



UNIVERSITY
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MĀNOA

MĀNOA FACULTY SENATE MEETING [DRAFT]

February 19, 2014

Architecture Auditorium (ARCH 205)

3:00 pm –

ATTENDANCE

Present (68)

BONTEKOE, Ronald; BOULOS, Daniel; BROWN, Steven; BRYANT GREENWOOD, Peter; CANYON, Deon; CARON, James; CASKEN, John; CHAIN, William; CHANG, Williamson; CHIN, David; COONEY, Robert; COWIE, Robert; DAVIDSON, Elizabeth; DEBARYSHE, Barbara; DI, Xu; DOI, Saori; DUNN, Robert; ERICSON, David; ERTEKIN, R Cengiz; FLYNN, David; GARROD, Peter; HARRIGAN, Rosanne; HONG, Seunghye; HWANG, Hyunjoo; INAZU, Judith; ITO, Ken; KALLIANPUR, Kalpana; KAWABATA, Wendy; KIM, Albert; LE SAUX, Olivier; MANINI, Bonnyjean; MATSUDA, Jennifer; MATTER, Michelle; MAYNARD, Ashley; MELZER, Michael; MINERBI, Luciano; MOCZ, Gabor; NGUYEN, Hannah; PARK, Hyoung-June; PAULL, Robert; POTESMRA, James; RAWSON, James; RAYNER, Martin; ROBERTS, Stacey; ROBINSON, Scott; SAFFERY, Maya; SAKAGUCHI, Ann; SANDERS, David; SANTIAGO, Lilia; SHOULTZ, Janice; SMALL, Jennifer; SOLIS, Ron; SORENSEN, Trevor; SORIA, Julius; STEPHENSON, Carolyn; STEVENS, Duane; STIRR, Anna; SZYMCAK, Victoria; TAM, Elizabeth; THOMAS, Florence; VINCENT, Douglas; WELIN, Stephanie; WELLS, Jenny; WERTHEIMER, Andrew; WIECZOREK, Anna; WITHY, Kelley; WOODRUFF, Rosemarie; ZALESKI, Halina

Excused (17)

ASAHINA, Audrey; BINSTED, Kimberly; CHESNEY-LIND, Meda; CONWAY, Thomas; FELIPE, Miguel; FULFORD, Catherine; LESA, Faafetai; LENZ, Petra; OISHI, Martin; QURESHI, Kristine; RIGGS, H Ronald; ROBERTSON, Scott; SIMANU-KLUTZ, Manumaua; TALLQUIST, Michelle; VALENZUELA, Hector; VARGO, Stephen; WATTS, Margit

Absent (1)

BENGSTON, Rodney

AGENDA

1. CALL TO ORDER
2. MINUTES



- January 15, 2014 [[PDF](#)] [[DOC](#)] (Draft)

3. CHAIR'S REPORT

4. BUSINESS

- **PROPOSAL TO AMEND THE BYLAWS OF THE MANOA FACULTY CONGRESS AND SENATE** [[DOC](#); [DOC](#): track changes]
Committee on Administration and Budget [[Issue 15.12](#)]

Un-amended Manoa Faculty Senate By-Laws [[HTML](#)] [[PDF](#)]
last updated 10/2013

- **MOTION TO HOLD A MANOA FACULTY CONGRESS MEETING ON MARCH 19, 2014**
- **GUEST: CHANCELLOR TOM APPLE** (3:30 pm)
- **GUEST: UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY** (3:45 pm)
- **MANOA PUBLIC RELATIONS CAMPAIGN**

5. ISSUES

6. ADJOURNMENT

MINUTES

1. CALL TO ORDER at 3:05 pm

2. MINUTES

January 15, 2013 (Draft). Motion to approve the minutes as posted. Passed (50:0).

3. CHAIR'S REPORT - Dave Ericson

The SEC is searching for a new graduate student researcher. The Senate rules of order will not be brought forward for a vote since there was one minor change that was not substantive. We encourage everyone to vote in the Senate elections, which are open until March 3. They will be followed by the SEC election.

Athletics Director Ben Jay had to be present at the legislature and so is not available; he will come in March. The Congress is proposed for March following the Senate meeting.



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Brian Taylor is continuing as interim VCR, since the top candidate declined. The search has been stopped.

