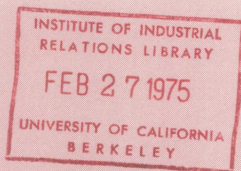


Professors and instructors - Collective Bargaining (1974) C. 2<sup>v</sup>

# UNIONIZATION OF HAWAII FACULTY: A Study in Frustration

EDWIN C. PENDLETON AND JOYCE M. NAJITA

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1. A curriculum for the training of young men for industrial relations positions; credit courses for University students and non-credit courses for the general public to bring about a better understanding of the problems of management and labor consistent with the basic needs of the community.
2. A library devoted to maintaining current materials and information in the field of labor-management relations, as well as the basic and standard sources, to be available for use by labor, management, and the general public. It is proposed that this library will contain all the important services now available, such as the publications of the Bureau of National Affairs, Prentice-Hall, and Commerce Clearing House. It would also be desirable to maintain files of collective bargaining agreements, both state and mainland agreements, and arbitration awards, as well as standard texts in the major fields of industrial relations.
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UNIONIZATION OF  
HAWAII FACULTY:  
A Study in Frustration

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By Edwin C. Pendleton  
and Joyce M. Najita

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Industrial Relations Center  
~~College of Business Administration~~  
UNIVERSITY OF HAWAII,  
Honolulu  
December 1974

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## BACKGROUND AND INTRODUCTION

Prior to 1970, one would have heard no mention of a labor union, as either probable or possible, for the University of Hawaii faculty.

As was typical of many universities in the United States, organized representation of the faculty was limited to a relatively small group in the American Association of University Professors (AAUP), an unknown number of professors, with memberships in their various professional associations, and in addition in Hawaii, a few hundred, perhaps, associated with the Hawaii Government Employees Association (HGEA). The latter membership was not for any usual trade union purposes but more for insurance or other benefits which the Association provided. Further, there were those who associated themselves with the traditional educators' association, the National Education Association (NEA) and its local branch, the Hawaii Education Association (HEA). At best, labor unionism was something apart from the professional faculty, probably read about or taught in a few personnel and industrial relations courses as a phenomenon of laborers—the blue collar world of work—but not of university faculties.

This state of affairs might well have continued despite the upsurge in the 1950s and 1960s of public employee unionism and despite the rapid growth in Hawaii of the single statewide university system (nine campuses by 1973), with its increasing employer-employee and bureaucratic problems, had not the Constitution of Hawaii in Article XII mandated the State legislature to effectuate collective bargaining for public employees. This the legislature proceeded to do and with surprising rapidity. In the 1970 session of the legislature, Act 171 (Ch. 89, HRS) was passed. Modeled in part on the National Labor Relations Act and a few earlier public employee collective bargaining laws in other states, such as Wisconsin, this Act covered *all* (except those excluded by law) public employees in Hawaii—state, county, and municipal—and encompassed most of the employee rights that had developed in the private sector over many decades, including a limited right to strike.<sup>1</sup>

The Act opened up an organizable market of about 40,000 employees, a market large enough to whet the appetites of some already established unions as well as those organizations which could rapidly reshape to become employee representatives

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<sup>1</sup>For a critical and insightful analysis of the Hawaii law, see Joel Seidman, *The Hawaii Law on Collective Bargaining in Public Employment* (Honolulu: University of Hawaii, Industrial Relations Center, October 1973).

for collective bargaining purposes. The HGEA, reorganized in 1969, and the HEA-NEA very soon restructured themselves, since many public employees already belonged to them, to take advantage of the new bargaining law. A local independent union, the United Public Workers (UPW), was already well established among public and private sector blue-collar workers. Other groups—firemen, nurses and police—looked to their own specialty unions or, as in the case of the police, formed a new organization to represent them for the purposes of collective bargaining with the state and counties.<sup>2</sup>

The public employee law on collective bargaining established 13 bargaining units to encompass all public employees, of which two, Unit 7 (faculty of the University of Hawaii and the community college system) and Unit 8 (personnel of the University of Hawaii and the community college system, other than faculty), were for the University of Hawaii system. All civil service employees in the University system were assigned to units with like employees throughout the state. In slightly more than two years (by July of 1972) all state employees had selected bargaining units and all, except the faculty of the University of Hawaii (Unit 7), had contracts which included wage and salary increases.

The purpose of this article is to unravel the threads of a complicated series of events and to present in logical fashion the important phases: union attempts to organize the faculty, subsequent bargaining difficulties, events leading to rejection of the first contract, and later restructuring for continuing representation. In addition, since it appears that there may be lessons to be learned from studying the pattern of events, some conclusions will be drawn that may be of somewhat wider interest than in Hawaii where the events occurred.

## STRUCTURE OF THE UNIVERSITY SYSTEM

In order better to understand the organization for bargaining and to explain what happened, it is necessary to have a picture of the University structure.

The main body of the University is the Manoa campus (UHM), located in Honolulu, where the central administration is housed, with some 22,000 undergraduate

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<sup>2</sup>Hawaii is somewhat unique. Governmentally, it is an integrated state-county system. There are three counties and one city and county but many functions performed at the county level on the mainland United States are handled at the state level in Hawaii. Education is a prime example. The State Department of Education (DOE) covers all K-12 education in the state. There is a single statewide higher education system, the University of Hawaii and community college system.

and graduate students and 1,600 faculty. On the island of Oahu, along with the Manoa campus, are four community colleges: two long-standing trade and technical schools, the Honolulu Community College and the Kapiolani Community College, and two fairly recently established institutions, Leeward Community College and Windward Community College. On each of the islands of Hawaii, Kauai and Maui, former technical-vocational schools are now established as community colleges. The University of Hawaii at Hilo, a two-year school for many years, has become Hilo College with a four-year undergraduate program.<sup>3</sup> In addition, there are a large number of special and research programs and activities scattered throughout the island state. The University, being a land-grant college, has a College of Tropical Agriculture at Manoa, and the Agricultural Extension Service operating throughout the state. Then, there is the East-West Center for Cultural and Technical Interchange, which has no counterpart in any other university in the U.S.<sup>4</sup> Also, at Manoa are the recently added medical and law schools. Today, at the University more than 40,000 individuals are enrolled in courses and there are approximately 2,500 appointees labeled as "faculty."<sup>5</sup>

As will be discussed later, the term *faculty* covers a wide variety of activities, jobs, and positions which are difficult to combine when the concept of "community of interest" is applied to the formation of a bargaining unit, yet superimposed on this geographically scattered and polyglot academic structure, Act 171 created one collective bargaining unit for everyone defined as "faculty." Interestingly enough, it does not appear that the legislature thought to ask the University administration or the faculty what their wishes were with respect to bargaining unit organization, or even if they wanted bargaining at all. At least there was no direct testimony on the part of the University in the legislative deliberations.

In any event, any organization wishing to represent the University faculty had to deal with a highly mixed group containing innumerable differences with respect to academic interests and work problems. However, once the law had established the bargaining units for all public employees in the state, in view of political and fiscal realities no group wished to be without representation in order to secure its "share" of the economic pie. Some faculty embraced collective bargaining with high hopes as a mechanism for instituting change, while others generally assumed that they were being "forced" for self-preservation to select a bargaining agent as prescribed by the

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<sup>3</sup>The Hawaii Community College is under the administrative jurisdiction of Hilo College; the other six community colleges are under the University central administration.

<sup>4</sup>Negotiations are presently under way to establish the Center as an independent entity with its own board of governors.

<sup>5</sup>Management Systems Office, *Facts About the University of Hawaii*, December 1973; *Hawaii's Community Colleges: A Few Facts*, Spring 1974.



law.<sup>6</sup> But which representative it should be was a difficult choice. And given the above sketch of the University system, it is no wonder the University faculty was the last of the 13 units to select a bargaining representative and will be the last to secure a contract acceptable to the membership.<sup>7</sup>

## THE STRUGGLE TO UNIONIZE THE FACULTY

### Contenders for Representation

The various groups which emerged in 1971 with hopes to represent the University faculty were as follows:

1. The AAUP, which had a membership of only a few hundred. However, the AAUP was emerging as a collective bargaining agency on the mainland at the same time it was adhering to its historical role of protecting the professional interests of university professors and standards of university governance.

2. The University of Hawaii Faculty Senate, a faculty governance body at the Manoa campus with recommending and advisory powers. This group had no collective bargaining experience or organization for that purpose. Therefore, it eventually worked out an alliance with the AAUP. Prior to the alliance, it established an organization called University of Hawaii Faculty Association (UHFA).

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<sup>6</sup>It is interesting to note that the employer did not wage a no-union campaign as has been done elsewhere on mainland campuses, and there were no assurances from the University administration that the no representation choice was a viable choice. In April 1972, Professor Joel Seidman, and Assistant Professors Al Edge and Lane Kelley, in cooperation with the Industrial Relations Center, conducted an attitude survey, including union representation choice, of the faculty. Two parts of this survey were published: (1) "Faculty Bargaining Comes to Hawaii," *Industrial Relations*, 13:1, February 1974, pp. 5-22; and (2) "Attitudes of Hawaiian Higher Education Faculty Towards Unionism and Collective Bargaining," *Journal of Collective Negotiations in the Public Sector*, June 1974. An interesting result of the survey indicated that the "no union" choice was the first choice but for strategic reasons the faculty would vote otherwise.

<sup>7</sup>As early as December 1970 the Faculty Senate Executive Committee established an Ad Hoc Committee on Collective Bargaining to develop a program for informing faculty on the details of collective bargaining. Outgrowths of this effort included meetings with representatives of contending organizations and release of articles and informational materials, including a series of questions and answers published in the University Bulletin by the Industrial Relations Center. It is not clear what the impact of this informational program was, nor is it clear whether or not it had more or less impact than the individual informational campaigns carried out by the contending organizations.

3. The HEA, affiliated with the NEA. This Association was restructuring itself before the passage of Act 171 in order to represent different educational groups. At first, the Hawaii State University and College Faculty Association (HSUCFA) was formed, but later was renamed College and University Professional Association (CUPA).

4. The HGEA. This Association, while expressing an interest in the University faculty, never seriously campaigned for representation.

5. No union group. Those taking this view never were formally organized, but they were a small, vocal group with the goal of no union for the University faculty.

6. The American Federation of Teachers (AFT, AFL-CIO), the only organization of the trade union model. The AFT had a considerable number of elementary and high school teachers organized as the Hawaii Federation of Teachers (HFT), which was its main strength, but the HFT lost the classroom teachers (Unit 5) representation election to the Hawaii State Teachers Association (HSTA), backed by the NEA-HEA. The AFT had a small membership among the University faculty even prior to the passage of Act 171 but they were mainly in Hilo College and the community colleges. The AFT local for University faculty, entitled at first, Hawaii United Federation of College Teachers, is the Hawaii Federation of College Teachers (HFCT), Local 2003. It was the HFCT which was most active over the two-year period prior to representation and which eventually won bargaining rights in 1972.

## Determining the Bargaining Unit

Prior to holding a representation election, the Hawaii Public Employment Relations Board (HPERB), the agency established to administer the law, must, by law, determine the composition of the bargaining unit; this means deciding who is to be included as "faculty" for purposes of collective bargaining. This problem occupied the Board and contending groups approximately one year—from July 1971 to July 1972.<sup>8</sup>

As early as 1970, the UHM Faculty Senate had defined "faculty," a definition questioned by the University President, but declared legally valid (for the Faculty Senate's purposes) by the State's deputy attorney general.<sup>9</sup> The University had in

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<sup>8</sup>It should be noted that the HGEA had filed for representation as early as January 5, 1971. At least one group must establish a 30 percent showing of interest, and all intervenors are required to show only a 10 percent interest in order to be recognized for voting purposes.

<sup>9</sup>The definition, adopted by the Faculty Senate on December 16, 1970, stated:  
"Definition of Academic Faculty: All individuals engaged in teaching and/or research or a specialization, whether on a nine or eleven month BOR appointment, who have a classification of I-2, R-2, S-2, A-3 or higher. These individuals

addition a wide variety of positions, many of which were not all or even partly classroom teaching, yet which had come to be considered as "faculty."<sup>10</sup> Since Chapter 89, HRS, established two bargaining units for the University, a determination had to be made as to who were in Unit 7 (faculty), and who were in Unit 8 (other than faculty),<sup>11</sup> and who were not in any collective bargaining unit.

