer as contractual obligations as is standard practice at universities nationwide.

Supporting Documents:

1. HLRB-4 Prohibited Practices Complaint
2. University respondents’ motion to dismiss prohibited practice complaint and/or for summary judgment e-filed January 15, 2016
3. UHPA memorandum in opposition to university respondents’ motion to dismiss prohibited practice complaint and/or for summary judgment filed on January 25, 2016
4. University respondents’ reply memorandum to UHPA’s memorandum in opposition to university respondents’ motion to dismiss prohibited practice complaint and/or for summary judgment e-filed February 1, 2016