The SEC will not bring a second resolution on the Cancer Center since it would not serve a good purpose at this time. The SEC remains greatly concerned and will closely monitor the situation. We will come forward with a resolution if needed.

The proposed tobacco policy was discussed with administration. We expect a new time line for development and implementation, likely in the fall. A new draft is being worked on and will be brought to the Senate.

Guests for this meeting are Chancellor Apple and the UHPA leadership. UHPA was invited to discuss their action at the Hawaii Labor Relations Board.

Bylaw changes - David Chinn. The bylaw changes as proposed by CAB were presented at the January Senate meeting. Motion to approve the bylaw changes passed (57:2).

Motion from the SEC to hold the Congress in March - David Ericson. Motion passed (59:2).

4. BUSINESS

(A) GUEST: CHANCELLOR TOM APPLE (3:15 pm)

The Violence Against Women (VOWA) reauthorization is coming on March 7. UH had a random audit and received suggestions. These will lead to change in policies and procedures and publication of remedies. Domestic violence policies include dorms. The System policies are out of date. Manoa needs to report by October 1. The Chancellor has received advice from the Hawaii Commission on the Status of Women. Manoa's Title 9 coordinator is Lori Ideta, but expanded policies, education and reports will require a dedicated person. A new Title 9 office will be set up. We need good policies and proposals and education. Our campus should be safe for all genders. The Chancellor would like a draft by March 14. He will involve everyone, including UHPA, student organizations and all others. Save the date.

The last campus conversation focused on the six working groups for the strategic plan. They are doing great work. Some recommendations do not cost much, but others do. Deans are being involved.

The VCR search has been postponed. Manoa could not seal a very good candidate. Another concern is that several office staff went with Vassilis when he became the VPR, and the office will need to be brought back up to speed. Interim VCR Brian is doing great work with the Cancer Center and needs more time to work on this. A new search will be initiated in six months.

The VCS search is starting with VCAA Reed Dasenbrock as chair of the search committee. The plan is to do a national search, but without using a search firm. We will give special consideration for local knowledge, although Fransisco Hernandez did very well without being local.



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Q and A

Could we bring back the Ombudsman and to put responsibilities for Title 9 in the same office? The Chancellor said that this will not satisfy VOWA. Title 9 will be a lot of work and need several people. He is open to considering an Ombuds position. We need a conversation that includes the union since grievances may be affected.

What is happening at the Legislature? The mood is better than last year and UH is making a good case. We have good support from the governor. The biggest issue is salaries; if those are funded we will be in relatively good shape. Funding for some personnel is needed, but uncertain. It depends on economics. Although people support UH, they do not trust the organization, so work is being done to improve that.

There are two bills proposed, one granting credits for life experience and the other providing cheap or free tuition for seniors. These do not fit Manoa's mission. Should faculty provide input? Input is good. Manoa does not have a full time legislative liaison. It was noted that not all seniors are poor, whereas some regular students are very needy. We need to think about reality and not just good intentions. Life experience is too broad a designation and will not work. Some bills need to die and others to move forward.

(B) GUEST: UHPA Sharon Rowe, VP, Kristeen Hanselman, Executive Director, Tony Gill, Counsel (3:45 pm)

Chair Ericson requested no taping or video since it violates collegiality. Remarks should not be taken out of context.

Some issues cross over between the Senate and UHPA, for example, periodic reviews of faculty can affect both academic development and employment. This has implications for Senate business.

Introduction to the issues - CPM Chair Ashley Maynard. Maynard thanked CPM for their hard work. The issue of amending Manoa policy on periodic reviews was first referred to CPM in 2012. This affects both the Senate and the Union. In fall 2013 the SEC urged CPM to deal with this issue. CPM met with System and UHPA representatives. Chapter 89 of the Hawaii Revised Statutes allows representation of faculty by UHPA. The contract covers work conditions. Article III.F. states that faculty will be evaluated periodically in accordance with BOR policy Section 9.15. BOR policy authorizes the Senate and this section delegates peer review to the Chancellor in consultation with faculty governance organizations. Thus faculty have two voices.

The proposed changes include the academic profile, which is clearly an academic question. The primary purpose is to identify deficiencies and help faculty address them through a peer-review process. If deans become involved this is no longer peer-review.