Unit 7 involved an estimated 3,300 employees including graduate assistants, lower level administrators, such as department chairmen, assistant deans and some directors. All parties—labor and management—took positions on the composition of the unit. In some cases, the position taken was clearly one of advantage in winning an election, such as the inclusion or exclusion of some 700 graduate assistants. HPERB, after giving out information in August 1971 concerning representation hearings, encouraged the parties to try to reach agreement informally on who should be included in the unit. One problem was securing official lists from the University which would identify all positions with sufficient information to make determinations. Both the unions and HPERB were critical concerning the slowness of the University's central administration in supply the position lists. These problems caused the unit determination issue to drag for months and unions charged each other with purposive delaying tactics as well as blaming the University administration.

On November 10, 1971, at an informal HPERB meeting, CUPA submitted a 37-page statement in which it recommended exclusion of graduate assistants, college deans, provosts and top administrators. The Alliance (AAUP-UHFA) recommended that graduate assistants and APTs not be included in the unit, but that associate and assistant deans and department chairmen be included. Among the unions, HFCT was the chief proponent for inclusion of graduate assistants and exclusion of associate and

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must have a Master's degree or its equivalent and must be appointed in an academic instructional department or unit whose function is to administer, organize or support instructional and research programs, and are thereby eligible for academic tenure in the department or organizational unit.

Civil service and APT personnel would not be covered. Administrators with any of the professional titles who are attached to an instructional, research or extension unit would be included.

All those individuals who are presently considered faculty will be considered as such under a grandfather clause." (See Faculty Senate Minutes, Dec. 16, 1970.)

<sup>10</sup> Such positions included librarians, student counselors, etc.

<sup>11</sup> These generally called APTs (administrative, professional and technical), comprised about 800 employees, and while there were some marginal cases, it was not too difficult to settle the Unit 8 qualification. During the period of Unit 7 determination, HFCT argued that APTs should be permitted to vote whether or not they wanted to be included in Unit 7 or set off in a separate unit. This would appear to be in conflict with the law which had expressly established separate units.

assistant deans; like the other unions, it supported the inclusion of department chairmen. CUPA's position was for inclusion of associate and assistant deans and department chairmen. The University administration's position excluded from Units 7 and 8 associate and assistant deans, division and department chairmen, and graduate assistants. All parties agreed that part-time lecturers teaching less than seven credit hours should be excluded. HPERB was mainly concerned with establishing items of agreement and disagreement, but the informal meetings did not produce fixed categories of agreement and/or disagreement; that is, shifting of positions or wait-and-see positions occurred. The crucial areas of disagreement were graduate assistants and department chairmen. While some groups sympathized with the graduate assistants, it was felt that they more appropriately belonged in Unit 8, and if not, they should either form their own independent union for informal bargaining purposes or just accept their lot as students without faculty bargaining rights.

The parties—Alliance, CUPA, HGEA, HFCT, and the University administration—never did reach agreement. The decision was left to the Board which had to review all the briefs and exhibits of the parties and make its own determination. This the Board did by affirming the Board's hearing officer report of July 17, 1972: assistant and associate deans, graduate (or teaching) assistants were excluded as were part-time faculty (teaching less than seven credit hours), and department chairmen were included. All the others in the unit were regular nine- or 11-month Board of Regents appointees over which the disputes were minimal or non-existent.<sup>12</sup>

The decision, coming in the summer months, meant that no representation election could be held before September or October 1972.

## The Campaign for Representation

*HGEA.* At a few meetings in 1971 at UHM, HGEA spokesmen expressed interest and stated that HGEA was seeking representation. In September and October 1972, just prior to the first election, HGEA published two special supplements to *The Public Employee*, the purpose of which was to encourage faculty to vote for HGEA.

Despite the Association's claimed lobbying and political know-how, the faculty appeared not to be influenced nor were many convinced that the Association would win an election. It may possibly have been that the faculty felt that the HGEA was too much civil service-oriented to represent the "professional" interests of professors. Further, many faculty who belonged to HGEA did so because of insurance benefits obtainable, not because HGEA espoused a faculty cause.

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<sup>12</sup>Hawaii Public Employment Relations Board, *In the Matter of HFCT, HGEA, AAUP-UHFA Alliance, CUPA and BOR, University of Hawaii*, Case No. R-07-12, Decision No. 21, Sept. 15, 1972.

It can be safely said that the entire HGEA approach to representing University faculty was definitely very low key and exhibited little serious intent. The HGEA seems to have decided that the University faculty, Unit 7, was a group that it did not particularly care to represent. Since the HGEA had captured, fairly rapidly, six of the bargaining units representing well over 10,000 employees, mostly in civil service classifications, it may have felt there was little reason for it to try for the some 2,500 University faculty whose employment conditions are considerably different from civil service personnel.<sup>13</sup> Because it had filed and met legal requirements for representation, HGEA appeared as one of five choices on the ballot. Of a total 2,035 votes cast in the October 1972 election, HGEA received 96, thus eliminating it from any further and possible future consideration as a faculty bargaining agent.

*No Representation.* The active "no-union" proponents were few in number and mainly on the Manoa campus. Obviously, there must have been several hundred or more who preferred a non-union status for the University but remained silent. The few concerned individuals who made up the active "no representation" faculty had no formal organization,<sup>14</sup> and practically no money for propaganda and campaign purposes. What little information they did put out—cartoons and leaflets—could not be taken seriously. The general theme was "right-to-work" philosophy and the repressiveness of a forced choice of a bargaining agent.

The apparent naivete and unfamiliarity of the "no-union" spokesmen with labor relations law was seen in the suggestion of turning in blank ballots at the October representation election.<sup>15</sup> Nevertheless, "no representation" received 287 votes, of which 239 were from the Manoa campus. The majority apparently felt that "no-union" was not really a viable position, given the law and the political and economic environment in Hawaii. The law provided for bargaining units for all classes of public employees and by the time the University faculty was permitted to vote for representation, all other public employees had selected their agents. Thus, in order to place University faculty on a par with other state employees vis-a-vis the legislature, which approves or disapproves all cost items, many faculty members felt that the only choice was a bargaining agent, since it appeared to them that the legislature was not going to grant faculty salary raises and other benefits except through the mechanism of collective bargaining provided for by law.

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<sup>13</sup>HGEA won representation rights for approximately 800 APT employees in the University system (Unit 8) in January 1973.

<sup>14</sup>The law requires a "No Representation" choice on the first ballot. "No Representation" would also appear on a runoff election if it were the first or second choice in a no-majority election.

<sup>15</sup>The law provides for determination by a majority of the valid votes cast and not a majority of the membership of the bargaining unit.

*HSUCFA [CUPA]*. As previously noted, the traditional teachers organization, the NEA and its local HEA, commenced reorganization in 1970, effective as of January 1, 1971. Three groups emerged: (1) Hawaii State Teachers Association (HSTA) to represent K-12 teachers; (2) Hawaii State Educational Officers Association (HSEOA) to represent mainly the principals and vice-principals in elementary and secondary schools; and (3) Hawaii State University and College Faculty Association (HSUCFA). HSUCFA changed its name in September 1971 to College and University Professional Association (CUPA).

HSUCFA began its campaign for representation in January 1971, appealing initially for signatures in order to secure a place on the ballot.<sup>16</sup> Along with an emphasis on "professionalism" as the core of faculty organization, HSUCFA stated its view on trade unions as follows: "As an organization of higher education personnel, we believe that the typical trade union approach is not appropriate here."<sup>17</sup> This put HSUCFA squarely in opposition to HFCT (AFT), a strong contender for representation.

Throughout its campaign, CUPA placed emphasis on NEA experience and successful negotiations, local achievements and professionalism. One campaign tactic was to publish statements by professors supporting the organization. Through its *Voice of the Faculty* and *CUPA Capsule*, it criticized the AAUP and its local leaders as handicapped by lack of funds, facilities, and experienced personnel; ineffective in obtaining strong contracts at other institutions; and for its weak response to the President's budget cut proposals.<sup>18</sup>

The most significant publication by CUPA was its statement of principles.<sup>19</sup> While this document was not in the nature of contract demands, it did indicate the positions of CUPA and what it thought a negotiated contract should contain. The essence of this document is contained in the statement of goals as follows:

1. CUPA is committed to  
*collective bargaining* as the most effective way to validate the proper role of  
faculty in the governance of the University,

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<sup>16</sup>In September 1971, CUPA filed for representation, submitting 970 signatures which was more than the 30 percent needed; however, at that time, the composition of Unit 7 had not been determined. At this early date, many University faculty were not aware that they could sign any number of unit representation forms; they seem to have thought that they could sign only one for an organization they wanted to win or to which they belonged.

<sup>17</sup>HSUCFA, Jan. 27, 1971, mimeo.

<sup>18</sup>During the fall months of 1971, CUPA, like the other organizations, was enmeshed in the problem of unit determination. Of all the contenders for representation, CUPA presented the most comprehensive brief to HPERB on the composition of Unit 7, probably due to the services of NEA staff members who came to Hawaii to assist in the campaign. See *supra*, pp. 6-7.

<sup>19</sup>CUPA: Professional Power, Faculty Platform, adopted by Board of Directors, Jan. 22, 1972, issued Feb. 22, 1972.

*negotiating a contract* guaranteeing the full exercise of that role and reflecting the will of the faculty,  
*enforcing the contract* with the professionalism suited to the character of the faculty, and  
*nurturing the best possible relations* with the administration of the University, the elected officials and legislature of the State, and the people of Hawaii, whose good will is essential to the success of collective bargaining and our educational mission,  
 toward the ultimate *goals* of enhancing  
     the professional status of the faculty,  
     the academic excellence of the University, and  
     our service to the students and people of Hawaii.

2. To carry out these commitments, CUPA offers
  - a. its identity as a *professional association* dedicated to the best interests of the faculties of all the campuses of the University System. . .
  - b. the resources, the experience and the united strength of its affiliation with the *National Education Association* and the Hawaii Education Association, and
  - c. its pledge to be guided by the principles and objectives of *faculty sovereignty, academic freedom, the encouragement of professional growth, and the improvement of faculty remuneration, benefits and professional conditions of employment*, as delineated hereinafter.

The remainder of the document outlined positions on faculty sovereignty, academic freedom and advancement, professional growth, faculty remuneration and benefits, and professional conditions of employment.<sup>20</sup>

Although it conducted an articulate campaign, CUPA lost the election in October, coming out third with 460 votes, probably due to its small membership which was drawn mainly from the College of Education at the Manoa campus, the community colleges, and Hilo College.

*HFCT.* The American Federation of Teachers (AFT, AFL-CIO) had individual teachers and faculty as members prior to the passage of Act 171 in 1970, but it was not until October 1970 that HUFCT (later HFCT) was fully organized as Local

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<sup>20</sup> It is of interest to note the use of the word "professional" or "professionalism" by such groups as the NEA, AAUP, and UHFA. Very often the term is not clearly defined, but used as if everyone knows what it means. One writer recently commented on such terms thusly:

"Nowadays these concepts are coming increasingly under fire, sometimes pretty heavy fire. 'Some think professionalism concerns public service instead of monetary gain; but one young engineer, agitated by an apparent correlation between the elevated calling of public service and rock-bottom salaries, queried: 'Is being professional and being an obsequious ass just about one and the same thing?'" Deborah Shapley, "Professional Societies: Identity Crisis Threatens on Bread and Butter Issues," *Science*, May 19, 1972, p. 778, quoted in Roland Cuvillier, "Intellectual Workers and Their Work in Social Theory and Practice," *International Labour Review*, Vol. 109, No. 4, April 1974, p. 309.

2003, AFT (AFL-CIO). The local had the assistance of the national AFT in setting up a statewide organization and in organizing. In the two years to follow before an election occurred, HFCT probably produced and distributed more union literature than all the other contenders combined.

