**Campus Question or Situation:**
In the context of the President’s delegation of authority for personnel actions, may a faculty member’s return-to-service obligation arising from a sabbatical leave be waived by the President (Chancellor)?

**Applicable Contract Provision, Executive Policy or Administrative Procedure:**
- Executive Policy E9.112, Delegation of Authority for Personnel Actions
- Article VI, Leave of Absence with Pay, Sabbatical Leaves

**Considerations:**
- In its delegation, the BOR did not reserve to the BOR authority to waive return-to-service requirements.
- The President’s delegation of personnel actions did not reserve to the President the authority to waive faculty return-to-service obligations arising from a sabbatical leave
  - E9.112 provides: “For faculty members and positions the following actions shall require the approval of the President or the Vice President for Community Colleges as the President's designee for community colleges (with no further delegation):
    - A. Special salary adjustments which are granted pursuant to the collective bargaining agreement
    - B. Appointments above the designated threshold
    - C. For the community colleges system:
      1. Designation of high demand disciplines
      2. Waiver of minimum qualification requirements for initial appointments
      3. Promotion and tenure criteria and procedures
    - D. Any leaves exceeding two years in a seven year period
    - E. Approval of Settlement Agreements and collective bargaining Memorandum of Agreement”
- The UHPA collective bargaining agreement Article VI, Leave of Absence with Pay, Sabbatical Leaves states: “4. Each Faculty Member who receives a sabbatical leave shall agree to return to the University System for service for a period of not less than the period of the sabbatical leave.”
  - The waiving of a contractual provision requires mutual agreement between the University and UHPA.
  - No standing agreement exists allowing the University to waive this provision
  - UHPA has previously raised concerns regarding the waiving of return-to-service requirement
- BOR policy 9-14 provides that for executives: “Any individual granted a leave with pay for professional improvement shall agree to return to service at the University, at the rate of one (1) year for each six 6 months of leave at full pay, or at a prorated rate.”
  - While the BOR did not specifically reserve to the BOR the authority to require BOR approval to waive executive return-to-service obligations for classified executives, the issue of return-to-service has been an issue before the BOR, e.g., unclassified Chancellor, with the BOR taking no action on a proposed waiver.

**Issues:**
- Mutual agreement is required to waive a contractual provision, e.g., return-to-service
- UHPA will have concerns regarding the waiving of members’ return-to-service requirements
- The BOR may have concerns regarding the waiving of return-to-service requirements

Note (10-31-08): Given the above, I’ve tentatively advised UHM that that the President (Chancellor) does not have unilateral authority to waive return-to-service requirements.