

November 13, 2009

AN OPEN LETTER TO THE FACULTY  
*THE HISTORY AND STATUS OF BARGAINING UNIT 7 NEGOTIATIONS*

Negotiations over the terms of a new collective bargaining agreement began almost two years ago, in December 2007, when I suggested to President David McClain that we begin an informal conversation about the terms that would follow our unprecedented six year contract. Despite our contract having an expiration date of June 30, 2009, which at the time appeared a long way off, I knew that a successor would be difficult to reach, in part because the economic future of Hawaii was so uncertain. At the time, I of course had no idea of the real crisis that existed in the national financial markets. I did intuitively know that we wanted to get through the final two years of the Governor's term without having a crisis in bargaining.

Early in 2008, David and I met on two or three occasions to discuss what I thought the faculty might expect in a successor contract. Issues such as basic salary minimums and addressing salary compression were discussed, along with the continuing concern that, despite the goal set in the UHCC Strategic Plan for the community colleges, the Regents had not adopted a 24-credit hour teaching equivalency. We also discussed the level of a general across-the-board salary increase to maintain the progress we were achieving towards the Regents' Stated goal of parity with peer institutions. Time was also spent discussing the huge problem of available and affordable "work force housing" options for faculty, thus renewing my call to look to the development of the UH West Oahu campus as the site for such a project. Our conversations were frank and forthright. I told David it was my hope that we could reach an early agreement by the summer 2008 that would provide a stable base for the University going through the next three years. He agreed with the goal but wasn't sure it was possible.

As it turned out, President McClain was correct. A quick settlement was not possible. Our informal conversations ended, and in April 2008 UHPA prepared a comprehensive proposal for a successor agreement. On May 23<sup>rd</sup> we began what would be our first summer-long set of negotiations with the first formal bargaining session held in the offices of UHPA. I was heartened by the fact that President McClain took personal responsibility for those talks, including the extraordinary step of actually participating and acting as the spokesperson for the University. In the beginning, even Marie Laderta, (State Director of Human Resources and the Office of Collective Bargaining) and her staff participated in the talks. However, by the start of the fall semester it became clear that the bargaining would not achieve a settlement.

On December 15, 2008 UHPA filed a notice with the Hawaii Labor Relations Board stating that impasse existed between the parties, which was followed the next day with HLRB Order No. 2566 that formally ordered the declaration of impasse and the appointment of a mediator.

Through the assistance of Federal Mediator Carol Catanzariti, the parties attempted to find a resolution to the impasse. On January 20, 2009 we held a meeting at the office of Marie Laderta that included John Morton, VPCC and the current spokesman for the University administration. At that meeting, I offered to accept Governor Lingle's proposal that UHPA roll over its current 2003-2009 Agreement, with no salary increases or changes in language, through the next biennium. The mediator, Marie, and John all seemed pleased by the willingness of this union to accept those terms. By Friday, the Board of Regents had voted to accept UHPA's offer. However, by that weekend, Governor Lingle phoned me to

say her offer was off the table and she must have a “global settlement” that would include all the public sector unions, or at least the ones currently bargaining new contracts.

For the next six months, UHPA dutifully and actively worked with HGEA, UPW, and HSTA to find a “global settlement.” An integral part of that effort centered on the funding of the employees’ health insurance premiums through the EUTF. The parties were all aware that the premiums for HMSA were scheduled to increase 29% on July 1<sup>st</sup>, and it was important for the employees to have assurance that the employers would maintain the historic 60% of premium payments. Many meetings were held that included various representatives of the public employers, even including all of the island mayors. The county mayors indicated that they would continue to pay 60% of the EUTF, but Governor Lingle indicated that the State would not allocate any additional funds for health insurance premiums, thus shifting the burden to public employees. The UH administration simply went along with the position of the Governor with respect to the EUTF funding. Still, it appeared early in the second summer of UHPA’s bargaining that a global settlement might emerge, but ultimately the lack of cooperation on the part of the Governor doomed those efforts to failure.

When the “global settlement” began to bog down last summer, UHPA returned to direct negotiations with the UH administration. Always under the direction of the federal mediator, UHPA tried to find a path that would meet the desired outcome of the UH administration to save \$37.5 million over the biennium from faculty salaries. This included a two year, 5% salary reduction plus the loss of one paycheck in 2010 to a payroll lag, but did not take into account the increased health insurance premiums that faculty would be paying to the EUTF of up to \$2,400 above what they would have paid in increases if the employer had continued to pay 60% of the premiums. While David McClain was still UH President, he attended these negotiations, and he seemed genuinely interested in exploring the idea of the faculty “loaning” the University the money achieved through salary reductions which was proposed by the UHPA Collective Bargaining Committee (CBC). Unfortunately, the Board of Regents rejected the proposal, and any other proposals, that amount to less than a permanent reduction in what faculty members were paid at least over the two years of biennium, beginning on July 1, 2009, and going through June 30, 2011.