Organized more closely on the traditional trade union model than any other faculty organization, HFCT appealed to the more militant faculty, the younger faculty and especially to employees in all branches of the university system other than Manoa. The HFCT-AFT program for college faculties; AFT benefits, such as insurance; AFT emphasis on democratically controlled unions; need for unity (apparently a cardinal principle with AFT); and AFT principles on faculty rights and powers were continuously played up in numerous publications distributed. But HFCT made note that it was not a traditional (industrial employee) union; it was concerned solely with teachers, teacher rights, educational standards and quality education.

By January 1971, HFCT assumed that an election would occur "soon"; therefore, it lost no time in mounting a membership campaign, getting authorization signatures, issuing newsletters, and by March began publishing *The Faculty Advocate*. The union established chapters on all of the campuses and had representatives to handle grievances as they occurred. Throughout the campaign period, HFCT held campus meetings, off campus beer get-togethers, seminars, union-oriented *ad hoc* courses, and weekend camps as ways to stimulate enthusiasm and interest for the union. HFCT was continuously involved in a variety of tenure, dismissal and grievance cases, and gave publicity to its assistance to faculty members whose "rights" were threatened. Other groups, especially AAUP, also claimed having amicably settled grievance cases but without publicity or threat of or actual court cases. Also, during 1971, a few talks were held about a coalition with the other contenders, mainly to insure a 30 percent showing of interest, but there was no real basis for a coalition or alliance with those groups who opposed the so-called "trade union" approach.

As with other contenders, HFCT was enmeshed throughout the fall of 1971 in the unit determination problems; however, the union reported to faculty at length on this problem along with various problems facing the University, what the union "will" do if elected, and how it was involving faculty in contract demands and protecting faculty rights. It also undertook and published a survey of "Faculty Opinions on Issues Relating to Collective Bargaining."<sup>21</sup> HFCT was the main spokesman for graduate assistants and pressed hard to get them included in the bargaining unit; further, HFCT took a more direct interest in equal opportunity matters.

By January 1972, HFCT pushed for a spring election but the controversy over unit determination forestalled any spring election.

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<sup>21</sup> Jim Marsh, "A Survey of Faculty Opinion on Issues Relating to Collective Bargaining," *The Faculty Advocate*, Special Edition, n.d.



In March 1972, HFCT published its program (the counterpart of CUPA's February 1972 statement) under the title of "Faculty Discussion Draft of HFCT Program." The purpose of this was to stimulate faculty interest, secure feedback, lay the groundwork for winning the election, and to negotiate a contract. The discussion draft contained six sections covering (1) Purpose and Principles (academic freedom and faculty rights); (2) Recognition and Cooperation (consultation and union rights); (3) Professional Conditions (personnel, tenure, promotion, workload, etc.); (4) Budget and Money; (5) Grievances; and (6) Governance.

By June 1972, HFCT had only approximately 500 members, certainly indicating a reluctance of many faculty to sign up with the AFT. Opposition organizations gave considerable publicity to the "dangerous" leadership of HFCT and its local chapters. Throughout the summer months, the union continued to issue bulletins on grievance cases, governance issues, University administrative actions it opposed, threats to untenured faculty or jobs, and material to the effect that "AFT is best able to see that the law [Ch. 89, HRS] is upheld."

With the opening of the University fall semester in September 1972, the pressure increased to VOTE AFT-HFCT. Many flyers were distributed, and the AFT national president made an appearance in Hawaii. The union pointed out that the real contest was between AFT (HFCT) and the Alliance (AAUP + UHFA), and emphasized how the AFT (HFCT) differed from the Alliance. In campaign jargon, the HFCT "beat the bushes" to get votes.

*Alliance (AAUP + UHFA).* For the greater part of 1971, the Hawaii AAUP chapter<sup>22</sup> was trying to make up its mind what to do and how to organize itself if it intended to enter the representation race. As early as the Fall of 1970, the UH chapter of AAUP put out a statement, somewhat cool towards collective bargaining, but asking support of AAUP when a representation election occurred. The AAUP chapter also distributed general material, some from Mainland sources, but it was slow in deciding what to do or in propagandizing the faculty. The local chapter did get printed material and later professional help from the national headquarters of AAUP. By April 1971 it attempted to get authorization cards from faculty, and soon after it began consideration of an alliance with any or all of the other contenders for representation. It is inferred that the AAUP had little strength in and of itself; thus it did not exert itself for bargaining representation but put its efforts from March to October 1971 into forming some sort of a coalition or alliance. It was clear after several meetings that no alliance would be made with either CUPA or HFCT; thus in October, because of greater similarity of interests, an alliance was formed with the University of Hawaii Faculty Association (UHFA), and members of both AAUP and UHFA ratified a constitution for the AAUP-UHFA Alliance.

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<sup>22</sup>For all practical purposes AAUP was limited to the Manoa campus.

The idea of UHFA began with the Executive Committee of the Manoa Faculty Senate in March 1971 when the question of whether or not the Faculty Senate might become the collective bargaining agent arose.<sup>23</sup> There was, at that time, no suggestion of reorganization of the Senate for bargaining purposes, but the idea of a coalition with AAUP did arise. A rough faculty canvass conducted by the Faculty Senate Executive Committee in April 1971 indicated interest in the Senate or the Senate plus another group becoming the faculty bargaining agent. Informal talks about organizing were held in March and April, but UHFA later claimed May 17, 1971, as its birthdate. In May, UHFA issued its general statement of principles and began soliciting membership. The basic theme of the principles was self-government, and the statement declared *inter alia*, "The UHFA is founded upon the belief that the unique character of an academic community creates needs and problems of an economic and professional kind which cannot be handled in a usual manner employed by labor unions."<sup>24</sup> UHFA and the later Alliance placed much emphasis on faculty handling of their own affairs—a direct challenge to the principles and philosophy of CUPA (NEA) and HFCT (AFT). UHFA spokesmen saw their organization as concerned mainly with faculty governance and had no interest in becoming involved in University management to any greater extent than currently existed through the committee advisory system. In other words, UHFA's goal was the preservation of the status quo.

Throughout May and the summer months, coalition or alliance was toyed with by UHFA in order to obtain sufficient strength so as to insure getting on the election ballot. Beyond the Manoa campus, UHFA had few contacts and the problem was to establish contacts on the eight other campuses and to get faculty on all campuses to sign authorization cards. Much of the summer was spent in drafting by-laws for the new organization. Documentary materials suggest that a great amount of time and effort was spent (and with very little money) in trying to get UHFA established. On its own, UHFA petitioned HPERB as an intervenor in the representation proceedings. A three-way alliance milled about in September 1971 (UHFA, AAUP, and HSUCFA), with UHFA reiterating that "[t]he predominant principle applying to the bargaining situation is faculty self-government."<sup>25</sup>

UHFA had only 175 members; thus it was essentially forced to consider seriously an alliance, basically with AAUP, rather than with HSUCFA (CUPA) which

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<sup>23</sup>There was some doubt as to whether or not the Faculty Senate at Manoa could serve as the exclusive representative for Unit 7 members for collective bargaining purposes as it represented only Manoa campus faculty. Additionally, it should be noted that the Faculty Senate was advisory and supported by funds from the University administration.

<sup>24</sup>UHFA, General Statement of Principles, n.d., ca. May 1971, mimeo.

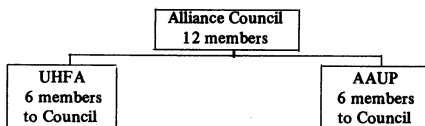
<sup>25</sup>A four-way alliance, one that had been tentatively called UH Collective Bargaining Alliance, was also discussed during July and August, but UHFA declined over fears of labor union intrusion into faculty affairs

it viewed as a "labor union" dominated by the parent NEA. UHFA wanted "faculty self-government with real faculty power. . . . We don't want 'shop stewards' established on campus—we would like grievances and disputes to be settled by *academic persons* meeting in revitalized senates freed from their ties to the administration. . . . [There is a] danger that a union will take over, and sweep away well-tested academic institutions."<sup>26</sup>

With practically no funds to pursue its objectives, UHFA went ahead with the formulation of extensive by-laws to meet incorporation requirements. By late September, the alliance move was solely with AAUP as HSUCFA(CUPA) had been dropped from further alliance consideration. A proposed AAUP-UHFA alliance constitution was drawn up. However, UHFA leaders stated that they were not the leaders in the alliance move, and they had only participated in discussions. An uneasiness with the alliance was indicated in the following statement by the president of UHFA: "We have consistently supported the core of our program ('faculty self government with collective bargaining powers in the hands of the faculty'). We have not been willing to abandon any of our basic doctrines merely to seek some possible winning combination."<sup>27</sup>

On September 30, 1971, at a UHFA meeting, a 20 to 2 vote in favor of an alliance was registered. During October, both UHFA and AAUP polled their memberships on an alliance and both groups received favorable responses; the AAUP-UHFA-Alliance (AUA) came into being before the end of the month and was ratified by the respective memberships. The Alliance "was created October 15, 1971, for the sole purpose of collective bargaining."<sup>28</sup> It is interesting to note that UHFA members voted 97.3 percent for the alliance, while the AAUP membership vote was 63 percent.

The Alliance's stronghold was essentially the Manoa campus; it was throughout its life in a minority position in the community colleges. An Alliance council was established and during the existence of the Alliance, 46 issues of the AUA bulletin were published from October 1971 to February 1973. The structure of the Alliance Council for collective bargaining organization was as follows:



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<sup>26</sup> UHFA News, Sept. 16, 1971.

<sup>27</sup> Report of president of UHFA, Sept. 29, 1971.

<sup>28</sup> This statement was made later by the former president of UHFA, as president of the executive group of the Alliance, May 17, 1972.

The goal of the Alliance was stated as “preserving the identity and autonomy of both member organizations,” with the Alliance assuming “responsibility for all collective negotiations efforts on behalf of both organizations through a co-equal Council. . . .”<sup>29</sup>

The Alliance filed with HPERB letters of intent of pooling AAUP and UHFA authorization cards in order to be placed on the election ballot. As with other groups seeking representation status, the Alliance hoped for an election early in 1972.<sup>30</sup> The Alliance continued to champion the platform of local autonomy, opposition to outsiders, non-trade unionism for faculty, academic freedom, professional faculty rights, and self-government.<sup>31</sup> It used considerable material from the national AAUP which it incorporated in AUA publications; nevertheless, a continuous appeal for money existed, indicating that the Alliance was learning that campaigning costs money, but local faculty were not overly enthusiastic about pouring much money into a collective bargaining campaign.<sup>32</sup>

From time to time, the Alliance reported on such matters as tenure, grievances or other cases that the AAUP had resolved satisfactorily, protests against unilateral administrative action without faculty consultation, and similar concerns. For example, in protest to a unilateral decision by the University president not to grant merit increases or equity adjustments, an Alliance leader wrote, “You make the need for collective bargaining abundantly clear to all of us. The collective bargaining agreement must now become the instrument whereby we make the concept of *shared authority* come alive.”<sup>33</sup>

Because the unit determination question delayed a representation election until the Fall, the Alliance did little campaigning during the summer months, but stepped up its publication and distribution of the AUA leaflet in August prior to the elections on October 18 and 19. Emphasis continued on tenure, local control, the Alliance as an “alternative to conventional unionism,” professionalism, and opposition to traditional labor unions. Its main publication effort was an eight-page pamphlet

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<sup>29</sup>See AUA, n.d., ca. October 1971. It is not clear whether or not the details concerning authority and responsibility, for example, of negotiating and administering a contract had been worked out at that early stage.

<sup>30</sup>All of the groups wanted an early election because the legislature meets from January to April and any contract negotiated requires legislative approval of all “cost” items.

<sup>31</sup>The Alliance, after it was formed, was also embroiled in the unit determination controversy previously discussed. The Alliance blamed HFCT for much of the delay on the unit issue. See AUA, Highlights from the AAUP-UHFA Alliance Platform, n.d., ca. Jan.-Feb. 1972.