CPM agrees that peer review must be faculty driven. There should be communication between the Senate and UHPA. The UHPA complaint addresses issues related to employment. It is hard for faculty to say no other than through UHPA.

Q and A



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Who proposed the changes? The VCAA's office.

AAUP recommends that peer review be formative to encourage excellence, as opposed to summative or disciplinary. Disciplinary issues should be addressed in a separate policy.

UHPA VP: Sharon Rowe

Sharon Rowe stressed that the collective bargaining committee wants to be in a strong going into negotiations. The UHPA Board did not vote on complaint presented to the Labor Relations Board. The Board never votes on prohibited practice issues. The Board just hires staff to deal with such issues.

UHPA Executive Director: Kristeen Hanselman

Consider issues in the context of what happened historically. Tensions lead to misinformation. There are fundamental issues to be addressed. The Faculty Senate has important roles, often concurrent with those of the Union. It is important to discuss issues, although we may agree to disagree. The important issues include tenure and academic freedom. The Union has a broader role and the power to enforce. The Senate can recommend. It is important that the Union address prohibited practice. The complaint does not affect the Senate role. For issues that impact the bargaining relationship the employer has the responsibility to contact the union under Hawaii law. This did not happen. The Union wants to force the employer to do this. The Union does not want to get a letter saying that the employer agreed with the Senate on a policy and will move to implement it. One example is policy on faculty housing. Another concern is uneven application of policy. The Union does not want to pit faculty against faculty, but to have all at the table. In the case of UH, there is one employer, the BOR, one union, UHPA, and one contract. Within that framework Senates are recognized. The prohibited practices complaint is not intended to stop Senate consultation. A prohibited practice complaint is a way to resolve a dispute and not a lawsuit. Issues such as faculty housing and smoking policy need bargaining before implementation. Post-tenure evaluation was a contentious issue in the past, which was resolved in 1982 under Simone. It is called evaluation, not post-tenure review, because tenure is not being reviewed and renewed. Critical elements of the policy are that it can not take away tenure, that it assumes competency, and that it is meant to be affirming and not disciplinary. Protection is provided in the grievance part of the contract. A proposed change of post-tenure evaluation that could lead to discipline is not acceptable. The Senate should talk to the Union and would learn the history. UHPA expects the UH System to resolve the complaint prior to the hearing in May.

UHPA Counsel: Tony Gill (TG).

He has represented UHPA since 1982. These issues have re-arisen from that time. There is a matrix of a duty to bargain (National Labor Relations Act) and a duty to consult. According to Hawaii law an employer must bargain before implementing changes to terms of employment, such as wages or hours. In Hawaii there is a duty to consult as to every other policy that affects the workplace in advance of making choices (or soon after), even if the employer has the right to implement such a policy. Everything must be dealt with between the employer and the union. The complaint arises from two issues: smoking and post-tenure review. It does not affect the Senate, just UH's responsibilities. It is not detrimental to and supports the Senate's role in academic matters, but stops it from discussing workplace matters.

Smoking is consultable. It was presented to UHPA as finished policy, rather than early in development. This is not correct. Administration consulted the Senate, not the Union. This does not suffice. The Union would relieve the Senate of



the duty to do this without having the armament to enforce it. Why was the Senate consulted?

Review is consultable. This issue was heavily litigated in the 1980s. It is a difficult issue and consultation should have happened early. If there are potential negative consequences to faculty, then the issue is bargainable and UH must negotiate. This tips the balance away from faculty by involving management. The proposal does not involve the Union in evaluation committee appointment procedures. Why was this presented to the Senate?

Q and A

Expectations vary hugely among 90 departments and the Union is not qualified to assess these. If we bargain then we are tied? TG: The Union can bargain the consequences of negative recommendations and protect the faculty role. We need to set boundaries. Bargaining need not restrict faculty prerogatives. Old documents worked out what is Senate and what is Union and the chance to work out unclear issues.

Why didn't UHPA talk to faculty so we can work together? TG: The Union has time lines and is glad that the Senate brought the issues to UHPA. Filing a complaint is not the Senate's responsibility. An important question is who is the employer - the System. Issues need to be addressed system-wide.