In the end, the resolution of contract talks for each of the bargaining units proceeded along the only lines that were available under HRS Chapter 89; interest arbitration for HGEA units and one unit of UPW, a strike authorization for the UPW Unit 1, the right to strike for HSTA K-12 teachers, and the continuation of the impasse in UHPA Bargaining Unit 7.

At this juncture in early July, UHPA had no other choice but to assert that although the UHPA/BOR Agreement expired on June 30, 2009, the provisions of Article XXX, Duration, extended the terms of that contract until both parties reached an agreement over the terms of a subsequent contract. The inclusion of the “evergreen” clause in the contract caused the “union” to give up the right to strike and the “employer” could not lock-out the faculty in Bargaining Unit 7 in absence of an agreement. Although the Governor, the President, and the Regents had signed the specific change in the Duration clause they were not aware of what it meant, and then denied the interpretation of the language put forth by the UHPA. What followed was an arbitration hearing over the meaning of Article XXX. The arbitrator was former Associate Supreme Court Justice Mario Ramil, and on July 20, 2009, he issued a

ruling confirming that the language of the contract did establish an “evergreen clause” which continues the contract provisions.

This decision had an immediate impact because the “employer” had failed to increase the premium payments to the EUTF when they increased on July 1<sup>st</sup>. UHPA filed another grievance, but the UH administration said that it had no control over the money sent by the Department of Budget & Finance to the EUTF on behalf of the faculty members. UHPA has made a demand for arbitration, and is still seeking the State administration’s compliance with the terms of the continuing contract.

With the understanding that Bargaining Unit 7 was covered by a contract, the UHPA CBC resumed its efforts in August to mediate a settlement. We recommended that the parties find mutually acceptable ways to meet the University’s budget shortfalls, reiterating the use of loans or salary deferrals. We suggested a comprehensive list of other contract language that might persuade the faculty to accept a temporary salary reduction for two years if these items were included. By and large, all of our suggestions were rejected, save the acceptance of minimal base salaries by rank and the establishment of a dependent scholarship fund. This ultimately led to the UH administration’s “Last, Best, Final, Offer” (LBFO) which was presented to the CBC on September 15<sup>th</sup>. (This was actually the first and only salary proposal presented to UHPA since bargaining began in May 2008.) Although the UHPA CBC did not agree with the terms of the LBFO, it did agree to take it to our membership for a vote. On October 7<sup>th</sup>, 86.2% of the UHPA members voted to reject the LBFO; a number that exceeds an absolute majority of the total 3758 bargaining unit members, which includes 251 lecturers teaching at least half time.

After the CBC considered the rejection of the UH LBFO, it prepared a counter proposal that was sent on October 14<sup>th</sup>. The proposal, which is posted on the UHPA website, proposed a four-year agreement that accepted the 5% salary reduction in the first biennium and proposed salary increases in the last two years. It also offered a temporary payroll lag. The proposal did seek other contract language improvements as part of the package.

Another mediation session was held on October 22<sup>nd</sup> and John Morton, on behalf of the UH Administration, rejected both UHPA’s counter proposal and the concept of entering into a four-year agreement. The administration repeated its demand for a salary reduction and a payroll lag. Further, they modified the LBFO with additional language that limited the employer’s contributions to the EUTF to only one year at the 2008 amounts, thus shifting more of the burden of the payments on the faculty with no guarantee as to an amount to be paid by the employer beginning July 1, 2010.

On Saturday, October 24th, over a hundred UHPA Faculty Representatives from across the campuses of the UH System met in general session. UHPA also invited all the Faculty Senate Chairs to attend the meeting. What follows is my summary of the views that were expressed at the Forum. No votes were taken, nor were any sought by or from the participants, but the mood was clear to discern. To quote the impression of one in attendance:

*There was nothing shrill or high pitched, argumentative or distracting on the part of the members today. No one was grasping at theoretical straws. No one was casting any aspersions on anyone else or blaming anyone for anything. Body language & demeanor was attentive but settled. There was no turning this way and that, connoting discomfort. There was almost no "black humor" suggestive of a "doom & gloom, we're all gonna die..." attitude. No giddiness. As much, or more than at any other time, this group seems to be as assured as smart people get, that they are on the right track.*

One message, which was repeated by many, is that it is perverted to call upon the University faculty to accept “shared sacrifice” through a reduction in their income and the employer’s payments to health insurance, when their work continues to produce more, not less, for the citizens of this State. At a time when student enrollments, external grants, and other revenue-generating activities have increased, these facts are twisted out of any semblance of reality by asking the faculty to fund public higher education when the political entities of the State are not willing to maintain the past level of revenue allocation. Faculty salaries are not the major driver of the total costs of public higher education. Just the external grant and training revenue sources brought in by faculty members exceed the total salaries paid to the bargaining unit by over \$120 million dollars per year. Finally, the UH administration has not properly accounted for all of the increases in tuition revenues or the impact of significantly more retirements on the actual budget shortfall.