<sup>32</sup>Unions, like HFCT and those with NEA backing, usually get considerable financial help from the parent organization in financing a campaign along with borrowing from banks or other financial institutions.

<sup>33</sup>Levi to Cleveland, April 26, 1972.

headed *Alliance!* In which A.A.U.P.-U.H.F.A. *Alliance States Its Position on Collective Bargaining for the Faculty of the University of Hawaii System*. This additional campaign effort paid off: The Alliance won 560 votes, the largest number for any of the five choices (see Table 1 below).

Table 1.  
HPERB Election Results, By Campus, October 18-19, 1972

| Polling Place               | Total Eligible | CUPA    | AFT/HFCT | Alliance | HGEA   | No Rep. | Valid Votes | Challenged Ballots | Total Ballots Cast |
|-----------------------------|----------------|---------|----------|----------|--------|---------|-------------|--------------------|--------------------|
| Manoa                       | 1816           | 224     | 330      | 465      | 55     | 239     | 1313        | 49                 | 1362               |
| Honolulu C.C.               | 111            | 38      | 34       | 10       | 9      | 3       | 94          | 12                 | 106                |
| Kapiolani C.C.              | 104)           | 56      | 37       | 1        | 3      | 7       | 104         | 2                  | 106                |
| Windward C.C.               | 21)            |         |          |          |        |         |             |                    |                    |
| Leeward C.C.                | 150            | 39      | 72       | 11       | 0      | 13      | 135         | 2                  | 137                |
| <i>All Oahu Total</i>       | 2202           | 357     | 473      | 487      | 67     | 262     | 1646        | 65                 | 1711               |
| UH at Hilo                  | 172            | 57      | 31       | 38       | 4      | 5       | 135         | 9                  | 144                |
| Kauai C.C.                  | 48             | 7       | 18       | 0        | 15     | 4       | 44          | 1                  | 45                 |
| Maui C. C.                  | 70             | 27      | 17       | 5        | 5      | 7       | 61          | 4                  | 65                 |
| <i>All Neighbor Islands</i> |                |         |          |          |        |         |             |                    |                    |
| <i>Total</i>                | 290            | 91      | 66       | 43       | 24     | 16      | 240         | 14                 | 254                |
| Mail Ballots                |                | 12      | 13       | 30       | 5      | 9       | 69          | 0                  | 69                 |
| <i>GRAND TOTAL</i>          | 2523           | 460     | 552      | 560      | 96     | 287     | 1955        | 79                 | 2034               |
|                             |                | (23.5%) | (28.2%)  | (28.8%)  | (4.9%) | (14.6%) |             |                    | (80.6%)            |

Source: State of Hawaii, Public Employment Relations Board, Honolulu, Hawaii.

The obvious result of the October elections was no majority, and a runoff election between the Alliance and the HFCT had to be scheduled.

## The Runoff Campaign and Election, November 1972

The runoff election was set for November 20 and 21; thus both the Alliance and the HFCT were forced to step up campaigning in order to win by shifting loser votes to their respective camps.

The Alliance gave special attention to the technical competence, experience and ability of the AAUP to bargain a successful contract, but continued, at the same time, to emphasize *faculty power* as the desideratum rather than *union power* as exemplified by HFCT.

The HFCT increased its efforts to gain adherents but at the same time attempted to secure a merger or a coalition with CUPA. While merger discussions were under way, CUPA urged faculty to vote AFT/HFCT in the November election.<sup>34</sup> This attempt at some sort of joint arrangement between CUPA and HFCT continued after the runoff election and CUPA was in and out of HFCT's early organization for collective bargaining, but it eventually withdrew in January 1973 from any further merger talks.<sup>35</sup>

Just before the runoff, HFCT distributed a number of flyers, citing advantages for voting HFCT. Whatever may have been the cause, the result was an HFCT victory by a vote of 995 to 805. However, the Manoa campus voted in the majority for the Alliance by 130 votes; the HFCT carried the community colleges and Hilo College.

## BARGAINING DIFFICULTIES

After the November runoff election, the HFCT moved to set up a statewide organization patterned around its program of March 1972. During December 1972, various divisions of the University system elected representatives to a statewide

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<sup>34</sup> See CUPA, *Voice of the Faculty*, November 16, 1972.

<sup>35</sup> An AFT-NEA coalition or merger has been milling about at the national level for nearly two years, but fundamental differences, such as joining the AFL-CIO and minority representation have blocked effectuation, although there are those who feel that such a merger is only a matter of time. HFCT has pursued, very consistently, a merger policy with its opposition. Prior to the election of 1972 and up to the present time, 1974, HFCT has sought unity, be it merger, coalition, or common representation at the bargaining table.

collective bargaining committee (CBC), thus creating a membership of about 40 to 45.<sup>36</sup>

The CBC's purpose was to provide the necessary input from all constituents so that the eventual negotiation team would have available what the faculty wanted in a contract. The CBC was organized into six, sometimes seven, major task forces: (1) principles; (2) governance; (3) compensation; (4) grievances; (5) professional conditions; (6) budget, and, for awhile, an *ad hoc* procedures task force, the last having to do with how the CBC would conduct itself.

The grass roots democratic approach was time-consuming, argumentative, and provided little workable results for negotiation. The faculty, through their representatives, wanted every general and individual problem that had ever occurred solved via a collective contract. Further, all existing rights and benefits were to be maintained and new rights achieved, particularly in matters of hiring, governance and layoffs. After more than a month of meetings, the task forces turned over to the negotiating team for HFCT a sizeable amount of material which had to be reorganized, rewritten, reargued in order to get it into a form to present to the employer, the University of Hawaii.

The negotiating team, which varied from five to eight members, met many times in February and March to formulate a contract package. Finally, after considerable debate among team members and with HFCT board members,<sup>37</sup> Victor Van Bourg, the AFT lawyer from San Francisco, was asked to review the package and to come to Hawaii to go over the entire proposal. This resulted in further reorganization and rewriting and debate over content, but essentially ended up in the package presented to the University on April 3, 1973. The proposals in 22 articles attempted to include the substance of what concerned the faculty, along with the usual "boiler-plate" items which are standard in most contracts and over which there is usually little dissention.

## Problems Besetting Union and Management

Before tracing the negotiations, it is essential to look at the environment in which organization for and actual negotiations took place; that is, the period from December 1972 to the summer of 1973. Four crisis issues belabored HFCT, the faculty and the University administration. These were: (1) a running dispute, with some

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<sup>36</sup>The exact membership was never clear, but the effective, working membership was close to 25.

<sup>37</sup>The debate was over whether local faculty should solely determine the contract package or outside expert legal assistance should be employed.

confrontation, between HFCT and the University administration over consultation rights, as provided for in the collective bargaining law, prior to a contract being negotiated; (2) sex discrimination cases under equal employment opportunity; (3) legislative "attack" on the University via tenure rights and budget cuts; and (4) the actual impact of budget cuts on positions, programs, and planned layoffs.

*Consultation.* Very soon after being elected exclusive representative for the faculty, HFCT requested budget information, and, a little later, personnel action information from the University central administration. The union claimed that it could not make intelligent policy decisions and bargaining demands without full knowledge of the University budget nor could it effectively service the members of the bargaining unit without being consulted when personnel decisions were made. The union further contended that the intent of the law was clear: the employer must consult with the union under Sec. 89-9(a) and 89-9(c) which follow.

Sec. 89-9. Scope of negotiations (a) The employer and the exclusive representative shall meet at reasonable times, *including meetings in advance of the employer's budgetmaking process*, . . . (c) . . . The employer shall make every reasonable effort to *consult with the exclusive representative prior to effecting changes in any major policy affecting employee relations* [Emphasis supplied.]

The University, as employer, responded that it would consult with the union via its negotiating team. The peculiar problem here is: did the law contemplate required consultation prior to effecting the first contract? The union said yes, but management implied no. The consultation dispute was further beclouded because of a rising number of grievances which the union was already handling without a contract and a formalized grievance procedure.

*Discrimination.* The sex discrimination cases and unequal employment and treatment of women are another fairly lengthy and involved issue which cannot be explored in this article. While the issue bore on unionization and negotiating problems, it grew out of the special case of Joan Abramson, who had been denied tenure by the University administration.

*Legislature and the University, 1973.* The State of Hawaii, faced by an estimated decline in revenues and rising estimated expenditures, found the University easy prey for criticism and attack. A legislative auditor's report<sup>38</sup> pointed the finger at questionable and inefficient practices at the University. This, in part, provided a basis for a two-pronged attack on the University: (1) the tenure system and (2) the budget allocation. Certain senators openly criticized granting of tenure to faculty and the

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<sup>38</sup>Hawaii, Legislative Auditor, *Audit of the University of Hawaii's Faculty Work Load* (Honolulu: Audit Report No 73-2, February 1973).



Senate succeeded in passing a bill to suspend and review tenure.<sup>39</sup> The outcry was voluble, in the press and otherwise, and the Senate subsequently voted to recommit the bill to committee, although some senators noted that they—faculty and administration—had “got the message.” The tenure issue seemed to have become mixed up with the legislature’s drive to save money.

However, the real legislative impact on the University was via the budget; cuts were made in the governor’s budget, followed by further cuts by the legislature and the Department of Budget and Finance. The overall cut included both a mandated reduction in position counts and a reduction of \$6 million in the University allotment, with most of the cut applicable to the Manoa campus.

*Economic Consequences of Budget Cuts.* Several innovative programs were eliminated; funds for equipment, including library books (later partly restored) were reduced to zero; and the University took the unpopular path of notifying 168 non-tenured faculty that their contracts would not be renewed. The nonrenewal of contracts, announced in July, caused rather notable reaction on the part of faculty because jobs were in jeopardy. Later, apparently following discussions with Governor Burns on the anticipated improvement in the fiscal situation, the University administration recalled the letters of intent to terminate.

These problems and crises took place mainly during the time the HFCT was preparing for bargaining and during the first four months of negotiations from April through July. Whether or not negotiations would have moved more rapidly if there had been less external (to the negotiation process) turbulence is debatable, but the “crises” did consume considerable management and union time.

## THE NEGOTIATION PROCESS

Meetings between the union, University representatives and the State’s chief negotiator<sup>40</sup> were held in January 1973 and ground rules were agreed to and initialed

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<sup>39</sup>It should be noted that tenure for university faculty has been under attack in many parts of the country in recent years. This is undoubtedly a reflection of the growing size and costs of operating universities along with increased numbers of tenured faculty. In face of budget stringencies, tenure has the effect of reducing management flexibility.

<sup>40</sup>Jack Reynolds had been the State’s chief negotiator for all 12 other bargaining units under the law. By the time that the University reached the pre-negotiating stage, Mr. Reynolds had indicated to the Governor his desire to retire. Other than preliminary meetings on ground rules and the first negotiation session, Mr. Reynolds did not participate, as his retirement was accepted and he left for the Mainland.

by the parties. Yet events did not move smoothly. A problem arose over closed negotiations versus open (to faculty members) sessions. An oral agreement had been reached between a union representative and the State negotiator which was added to the ground rules in pencil by the union representative but not initialed by both parties. The penciled addendum read, "If there is to be a news release by either party, prior notice will be given to the other party. *Meetings will be open to all faculty members.* The union reserves the right to report the progress of negotiations in its publication." (Emphasis supplied).<sup>41</sup> The italicized sentence in the addendum caused considerable dispute at early negotiation sessions when a number of non-negotiation team people showed up, particularly representatives of the more militant segments of the faculty. An agreement was finally reached between the parties concerning a "reasonable" number of observers,<sup>42</sup> and the parties also agreed that they did not wish to negotiate through the public media, which is a fairly well established principle of bargaining.

The union got its contract proposals into presentation form by the end of March. Arrangements were made to meet with the University negotiating team on April 3, 1973. This first meeting amounted to no more than presentation of proposals, general comment by the union spokesman, and management's reply that they would have to have some time to look them over.