What about Manoa-specific issues? How can the System address these? This can be problematic? TG: This is problematic if the issues are academic, not if they involve labor relations. The law says the employer is the BOR, the governor and the UH President. The employer can ask to break things out by campus.

There is overlap between UHPA and the Senate: six faculty who have served on both.

There was a 1976 agreement between UHPA and the Senates. We need a non-corporate model of administration.

Why did this come to the Senate? It came at the request of the Deans via the VCAA.

The System does not understand Manoa and imposes problematic decisions, such as the dollarization of tuition waivers. Why negotiate with the System rather than Manoa? TG: That is not a Union issue. If the System does things that are unwise academically, the Union can not do anything, but can only back the faculty. They are willing to see if there is any help that can be provided.

In regard to the plaintiff's opposition: does exclusive representation trump Senate action? It prohibits the employer from consulting with any member of the Union, including the Senate, regarding any matter that is employment related. Can issues be brought to the Senate? TG: Only the Union can represent faculty on employment matters. Employer circumvention violates the law. If issues are purely academic, the employer can consult the Senate. In a mixed case the employer must discriminate. This was not a problem in the past. UHPA was bargaining with System on review while the matter was before CPM. Administration got ahead of themselves. This mistake needs to be fixed.

So administration can not bring this to the Senate? TG: Yes.



So the UHPA complaint impinges on the Senate. TG: The Senate can address academics. The Union is created by state law: the Senate by BOR policy.

Hawaii Revised Statutes 89-9c allows broad consultation. TG: This is a question of interpretation.

How will this affect Senate relationships? TG: It is okay if we consult.

Former Senate Chair David Ross and former UHPA President Duane Stevens used to be in constant communication, especially on mixed issues. The Senate worked closely with UHPA, but made the administration bargain if needed. Sometimes the Senate was called even in areas of Union prerogative. We work hand-in-hand versus drawing a line. The Senate feels they have a right to have an opinion on everything. We need to stop the miscommunication. TG: In 1982 the Union asked the Senate not to touch some issues and the Senate agreed; this is an example of collaboration.

If these issues are bargainable, once the Union learned of them, what did they say to the Senate. Did the Union ask the Senate to stop consideration of these, and, if so, how did the Senate respond? Is this lack of communication? TG: I don't know.

There is no objection to prohibiting administration going to the Senate in lieu of the Union, but there is concern about prohibiting administration from dealing with any group other than the Union, the exclusive representative. TG: This is garden-variety labor law. We should support this, but need to work out mixed cases. Who is the University and who are rogue elements?

On smoking and reviews, should the Senate have been excluded? The Senate wants to have a say. TG: The Senate may want to have a say, but they are limited by BOR policy to academic questions. Manoa is subordinate to the System. If matters fall outside the Senate's role, they should be taken to appropriate channels. Issues of order are important. Consulting the Union early is important. We need a ruling as to whether simultaneous consultation is allowed.

These issues are mixed. TG: Five year review involves academic and bargainable aspects. Why is smoking academic rather than setting rules on public property?

Smoking was brought to the Senate by ASUH. Should student groups be referred to UHPA? And why does the UHPA complaint focus on Manoa when other campuses such as Kapiolani CC have already implemented no smoking policies? TG: Kapiolani CC did not inform UHPA. Maui College is also considering a no smoking policy. UH System was unaware of these policies. At least Manoa sent a letter to UHPA. I don't know how to handle ASUH.

Both the Senate and UHPA should work for faculty's best interests. How do we get these organizations to work together? TG: UHPA is not offended and intentions are not being questioned. People make mistakes. We get off track; we can get it together. People in the new age show lack of knowledge or respect for labor law. There is a course on labor law.

(C) Proposal to Amend the By-Laws of the Manoa Faculty Congress and Senate [Second Reading]



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Committee on Administration and Budget [Issue 15.12] - David Chin

The proposed changes were brought before the January meeting of the Senate. If this meeting votes to approve the proposal it will be brought to Congress in March. The motion to approve was passed.

(D) Manoa Public Relations Campaign - David Ericson. Send ideas and achievements to the SEC.

5. ISSUES

6. ADJOURNMENT at 16:33.

Respectfully submitted by Halina Zaleski, *Senate Executive Committee Secretary*

Approved by the Mānoa Faculty Senate on March 19, 2014.