The Governor’s call for “shared pain” is based on a false premise. Unlike a private sector company that seeks salary concessions from its employees because they are unable to sell their product, either due to marketing deficiencies or labor costs, the University of Hawai’i is serving a growing market at very competitive costs, i.e., tuition rates. Would you call for a salary reduction or reduced workforce (retrenchment) if your business was growing? And does it make any sense to take action that causes the employees of the new bio-tech industries in Ann Arbor to suffer simply because General Motors is in bankruptcy because of poor business decisions? The hope of the future of the economy of Michigan rests with the industries that are producing new revenues and jobs, and it does no good to kill those efforts simply to “share the pain” with the laid off autoworker.

At the same time that the State of Hawai’i continues tax incentives to new private industry, they want to pay less for a public industry – in this case the University -- that does more for the State both in real growth and future potential than any single private company. When the Governor restricts appropriated funds, the UH administration had the audacity to suggest that those who do the work, the faculty, make up the difference out of their own pockets. They should be increasing salaries to assure that the quality of the faculty does not decline through attrition of all forms, and rewarding faculty for the increased accomplishments they have achieved in the instruction of students, service to the community, and the acquisition of new knowledge, while actually generating new revenues for our State.

The faculty believe that by not accepting the reductions in compensation that the UH administration is proposing they are doing a long term service to the future of public higher education and the citizens of our State. To simply accept the reductions is to accept the likely decline in overall quality of the institution. This will cause a downward spiral that will only exacerbate the State’s economic woes; a self-fulfilling prophecy of economic disaster. The Legislature’s or the Governor’s inability—or unwillingness—to provide revenues to fund public higher education is an expression of the State’s priorities. There is no way to protect the citizens of the State from the consequences of that decision, and the faculty is not going to “enable” this misguided direction.

At this point, the faculty members of the University of Hawai’i are employed under the terms of a collective bargaining agreement. As the exclusive representative for Bargaining Unit 7, UHPA has considered the UH administration’s request that the budget shortfalls resulting from reductions in State revenues be made up in part through reduced faculty salaries and benefits. We do not believe that any of the proposals, thus far, are in the best interests of individuals we represent or the institution’s ability to carry out its missions. The faculty members comprising this bargaining unit are convinced that there are sufficient sources of funds, beginning with administrative overhead costs, available for redistribution to fund budgetary priorities. If those reallocations are insufficient, then the Regents must consider

increasing tuitions beyond those previously scheduled since neither the Legislature nor the Governor are willing to continue to support lower student tuitions that do not cover the actual cost of instruction. Further, the revenue assumptions being used by the administration to determine the budget shortfall do not take into consideration the increases in faculty and staff retirements beyond normal attrition or the continued growth in student enrollments with the resulting increases in total tuition dollars. Finally, the faculty members are expressing their deep disappointment that the Board of Regents' 2010 supplemental budget request to the Legislature did not even include a request to restore Governor Lingle's restrictions to previously appropriated funds for UH. The Regents appear quite willing to create a situation where either tuition rates must be increased or faculty and staff salaries must be cut.

For a settlement of a new contract to be acceptable, the UH administration must be willing to offer an agreement that is equal to or better than the terms of the continuing contract. This can be done in a number of ways, as we have suggested in our talks over the summer. Unfortunately, all that has been offered by the UH administration is a substitute contract that would be substantially less than the current provisions extended through the evergreen clause.

President M.R.C. Greenwood left a phone message for me on November 2<sup>nd</sup> asking for a private meeting. I wrote back and suggested to Dr. Greenwood that she meet with me plus the seven members of the UHPA Executive Committee. These seven individuals are all faculty members, and they happen to include representatives from UH-Manoa, UH-Hilo, UH-West Oahu, and the Community Colleges. Dr. Greenwood said although she would like to meet at some time with the Executive Committee, she wanted to meet with me to see "...whether there is any basis or hope for a settlement." I responded candidly by saying, *"Quite frankly, it is also my view that the faculty does not trust the administration to lead the University through this crisis."* I went on to say that there is always hope for a settlement, but if her question was specifically is the faculty willing to accept the UH administration's most recent last, best, final, offer (II), my view was no. I finished by indicating that having read all of this, if she still wished to have a private meeting I was willing to do so at anytime. I did suggest that beginning by meeting with the Executive Committee was probably the best way to start to build the trust necessary for any settlement. As of this writing, there has been no response, although I noted in a recent *Advertiser* article that President Greenwood said she asked for a private meeting with me. However, the report did not mention that she had received a reply indicating my willingness to meet.

As of this date, no further negotiating sessions or mediations are scheduled. UHPA has kept the federal mediator apprised of all that has transpired, and should the UH administration wish to meet again we are always prepared. I suspect that the next action taken by the UH administration will be to attempt to overturn, in some manner, the continuing provisions of our contract. Most likely they will petition the Hawaii Labor Relations Board or simply move to implement their LBFO (II). We are also prepared to meet these actions with appropriate legal responses.

In solidarity,

J. N. Musto, Ph.D.  
Executive Director & Chief Negotiator