Except for an informal meeting, labeled a "fishing expedition" by some on the union side, in the office of the Secretary of the University, there was no further meeting of the parties until May 17. It was soon clear that negotiations would go through the summer months and probably into the fall, not only because negotiations were likely to be difficult but also because of the other "crisis" problems, previously noted, in which both parties became enmeshed.

At the May 17 meeting, the University responded to some of the union's demands but there were no counterproposals to most of the union's substantive demands: maintenance of faculty rights, promotion and tenure, dismissal, and academic freedom. Further May meetings involved additional disputes over ground rules and union observers. At the end of May, a new State negotiator (later confirmed as chief negotiator for the classroom teachers and University faculty units) joined the management team. The union changed its chief spokesman twice during the month of June, and finally secured, for the remainder of negotiations, a representative from the national AFT office. These personnel changes tended to slow the negotiation process.<sup>43</sup>

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<sup>41</sup> A later mimeographed copy, dated in ink "1/73" contained the orally agreed-to addendum. Management stated that its copy contained no such agreement.

<sup>42</sup> After the first few sessions, there was rapid decline in observers; negotiations are often slow, boring, time-consuming and non-participant interest tends to wane rapidly.

<sup>43</sup> On April 5, 1973, the union negotiating team of eight members established and signed its own team rules. During the negotiations, there were a number of changes in the team because

By mid-summer, negotiations began to move along with one or more sessions a week, but several hard problem areas began to emerge. Management felt that many union demands infringed upon management rights protected by Sec. 9(d) of the law.<sup>44</sup> The grievance procedure with final and binding arbitration caused management to declare that it could not agree to a grievance procedure until it knew what terms and conditions of employment would be covered under the contract. Prior rights and benefits protection was not acceptable to management because of the lack of definitiveness of what "prior rights and benefits" actually existed. All of this meant that weeks of negotiation were spent on housekeeping items, often labeled "boilerplate," mostly those items such as the recognition and saving clauses which did not fundamentally change the status quo or current faculty-administration relationships but constitute the trappings of a collective bargaining agreement. This period of negotiations was characterized by the parties as one of "feeling each other out" to find strengths and weaknesses and to sense the objectives of each other.

Up through August, all sessions were held on the Manoa campus; then they were moved to the Hawaii Employers Council (HEC)<sup>45</sup> with its facilities for negotiation. All sessions thereafter were held at the HEC. Very little information about what was going on, other than hearsay and rumor, was released to the faculty or to the press, although the union did, from time to time, put out short reports that negotiations were continuing and that "progress" was being made. The union was later to be severely criticized for its failure to communicate with the faculty on the progress of negotiations.<sup>46</sup>

The public press contained very little news concerning negotiations at the University, but gave some attention to the budget, workload, tenure, and layoff crisis stemming from the legislature. One newspaper reporter remarked concerning "no

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members resigned for various reasons and new members were added. Not more than four continued through the entire negotiation period, ending in November 1973.

<sup>44</sup>It should be noted that in a university, with its system of self-governance—faculty committees, faculty senates, and the like—many functions which are recognized as managerial in the private business sector are essentially performed by faculty. This is a kind of delegated (sometimes termed "shared") authority and responsibility from the board of regents down through the university administration to the faculty. Curricula, materials, textbooks, and a number of personnel actions are more or less considered subject to faculty action. Therefore, faculty usually show considerable resentment when these are tampered with.

<sup>45</sup>The State's negotiator is an employee of the Council, a private organization representing nearly 700 business firms in Hawaii and Guam. Some negotiators prefer to meet on "neutral" ground rather than in offices or conference rooms of either party.

<sup>46</sup>However, it must be noted that the charge that the union "failed" to communicate with the faculty and keep the faculty informed of what was going on grew out of strong faculty reaction against the negotiated contract.

progress" in negotiations and said that the "faculty will be asked to strike."<sup>47</sup> It is interesting to note that the report caused immediate denial by both negotiating parties, and no more was heard of striking over contract demands.

During October and November, negotiation sessions were held more frequently and for longer periods as the parties had to grapple with the substantive issues (salary, governance, grievance procedures, and so on) on which the union and the University administration were far apart. There were murmurings that the union was under heavy pressure to secure an agreement prior to the one-year deadline from date of certification as exclusive bargaining agent when an opposition union could petition for a decertification or a new representation election. Possibly in response to this pressure the contract agreement was publicly announced on November 12, 1973. The union executive board was expected to recommend approval of the contract, which it did.

It is interesting to note that the opposition AAUP had issued "warnings" about the HFCT contract and told faculty what they should look for if faculty rights were to be protected.

## FAILURE OF THE FIRST CONTRACT

The contract term was for September 1, 1973, to August 31, 1976, with a reopener in 1975 on salaries only. The contract contained 24 articles, including the several standard items found in many contracts: recognition, definitions, savings clause, union rights, no strike or lockout, and term of agreement. Included in the contract were two provisions which did not apply to academic (teaching) faculty—sick leave and vacation leave—since teaching faculty do not have the usual prescribed hour or time requirements but which did apply to librarians, county agents and similar personnel.<sup>48</sup>

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<sup>47</sup> See *Honolulu Star-Bulletin*, June 28, 1973.

<sup>48</sup> One of the basic problems faced by negotiators in writing a contract covering a statewide higher educational system was to provide for the differences in work requirements for a variety of personnel all under the general term of "faculty" or "employee" in the bargaining unit. Even teaching faculty are not homogeneous when one compares and analyzes differences between the undergraduate-graduate Manoa campus and the seven community colleges. The wide variety of positions in differently structured divisions of the University was the source of considerable heated debate and controversy in the union's collective bargaining committee meetings when the committee tried to formulate generally acceptable demands. Many individual spokesmen argued that their group or interests were being left out.

The provisions which concerned most faculty<sup>49</sup> were in two general areas: (1) that bundle loosely labeled “faculty rights” and/or “self-governance,” viewed by faculty as comparable to “working conditions” in traditional labor parlance, and (2) salaries, along with sabbatical and other leave perquisites. The contract also contained general provisions, such as consultation, management rights, grievance procedure, personnel files, and layoff (reduction in force).

## General Provisions of the Contract

*Consultation* (Art. V). This provision, in contrast to its counterparts found in other contracts covering employees in Units 1-13, required two informal meetings of the chancellors and provosts with the chapter officers of the HFCT “each regular academic semester for the purpose of discussing general matters of mutual concern.”<sup>50</sup> More importantly, in setting forth the employer’s agreement to make every reasonable effort to consult with the union prior to effecting changes in major policies affecting employee relations as required under Section 89-9(c) of the law, the contract provision included the following rather narrow definition:

Major policies affecting employee relations are the written policies, rules and regulations of the Board of Regents concerned principally with the employment of faculty employees, such as the policies on tenure and suspension and dismissal.”

*Management Rights* (Art. VI). This section reflected the concern of the University administration to preserve and even extend its decisionmaking power, backed by almost literally quoting Sec. 9(d) of the law, in order to cover the whole gamut of the non-defined bundle of “terms and conditions of employment.” The article included such open wording as “but not be limited to,” “for proper cause,” and “or other legitimate reasons”—the kind of language which would be difficult to implement and which makes arbitration decisions troublesome. Article VI read as follows:

A. The parties agree that all the rights and responsibilities of the Employer which have not been specifically provided for in this Agreement are retained in the sole discretion of the Employer whose right to determine

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<sup>49</sup>One must be aware of the usual high degree of apathy among university faculty and that concern is often expressed by small groups or by very militant and outspoken individuals. Thus, one must qualify statements regarding faculty reactions or opinions as there may be within a given faculty many opinions, many reactions along with neither of these. In this case the concern was widespread.

<sup>50</sup>The contract covering classroom teachers was the only other agreement containing such a clause. It required the Board of Education to hold meetings “regularly once a quarter on an on-call basis . . . at a mutually determined place and time.” Article IX, C.

and structure the goals, purposes, functions and policies of the University without prior negotiation with the Union and without being subject to the grievance and arbitration procedures of this Agreement shall include but not be limited to the following: (1) the right to classify and reclassify personnel; (2) the right to direct Employees, to determine qualifications, standards for work, and to hire, promote, transfer, assign, retain Employees in positions, award tenured appointments; and to suspend, demote, discharge or take other disciplinary actions against an Employee for proper cause; (3) the right to relieve an Employee from duty because of lack of work or other legitimate reasons; (4) the right to take such action as in its judgment it deems necessary to maintain the efficiency of University operations; (5) the right to determine the means, methods, and personnel by which the University's operations are to be conducted; (6) the right to take such actions as may be necessary to carry out the missions of the University in case of emergencies; and (7) the right to make rules, regulations, and policies not inconsistent with the provisions of this Agreement and to require compliance therewith.

It is interesting to note the contrast of the proposed agreement with other contracts negotiated. First, neither of the contracts covering classroom teachers nor non-faculty personnel at the University of Hawaii contained a management rights section. Second, aside from the contract covering educational officers which contained a similarly detailed provision,<sup>51</sup> all of the sections found in the remaining negotiated contracts, were of a general nature such as to be found in the contract covering blue collar supervisory employees which reads as follows:

The Employer reserves and retains, solely and exclusively, all management rights, powers and authority, including the right of management to manage, control and direct its work forces and operations except those as

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<sup>51</sup>Article V, Rights of the Employer, provides as follows:

"The Board retains sole authority and right to operate the State of Hawaii, Department of Education.

"The rights retained include, but are not limited to, the right to determine the goals, purposes and policies of the State of Hawaii, Board of Education and the Department of Education; the right to determine facilities, methods, means and numbers of personnel required for the implementation of the State's educational programs; the right to hire, direct, promote, transfer, assign and retain employees in positions within the department and to suspend, demote, discharge or take other disciplinary action against employees; the right to relieve employees from duties because of lack of work or for other legitimate reasons; the right to examine, select, certify, recruit, hire, evaluate, train, retain, promote, assign or transfer employees; the right to utilize and direct the work force; the right to classify and reclassify positions, assign or reassign classes to pay scales; the right to discipline or discharge employees; the right to maintain the efficiency of the State operation entrusted to them; and the right to take whatever action may be necessary in situations of emergency, except those as may be modified under this Agreement "

may be modified under this Agreement.” (Article XXXVIII, Agreement between State of Hawaii, City and County of Honolulu, County of Hawaii, County of Maui, County of Kauai, and HGEA, AFSCME Local 152, AFL-CIO, effective Dec. 29, 1972.)

Further, the article stated that “the exercise of the management rights and responsibilities of the Employer set forth hereby shall not be subject to the grievance procedure set forth in this Agreement,”<sup>52</sup> except where a contractual procedural matter is concerned. Such a provision appeared to place considerable limitation on the scope of arbitrability and was doomed to be unacceptable to faculty.

*Grievance Procedure* (Art. IX). While the grievance procedure read similarly to most formal procedures which end in final and binding arbitration, it was limited with respect to scope of arbitrability, especially when read in relation to the management rights and employment status provisions of the contract.

The most critical section of Article IX provided as follows:

The decision of the Arbitrator shall be final and binding upon the Union, its members, the Employees involved in the grievance, and the Employer. There shall be no appeal from the Arbitrator's decision by either party, if such decision is *within the scope of the Arbitrator's authority* as described below:

- (a) The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.
- (b) His power shall be limited to deciding whether the Employer has violated any of the terms of this Agreement, or whether the procedural steps provided by this Agreement have been followed, as the case may be.
- (c) Where the provisions of this Agreement call for the exercise of judgment, *the Arbitrator shall not substitute his judgment for that of the official making such judgment, but shall confine himself to a determination that the procedural steps specified by this Agreement have or have not been followed.* If the Arbitrator determines that such specified procedural steps have not been followed, he shall direct that the matter be reconsidered by the appropriate official in accordance with such specified procedural steps. [Emphasis supplied.]

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<sup>52</sup> Article VI, B, read as follows:

“The exercise of the management rights and responsibilities of the Employer set forth hereby shall not be subject to the grievance procedures set forth in this Agreement, except that where a management right is specifically required to be exercised in accordance with a specified procedure as provided in this Agreement, grievances alleging a failure to comply with such procedure will be subject to the grievance provisions of this Agreement. In any event that the Arbitrator finds failure on the part of the Employer to comply with the specified procedure, the Arbitrator's award shall be limited to requiring compliance with the specified procedure.”

This provision is to be contrasted with that included in the 11 other contracts covering employees other than non-teaching personnel of the University system<sup>53</sup> which read generally as follows:

The decision of the Arbitrator shall be final and binding upon the Union, its members, the Employees involved in the grievance, and the Employer. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority as described below:

1. The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.
2. His power shall be limited to deciding whether the Employer has violated any of the terms of this Agreement.
3. In any case of suspension or discharge where the Arbitrator finds such suspension or discharge was improper, the Arbitrator may set aside, reduce or modify the action taken by the Employer. If the penalty is set aside, reduced or otherwise changed, the Arbitrator may award back pay to compensate the Employee, wholly or partially, for any wages lost because of the penalty." (Article X, K, Agreement between HGEA, AFSCME Local 152, AFL-CIO, and State of Hawaii, City and County of Honolulu, County of Hawaii, County of Maui, and County of Kauai, effective Jan. 1, 1973, covering white collar non-supervisory employees.)

*Personnel Files* (Art. XIII). This was a general provision with respect to an "official personnel file," and the right to examine it by an employee, but the article contained nothing about controls on what goes into the file or what may be eliminated from the file.

*Reduction in Force* (Art. XXI). This was a short, two sentence paragraph providing for preferential rehiring (limited to one year) of tenured faculty who are laid off.

## **Faculty Rights: Governance**

*Employment Status* (Art. VIII). This article covered appointment, renewal and tenure, promotion, discipline and discharge, and it was a complex provision in the area of "job security." Because contracts tend to imply "fixed" conditions as opposed to more flexible arrangements ex-contracts, non-tenured and young faculty looked at these job rights with singular criticism. Among other things, this article included a new form of non-tenure, that is, a provision for a five-year "extended

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<sup>53</sup>The provision incorporated in the Unit 8 contract covering non-teaching personnel of the University system is unique. Final and binding decisions are rendered by a seven-member Contract Review Committee, composed of three members selected by the employer, three members selected by the union, and one member of the Board of Regents who serves as Chairman of the Committee. Article XVI, C.



appointment"; a language change from "permanent" appointment to "indefinite" appointment for tenured faculty; limitation of tenured appointment to a "school, college or other administrative unit," rather than on a university-wide basis; and personnel committees appointed by chairmen or unit heads rather than directly elected by faculty. Further, the language of the article appeared to mean a reduction of peer review and faculty input for tenure and promotion considerations, and gave discretionary power to administrators in discipline and discharge cases.

*Academic Freedom* (Art. VII). This provision contained generalized language and admonitions which some faculty members found exceedingly offensive. For example, some faculty were very disturbed by such statements as "he should be careful not to introduce into his teaching controversial matters which has no relation to his subject," "his special position in the community imposes special obligations," therefore, he should be very careful when speaking or writing outside of "his own field of study"; and "conduct himself with appropriate decorum."<sup>54</sup> Significantly, what had been deleted was mention of research and publication, which most faculty believe to be an essential right to be engaged in without interference.

## Salaries and Leaves

The previous general salary increase was effective July 1, 1970, approved in 1969 and based on 1968 data. Consequently, University faculty were concerned about a salary increase because of inflation, the very high cost of living in Hawaii, and because all other public employees had negotiated salary or wage increases. Apparently, the negotiators agreed on a total dollar amount which was then distributed equally in dollar amounts among several salary schedules to apply over four periods of time: September 1, 1973 to February 28, 1974; March 1, 1974 to August 31, 1974; September 1, 1974 to February 28, 1975; and March 1, 1975 to August 31, 1975.<sup>55</sup> Annual 4 percent increments were eliminated (except on September 1, 1974), and for nine-month academic personnel, \$288 was added to each salary figure in the first period, which, in percentage terms was an increase of 1.1 percent at top of scale for a full professor and 3.8 percent increase for an instructor at bottom of scale. The percentage increases for others varied between these points, but were all 3.0 percent or less.<sup>56</sup> Eleven-month academic personnel received \$336 across the

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<sup>54</sup>Oddly enough, these rules had been contained in the Faculty Handbook since 1964.

<sup>55</sup>The agreement provided for a reopening solely on the provisions of salaries with respect to the period September 1, 1975 to August 31, 1976.

<sup>56</sup>In terms of actual earnings for the period July 1, 1973 - June 30, 1974, the increases for 9-month instructional personnel (Step 1) amounted to 4.6% for instructors, 3.6% for assistant professors, 2.8% for associate professors, and 2.1 for professors. In the second period, July 1,

board, on a salary scale roughly a little less than 2/9 more than the nine-month scale. The total wage package increase varied from 12.4 percent (Professor, Step 1) to 22.4 percent (Instructor, Step 1) depending on rank for the contract period September 1, 1973 to August 31, 1975.

Sabbatical and study leaves, Article XIV, strengthened management rights in specifying conditions for leave and established a contractual relationship<sup>57</sup> between the faculty member and the employer (BOR).

## What Was Not in the Contract

We have just pointed out some of the basic provisions of the contract, but further emphasis is needed on what the contract did not contain, at least as interpreted from original demands by the union and later faculty reactions.

1. A prior rights and benefits provision, demanded by the union was omitted. This omission raised fears that all rights, at least those contained in several versions of the Faculty Handbook,<sup>58</sup> which had developed over the years had been lost

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1974 - June 30, 1975, the increase would have amounted to 12.1 percent for instructors, 10.4 percent for assistant professors, 8.7 percent for associate professors, and 7.5 percent for professors. The total increase for the period July 1, 1973 to June 30, 1975 amounted to 17.3 percent for instructors, 14.4 percent for assistant professors, 11.7 percent for associate professors, and 9.7 percent for professors. Community college faculty employed on a nine-month basis were granted increases of 17.3 percent to 13.6 percent (depending on salary range) over the two-year period.

<sup>57</sup> Article XIV, H, provided:

"As a condition of such leave [sabbatical leave], an Employee *shall enter into a contract* with the Employer, a copy which shall be furnished the Employee, and which shall contain the terms and plans of the leave and shall provide for the following: 1. The Employee shall agree to return to work immediately upon termination of such leave. If the Employee fails to report for work upon termination of such leave, he shall be considered to have resigned and shall refund all monies received while on such leave. 2. Upon return from such leave, the Employee shall agree to work for a period of one (1) year. If the Employee fails to do so, he shall refund all monies received from the Employer while on such leave." [Emphasis supplied.] It should be noted that this provision also had been incorporated into the agreements covering educational officers; non-teaching personnel of the University; registered professional nurses; and professional and scientific employees, other than nurses. The agreement covering classroom teachers, however, was silent on this issue.

<sup>58</sup> It is not at all clear which of the two editions of the Faculty Handbook—the 1969 or 1973 "interim revision"—is accepted by both the administration and the faculty as the official document. The 1973 interim revision prepared by the University Secretary attempted to update

or "sold out" to management.

2. The union had demanded that a departmental peer judgment on tenure or promotion could not be overturned by higher authority without substantial evidence. This was omitted.

3. Faculty input at various levels of personnel decisionmaking was eliminated or substantially weakened. A department head (a member of the bargaining unit) was permitted to appoint his own tenure and promotion committees from a panel of tenured faculty elected by the members of the department, division, or unit, instead of having such committees elected by the faculty of the department, without the intervention of the department chairman. Furthermore, the contract made no mention of how the department chairman was to be appointed.

4. No new fringe benefits were negotiated and written into the contract. However, the State's position was against negotiating any fringe benefits of a general nature such as health benefits on a unit by unit basis and has taken the position that such benefits should be negotiated across-the-board for all public employees. Even the controversial issue of parking was not covered by the contract, since Article XII, E, on parking added nothing over what now exists.

5. A number of critics of the contract complained that the contract failed to define significant terms, such as "proper cause" and "other institutional considerations" (in the case of granting or denying tenure), and "other legitimate reasons" (in the case of relieving an employee from duty).

## Reaction and Rejection

Given this brief overview of the contract, it is not difficult to imagine the faculty reaction. HFCT scheduled a "contract meeting" of the Manoa faculty at the Kennedy Theater on November 14, 1973, to recommend approval of the contract to the faculty. With some 500 faculty in attendance, the meeting was explosive and vehement. Other than union officers and negotiators, no one spoke in favor of the contract. Even some ardent members of the union condemned the contract and its provisions. Remarks, such as "tenure destroyed;" "management rights, no faculty rights;" salary increase is "a disgrace and insult;" "worse than an industrial contract;" "worse contract I've ever seen," and so on were hurled at the union officers and

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the 1969 revision and reconcile differences with the 1964 edition and incorporated all regental policies adopted since the 1969 revision through December 1972.

representatives. A telegram from the general secretary of AAUP was read condemning the contract and urging rejection. HFCT handouts were headed: "This Is What We Won," and "You will have faculty rights under the contract. You do not have any now." An AAUP leaflet read, "This Is What We Will Lose If the Contract Is Ratified. Take Warning This Is a Dangerous Contract." CUPA condemned the wage package in a leaflet, and stated, "The Faculty of the University of Hawaii system self-destructs 60 seconds after the HFCT-University of Hawaii collective bargaining contract is ratified." This barrage of criticism indicated that the faculty was not likely to ratify a contract; the salary increase was far too little to offset the perceived loss of faculty rights—at least that seemed to be what many were saying. An AAUP flyer urged faculty to vote NO on ratification.<sup>59</sup>

HFCT's annual convention held on November 17, 1973, turned from a business meeting to discuss budget matters, constitutional changes and committee reports into a bitter and acrimonious debate over the proposed contract, and repeated calls were made for the resignations of the collective bargaining team, the union's officers and executive board. The delegates, from all nine campuses of the University, voted for rejection of the contract. A week later, the ratification vote was announced: about 62 percent of the eligible unit members voted and rejected the contract 1,301 to 279. This is apparently one of two cases of a contract rejection in higher education in the United States.<sup>60</sup>

The union convention recessed twice and continued full-day meetings on November 25 and December 9, soon followed by the resignations of the union negotiators, and the election of a new contract team, which included a member each from AAUP and CUPA; the resignations of the officers of the union and election of four new officers. The union position, as represented by the convention, was to get back

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<sup>59</sup>Further strong denunciations of the contract were as follows: CUPA (NEA)—"appalling," "academic rights abrogated," "regressive." AAUP—"is the worst document it has seen," no "past practice" protection, "tenure can be completely eliminated from the University system," "contract lacking in the most elementary due process protection." NEA President—"The proposed contract can only be described as an obliteration of faculty rights and a major travesty in the field of labor relations . . . a blatant and repugnant attempt to eliminate any faculty role in academic governance . . . a mockery of collective bargaining process." In defense, the union said that the contract was "misunderstood," it gave rights that the faculty never had; it was a compromise; the negotiations were influenced by the legislature's "attacks" on the University in the matters of tenure and budget; and the negotiators operated on the assumption that faculty would not strike for demands.

<sup>60</sup>In April 1971 faculty at Central Michigan University failed to ratify their second agreement negotiated between the CMU Faculty Association and the university administration. An alternative agreement was developed and in less than a month, it was ratified by the faculty. See Neil S. Bucklew, "State College: Central Michigan," in E. D. Duryea, Robert S. Fisk, and Associates, *Faculty Unions and Collective Bargaining* (London: Jossey-Bass, Ltd., 1973), pp. 165, 172.

to the bargaining table and get a suitable contract by the time the legislature convened in January 1974.

However, some viewed the union in total disarray, and hope for a faculty contract declined. Further, no one seemed to know if the University administration wished to or would resume bargaining. The union was subjected to severe criticism and by December was facing a challenge from a new rival: The University of Hawaii Professional Assembly (UHPA).

## Restructuring for Representation

Very shortly after the HFCT contract was voted down in November by the University faculty, AAUP<sup>61</sup> and CUPA entered into talks for a coalition to broaden their power base, as neither group, notwithstanding statements to the contrary, had sufficient following to challenge HFCT successfully. The coalition proposal was announced on December 1, 1973, and by the middle of the month, members of both groups had approved the coalition, a constitution was agreed to, and UHPA was officially born.

UHPA was established solely for collective bargaining purposes. As the constitution stated, AAUP and CUPA-NEA "reserve to themselves all other functions of a professional nature not specifically ceded to UHPA."<sup>62</sup>

UHPA sent out a memo to all faculty requesting authorization signatures so that it could petition HPERB for a decertification and/or a new representation election. Before the end of December, UHPA claimed it had more than the legally required 30 percent showing of interest; therefore, on January 4, 1974, the Assembly filed petitions with the Board.

In the meantime, HFCT's "new" negotiating team and new officers were active on two fronts: (1) rewriting contract proposals which they hoped would meet faculty criticisms, and (2) seeking to start bargaining again with the University administration. The HFCT "Counterproposals" (51 articles), as they were called, were distributed to all faculty members in early January. Attached to the Proposals was a survey questionnaire requesting faculty to: (1) note counter-proposals "you

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<sup>61</sup>The West Coast director of AAUP, Richard Peairs, came to Hawaii on November 15 to express opposition to the contract and to revitalize the local AAUP and assist in strategy to challenge HFCT and win faculty representation.

<sup>62</sup>Constitution and By-Laws of the University of Hawaii Professional Assembly, Article III, n.d.

consider *most important*," (2) counterproposals "you consider *least important*," and (3) "comments." In approximately 160 replies the faculty listed as *most important* the following: prior rights, grievance procedure, tenure, promotion, layoffs, wages, sabbatical leaves, and workload. Among the *least important* listed were: jury duty, funeral leave, tuition exemption, parking, and sick and vacation leave, the latter which applied only to certain non-"academic" employees. In their comments some faculty rated the proposals as an improvement, and in many cases, they submitted a wide variety of ideas and suggestions on what provisions the contract ought to contain or where modifications should be made. To the union negotiators, the survey results indicated that there was enough faculty backing to try to pressure the State and the University administration to return to the bargaining table.

In January, it was fairly widely believed that the union thought it had secured the backing of other labor unions and the Acting Governor in getting the University to start bargaining again, but, as nothing came of this, one can assume that such outside parties decided against any "interference" with collective bargaining at the University.

*Bargaining Stymied.* A series of involved events, beginning around the middle of December 1973, effectively blocked a return to bargaining.

UHPA was moving rapidly to secure authorizations so that it could petition HPERB for a decertification and/or a new election.

In January, after UHPA had filed for representation, the University did say that there was a matter of the legality, perhaps a prohibited practice, of bargaining with a union when there was a question concerning whether or not the union represented a majority of the faculty. Consequently, the University asked HPERB for a declaratory ruling on whether or not it must bargain with HFCT. On February 12, after the parties had agreed on January 21 to a consent election for March 13 and 15, the Board ruled that it would be a prohibited practice for the University to bargain pending a Board ordered election.<sup>63</sup> This ended HFCT's hope of forcing negotiations.

From time to time, HFCT proposed a joint approach with UHPA in order to get bargaining under way and to establish "unity." However, even at the time, given the leadership and views of the two contending groups, an alliance seemed very unlikely.

UHPA, as part of its election campaign, distributed a series of newsletters, which contained a mixture of attacks on and criticisms of HFCT's views and past

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<sup>63</sup> HPERB, DR-07-7, February 12, 1974.

performance along with UHPA's AAUP-NEA principles approach to collective bargaining and faculty interests. UHPA also attacked HFCT's stopgap attempt to get a faculty salary increase by special legislation<sup>64</sup> before the legislature adjourned rather than by the negotiation-contract procedure as intended by the law. UHPA clearly expected to win the March election, then negotiate a short contract to (1) get a salary increase in time for legislative approval, and (2) "safeguard faculty rights." On March 1, UHPA distributed a four-page statement of goals and objectives, essentially a general outline of its collective bargaining platform. The general theme of the UHPA position included "professionalism," shared authority, and local autonomy with considerable emphasis on established AAUP principles—goals and objectives considerably closer to traditional university faculty-administration relationships than those of the HFCT.

During March, UHPA noted that it would take a "dual track" approach to a contract, which would view faculty as having two roles: (1) academic professionals and (2) state employees. As state employees, UHPA would negotiate a short form economic (salary) contract; then spend more time on a full contract to cover all other items, including a whole bundle of professional rights. UHPA also proposed a dual track approach for grievance procedures: one for "faculty appeals," presumably having to do with professional matters, and one for "employee grievances."<sup>65</sup> No explanation was given with respect to administration of such a system and cases which could fall into both categories.

UHPA campaigned more strenuously than did HFCT; although HFCT distributed material on what it was doing legislatively and how it continued to protect faculty rights, it generally assumed a low-key approach to the coming election.

The election of March 13 and 15, counted on March 25, produced no majority, as shown in Table 2.

It is interesting to note that the "no representation" vote remained practically the same as it was in the original election of October 1972 when "no representation" gained 287 votes. Given what had happened since the union's certification, especially the failure to secure an acceptable contract, one might have expected a significant increase in the no-representation vote. Furthermore, the

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<sup>64</sup>H.B. 2486-74, introduced by Representative Akira Sakima, was to provide for a salary increase for University of Hawaii system faculty; HFCT was asking that the figure of 7.5 percent be inserted in the pay raise bill. According to HFCT, the UHPA petition to gain representation rights had stalled negotiations so that there would be insufficient time to gain legislative approval on a negotiated salary increase; HFCT's plan was to negotiate the non-cost items to protect faculty at a later time.

<sup>65</sup>UHPA, Newsletter No. 7, March 5, 1974.

Table 2.  
HPERB Election Results, by Campus, March 13 and 15, 1974

| Polling Place                     | Total Eligible | UHPA           | HFCT           | No Rep.        | Valid Votes     | Challenged Ballots | Void Ballots | Total Ballots Cast |
|-----------------------------------|----------------|----------------|----------------|----------------|-----------------|--------------------|--------------|--------------------|
| Manoa                             | 1487           | 541            | 248            | 186            | 975             | 8                  | 1            | 984                |
| Honolulu C.C.                     | 128            | 27             | 68             | 10             | 105             | 0                  | 0            | 105                |
| Kapiolani C.C.                    | 102            | 13             | 57             | 9              | 79              | 0                  | 0            | 79                 |
| Leeward C. C.                     | 143            | 29             | 56             | 14             | 99              | 1                  | 0            | 100                |
| <i>All Oahu Total</i>             | 1860           | 610            | 429            | 219            | 1258            | 9                  | 1            | 1268               |
| UH at Hilo                        | 179            | 45             | 72             | 18             | 135             | 0                  | 0            | 135                |
| Kauai C.C.                        | 41             | 7              | 28             | 2              | 37              | 2                  | 0            | 39                 |
| Maui C. C.                        | 67             | 35             | 18             | 3              | 56              | 0                  | 0            | 56                 |
| <i>All Neighbor Islands Total</i> | 287            | 87             | 118            | 23             | 228             | 2                  | 0            | 230                |
| Mail Ballots                      | 320            | 110            | 73             | 47             | 230             | 0                  | 0            | 230                |
| <i>GRAND TOTAL</i>                | 2467           | 807<br>(47.0%) | 620<br>(36.0%) | 289<br>(17.0%) | 1716<br>(70.0%) | 11                 | 1            | 1728<br>(70.0%)    |

Source: State of Hawaii, Public Employment Relations Board, Honolulu, Hawaii.



percentage voting dropped from approximately 80 percent to 69.5 percent; the absolute number voting dropped from 2,034 to 1,716 or by 318, not all of which can be accounted for by the decline in eligible employees of 94 (from 2,561 in October 1972 to 2,467 in March 1974). HPERB set a runoff election for April 24 and 26 with votes to be counted on May 9.

Early in April, the relationships of UHPA and HFCT became more contentious.<sup>66</sup> Almost simultaneously with the failure to get bargaining started again, the HFCT, in January, had drawn up and notarized prohibited practice charges against the University and UHPA. These charges were not filed with HPERB until March 21 after the elections of March 13 and 14 were held.

On April 1, HFCT and Edward Beechert, president of HFCT, filed objections to the conduct affecting the results of the election. The union's position was that management had interfered with the rights of employees to choose a bargaining agent. HFCT charged that UHPA representatives met with University administrators and agreement or understandings were reached then or later that: (1) the University would prefer UHPA over HFCT; (2) the University (management team) would be "easier" with UHPA than it had been with HFCT; (3) the State's chief negotiator would be removed from the management team if UHPA became the faculty agent; and (4) the University wished UHPA's assistance and support in pursuing actions which would avoid having to bargain with HFCT. There was a further later charge that some University official had said that the University would never negotiate a contract with HFCT.<sup>67</sup>

On April 19 HFCT claimed that neither the University nor UHPA had replied to the prohibited practice charges within the time rules set by HPERB. Thus, HFCT filed a motion with HPERB that the parties had admitted guilt and asked the Board to rule on the matter. Because of these conditions, on April 23, one day before the Manoa runoff election, HPERB cancelled the runoff elections and scheduled a hearing on April 25. HFCT announced that the Board explained that if the charges proved true and HFCT won the election, then taxpayers' money would have been wasted. HPERB ruled, on April 25, after a heated hearing, that the failure to respond to charges was not a necessary admission of guilt, since its rules were flexible and do not require mandatory finding of guilt. The Board suggested an early date for a

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<sup>66</sup>UHPA appointed a chief negotiator, and shortly thereafter, it was announced that the chief negotiator for HFCT was leaving the University for an overseas job. In May, UHPA's counsel and chief negotiator resigned, and UHPA obtained another legal counsel.

<sup>67</sup>A formal hearing on the prohibited practices was held on June 19 and 20, 1974; the Board's decision was released on August 12, 1974. The Board found that there were no violations of the law and dismissed all of the charges alleged, including the objections filed with respect to conduct affecting the results of the election.

runoff, which was apparently acceptable to UHPA, but HFCT protested and argued that the prohibited practice charges must be settled prior to an election, since the rulings on the charges could affect the outcome of the election.

UHPA then accused HFCT of blocking the election.<sup>68</sup> UHPA pushed for a hearing on HFCT's service fees, claiming that since "no service" had been rendered, the fees should cease, retroactive to January 1, 1974. The Board then set May 23 for a hearing on the prohibited practice charges, including the service fee question.

All of the above left the faculty hanging helplessly while UHPA and HFCT "fought it out." The legislature had adjourned on schedule on April 1, the special faculty salary increase bill was killed, and the University faculty was left as the only bargaining unit without a contract, and with a question of who was to represent them for collective bargaining, at least until October 1974 when the run-off election could be held.<sup>69</sup>

## SUMMARY AND CONCLUSIONS

While the experience of collective bargaining at the University of Hawaii may be unique because of the statutory framework, among other reasons, under which it developed, it does point up several characteristics of and problems peculiar to collective bargaining in higher education in general.

### The Internal Environment

*Nature of University Governance.* The concept of "shared authority" in university governance is a subject of less interest to laymen than to educators. While some authorities tend to characterize it as a particular form of governance it is probably more accurate to describe it, as stated by the American Association of

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<sup>68</sup>In a statement issued May 15, 1974, by the president of UHPA, the HFCT position was challenged by citing NLRB precedent and cases. UHPA was essentially charging HFCT with purposive delaying tactics.

<sup>69</sup>In May 1974, another short crisis struck the University; a conflict developed between the University administration and the BOR over the question of respective rights and powers involving the employment contract of the head football coach. The Board acted unilaterally without following proper procedure and against recommendations from University administrators. In this case, both unions backed the University administration.

Higher Education, as the "middle zone of an authority continuum ranging from administrative dominance at the one end of the continuum to faculty dominance at the other end"<sup>70</sup> Within the continuum is to be found a range of options by which shared authority may be achieved between various college and university constituencies, including full consultation and cooperation among all constituents—faculty, administrators, students and others; and separation of spheres of authority according to concern, competence, and responsibility of respective constituencies.<sup>71</sup>

Thus, shared authority in its traditional sense involves a wide range of issues including educational and administrative policies, personnel administration, public issues, and economic matters concerning individuals, special groups, or the university as a whole—matters not normally encompassed within the employer-employee relationship.

Implicit in the concept of shared authority are at least two points: (1) the top-level managerial echelon, particularly the president and the governing board, are entrusted with the power and authority to set policy to achieve institutional goals; and (2) the autonomy and self-discipline of the faculty are protected as they are considered vital to their effectiveness as scholars. Thus, there is required a high degree of interdependence and interaction between the governing board, the administration, and the faculty, with much of the work being done through a network of committees composed of administrators, faculty and students.

*Nature of the Professoriate.* It has already been stated that the system of governance in a university, "while it recognizes the collegial principle, is not a true system of collegiality, for, although the recommendations of faculty committees are generally accorded great weight, the ultimate authority does not rest with the faculty, the peer group, but with the board of trustees. . . ."<sup>72</sup> However, faculty frequently perform a number of functions and make decisions which are exclusive to management in the private industrial sector, although in this work they do not advocate management's interests. Furthermore, the job requirements of positions held by faculty are often loosely defined, and faculty members have considerable

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<sup>70</sup> AAHE Task Force on Faculty Representation and Academic Negotiations, *Faculty Participation in Academic Governance* (Wash., D.C.: American Association of Higher Education, 1967), pp. 15-16.

<sup>71</sup> See G. Gregory Lozier and Kenneth P. Mortimer, *Anatomy of a Collective Bargaining Election in Pennsylvania's State Owned Colleges* (University Park, Pa.: Center for the Study of Higher Education, The Pennsylvania State University, February 1974), p. 61.

<sup>72</sup> See dissenting opinion of Joseph Crowley, *In the Matter of Board of Higher Education of the City of New York and Professional Staff Congress/CUNY*, NYPERB, Case No. U-904, April 29, 1974.

control over how they use their time and accomplish their teaching and research assignments. The pronounced sense of individuality of university faculty, the ingrained status systems, and the job hierarchy do not lend themselves to faculty unity even on academic issues; on unionization matters and purposes unity would be less likely. Perhaps in the majority, faculty tend to distrust trade or labor unions and particularly leadership of such organizations. Thus, they may look upon collective bargaining more in a negative sense than as a positive benefit. In fact, the University of Hawaii faculty, prior to the elections of October 1972, favored the "no representation" choice, but for strategic reasons indicated they would vote representation.

There are other difficulties which stem from the university's organizational structure. Many "managerial" faculty such as department and division chairmen may be included in the bargaining unit with the rest of the teaching faculty. Thus, a large number of grievances or complaints are lodged not against an employer representative but lodged by an employee against another employee. Evaluations for hiring, promotion, tenure, or dismissal purposes are also made by one's peers—other employees. Furthermore, many higher level administrators such as chancellors and vice presidents for academic affairs are often drawn from faculty ranks and continue teaching, although on a reduced level. Finally, the rules, regulations and practices relating to faculty and administration may have grown "like topsy" through handbooks, memoranda, and other extra-legal procedures so that the parties saddled with the prospect of a legally binding collectively negotiated agreement may not clearly know or are reluctant to set forth what the existing benefits and rights are.

## The External Environment

*State/Regents/University Administration Relationship.* Although the Hawaii State Constitution vests the Board of Regents with the power, in accordance with the law, to formulate policy, and to exercise control over the University through the president of the University, who is appointed by the board, under Act 171, for purposes of negotiations, the public employer is represented, in the case of units 7 and 8, by the governor or his designated representatives of not less than three together with not more than two members of the Board of Regents. Given such a composition of the employer negotiating team, the power balance may well have shifted outside the control of the University administration. This tended to emphasize the levelling influence of the law which, among other changes, equated the status of University faculty with other government employees outside the University. It is not shocking to learn that outside academia, faculty interests, the uniqueness of the academic enterprise, and the system of governance are little understood, and thus the universal application of the public employment collective bargaining law is therefore not to be unexpected. However, among other reasons, in the face of the rapid representation of other public employees in the state, for the faculty the no-representation

choice was effectively eliminated.

How rival groups—the university administration, the governor, the legislature, and the bargaining agent—act toward each other can help to determine the success or failure of collective bargaining. This is demonstrated in the University of Hawaii situation, even though one can speculate what would have happened if this or that group or party did not make this or that decision. On the issue of management rights, regardless of whether limits may be placed on the scope of negotiations in the law, in practical terms, management would probably give the language covering the scope of negotiations a narrow construction and resist negotiating over non-economic issues and limit bargaining to the confines of salaries, suitable working conditions, and fringe benefits. The grievance procedure incorporated into the proposed contract reflects management's view that every right it assumed it had, everything encompassed in its definition of collegiality, much of what is contained in faculty handbooks, and a vast array of operational rules and regulations should not be subject to a formal grievance procedure ending in final and binding arbitration. It was for these reasons, in part, that management strongly opposed a prior rights and benefits clause in the contract. Such a clause, in management's view, would open up an unknown mass of grievable items, since management claimed it did not know what the prior rights and benefits were. However, it is a basic rule of union negotiations not to give up an existing benefit unless a greater benefit can be gained, possibly through a trade-off, and faculty at the University of Hawaii had apparently convinced themselves that they had these rights even though little hard evidence existed.

The above types of problems and characteristics suggest why collective bargaining makes moderately slow headway in the four-year collegiate institutions.<sup>73</sup>

Because of the experience at the University of Hawaii, some have stated that collective bargaining at the University is a "mess." The President of the University reported to the Board of Regents on topics of interest at the Western College Association as follows:

The second major topic was *collective bargaining*, and here the University of Hawaii story was the centerpiece. A long front-page article in the *Chronicle of Higher Education* [March 11, 1974] had described the U.H. mess and the recent election campaign, so everyone wanted to know how it was all going to come out. The votes had not then been counted, so I could not satisfy my colleagues' curiosity. I did, however, narrate the story of the past two years—the passage of the collective bargaining act, the free

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<sup>73</sup>The fact that the university operates on a nine-month academic year (September to May) with a lull during the summer months is also seen to compress the year and cause slow progress.

and open decision of the faculty to opt for bargaining under the law, the faculty's failure to read the law (and especially its tough management rights clause), the difficulty of fitting the many-sided, consultative, implicit, horizontal governance of the major University into the two-sided, adversary, legalistic, vertical, industrial-union model required by the law. "In ancient mythology," I said, "the giant Procrustes had to force his victims to lie down in his bed. In Hawaii, the faculty has voluntarily leaped into a Procrustean bed, without first making sure that it would fit." One proposition seemed to be agreed by all who spoke: Hawaii has made more of a mess of collective bargaining than any other state.<sup>74</sup>

## Postscript

Whether or not one refers to the two-year or more collective bargaining situation at the University as a "mess," it is the product of "forced change," brought about by the enactment of the public employment bargaining law and the expectation of the State legislature that all employees would take advantage of the law if they wished economic gain. However, no matter how the law is interpreted, there is nothing in that statute which compels the parties to act as if they were an industrial organization nor does it compel the parties to negotiate an industrial model contract. A contract could well be written to suit the particular nature of the university and be wholly in compliance with the law.

Whether the representative organization can be successful in terms of achieving economic goals as well as non-economic ones in the next set of negotiations or whether it will be forced to focus primarily on achievement of the former in the early stages of the collective bargaining relationship and leave the matter for a later period remains to be seen. For both union and management the focus hopefully will turn in time to determining not who has which rights but what the consequences of bilaterally determined changes are likely to be and whether the changes will make the enterprise more efficient and result in improvement of the quality of the service which the enterprise provides the public.

At best, collective bargaining is currently at a low ebb at the University, and given the economic picture of inflation and high cost of living in Hawaii, the faculty so far have suffered singular economic defeat.

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<sup>74</sup>Memorandum from Harlan Cleveland to the Board of Regents, April 2, 1974.

## PUBLICATIONS

The Industrial Relations Center of the University of Hawaii publishes a monthly *Newsletter*, a bi-monthly *Selected Acquisitions List*, bibliographies and occasional research and source materials. Persons interested in receiving any of these materials may write to the Industrial Relations Center and be placed on the mailing list.\*

**Newsletter:** Issued since August 22, 1949.

**Selected Acquisitions List:** Issued since October, 1959.

**Selected Bibliographies:** Issued since September, 1948.

### Occasional Publications:

43. *Disputes Settlement in New Zealand*, Reprint No. 3, by Paul F. Brissenden (1964)
62. *Manpower Utilization in Government Agencies*, by Harold S. Roberts (ed.) (1967)
64. *Labor Arbitration Awards in Hawaii, 1944-1962*, by Joyce M. Najita (1967)
66. *Indian Trade Unions*, by A. V. Raman Rao (1967), \$1.00
76. *The Canadian Task Force on Labour Relations*, by George Saunders and Harold S. Roberts (1969)
78. *Free or Compulsory Collective Bargaining—New Zealand at the Crossroads*, by Noel S. Woods (1971)
79. *Collective Bargaining with Government Employees—The New Zealand Experience*, by Noel S. Woods (1971)
82. *Case Studies in Labor Ideology*, Monograph No. 3, by David J. Saposs (1971), \$4.00
83. *Labor in Hawaii, A Bibliography*, by Edwin C. Pendleton (1971)
84. *Hawaii Act 171: Framework for Change*, by Edwin C. Pendleton and Joyce M. Najita (1972)
88. *Public Sector Collective Bargaining and the Administrative Process*, by Joel Seidman (1972), 50 cents
89. *Educators Unionize: The Hawaii Scene*, by Edwin C. Pendleton (1972), 50 cents
90. *Higher Education Contract Clause Finder* (1973), \$30.00
91. *Duration of Collective Bargaining Agreements in Hawaii, 1973*, by Helene S. Tanimoto (1973)
92. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Scope of Negotiations*, by Joyce M. Najita (1973), \$1.00
93. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Union Security*, by Joyce M. Najita and Dennis T. Ogawa (1973), \$1.00
94. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Unit Determination*, by Dennis T. Ogawa and Joyce M. Najita (1973), \$1.00
95. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolution Procedures*, by Helene S. Tanimoto (1973), \$2.00
96. *Higher Education Contract Clause Finder*, Second Issue (1974), \$25.00
97. *Duration of Collective Bargaining Agreements in Hawaii, 1974*, by Helene S. Tanimoto (1974)
98. *Labor Relations Under Stress: Hawaii Teachers, 1972-73*, by Edwin C. Pendleton (1974)
99. *Free Speech for the Union Member: Private vs. Public Sector*, by John B. Ferguson, Reprint No. 8 (1974)

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\*Except for special publications for which there is a charge. Prepayment is requested for orders under \$20.00. Checks should be made payable to the University of Hawaii and mailed to the Industrial Relations Center, University of Hawaii, 2404 Maile Way, Honolulu, Hawaii 96822.

100. *The Mandatory Agency Shop in Hawaii's Public Sector*, by Joyce M. Najita, Reprint No. 9 (1974)
101. *Guide to Statutory Provisions in Public Sector Collective Bargaining: The Public Employer and the Duty to Bargain*, by Joyce M. Najita (1974), \$2.25
102. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Unit Determination*, Second Issue, by Dennis T. Ogawa and Joyce M. Najita (1974), \$2.25
103. *Topic Coded Titles on Public Employee Collective Bargaining with Emphasis on State and Local Levels*, 3d ed., by Helene S. Tanimoto (1974)
104. *Guide to Statutory Provisions in Public Sector Collective Bargaining: Strike Rights and Prohibitions*, by Helene S. Tanimoto and Joyce M. Najita (1974), \$2.25
105. *Higher Education Contract Clause Finder: Two-Year Colleges*, Third Issue, by Joyce M. Najita (1974), \$25.00
106. *Unionization of Hawaii Faculty: A Study in Frustration*, by Edwin C. Pendleton and Joyce M. Najita (1974)

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