

Honolulu, Hawaii

April 28, 2006

RE: H.B. No. 266
H.D. 1
S.D. 2
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 266, H.D. 1, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LABOR,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining. Specifically, this measure:

- (1) Allows a public employer to negotiate over procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions; and
- (2) Requires negotiations over the impact of transfers, assignments, and layoffs of public employees.



This measure also clarifies the rights of public employees to engage in collective bargaining under chapter 89, Hawaii Revised Statutes, in light of recent court decisions, Hoopai v. Civil Service Comm'n, 106 Hawai'i 205 (2004) and United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawai'i 359 (2005), and to avoid the invalidation of provisions of collective bargaining agreements in effect on and after July 1, 2005. Specifically, language contained in dicta to the high court's opinion on United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawai'i 359 (2005), implied that the right of an employer to manage its business outweighed its duty to negotiate over wages, hours, and conditions of employment. Therefore, while H.R.S. § 89-9 provides that wages, hours, and conditions of employment are indeed mandatory subjects of bargaining, the *UPW v. Hanneman* decision may be read so that employers are not required to bargain over such matters if such negotiations would interfere with management's rights.

Your Committee on Conference finds that such a conclusion, however, would be an incorrect application of the law. Rather, your Committee on Conference finds that H.R.S. § 89-9 provides three different categories of bargaining subjects: (1) excluded bargaining subjects that may not be bargained over, (2) mandatory bargaining subjects that must be bargained over, and (3) permissive bargaining subjects that may be bargained over, upon agreement of both the public employer and the exclusive bargaining representative of its employees.

Additionally, in this context, your Committee on Conference also finds that although a public employer and the exclusive bargaining representative of its employees may not bargain over matters that would affect the management rights of the public employer because such matters are excluded from bargaining, such management rights do not preclude negotiations over mandatory subjects of bargaining.

Therefore, in light of the Hawaii Supreme Court's opinion in *UPW v. Hanneman*, the purpose of this bill is as follows. First, this bill clarifies that management rights and the right to engage in collective bargaining are equal to each other, and that management rights do not preclude negotiations over mandatory subjects of bargaining.

Second, this bill clarifies that management rights may not be used to preclude negotiations over mandatory subjects of bargaining,



and at the same time, preserves the rights of a public employer to manage its own operations. Therefore, your Committee on Conference wants to make it clear that this bill is not intended to infringe upon or dilute management rights in any way.

Finally, this bill clarifies that H.R.S. § 89-9 applies during collective bargaining or during negotiations over a memorandum of agreement, memorandum of understanding, or supplemental agreement only, and does not require negotiations over individual promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions. Therefore, this bill preserves management rights in this way as well.

Your Committee on Conference finds that the negotiations over procedures and criteria of promotions, transfers, assignments demotions, layoffs, suspension, terminations, discharges, or other disciplinary actions, and negotiations over the impact of transfers, assignments, and layoffs, are consistent with the underlying purpose of chapter 89, Hawaii Revised Statutes. Exclusive representatives and public employees have negotiated over these subject matters since 1970. Provisions in collective bargaining agreements in effect on and after July 1, 2005 should not be subject to invalidation by reason of section 89-9(d), Hawaii Revised Statutes.

Accordingly, Your Committee on Conference has amended this measure by:

- (1) Clarifying that the provisions of this act shall not be used to invalidate provisions of collective bargaining agreements in effect on or after June 30, 2007, rather than collective bargaining agreements in effect on or after July 1, 2006;
- (2) Authorizing negotiations over the procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions as a permissive subject of bargaining during collective bargaining negotiations or negotiations over a memorandum of agreement, memorandum of understanding, or other supplemental agreement.
- (3) Deleting the requirement that impacts of transfers, assignments, and layoffs of public employees be negotiated; and



- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 266, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 266, H.D. 1, S.D. 2, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


BRIAN KANNO, Chair


KIRK CALDWELL, Co-Chair


BRIAN T. TANIGUCHI, Co-Chair


DWIGHT TAKAMINE, Co-Chair



Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: HB 266-HD 1, SD 2	Date/Time: 4/28/06 5:35
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The recommendation of the House and Senate managers is to pass with amendments (CD).

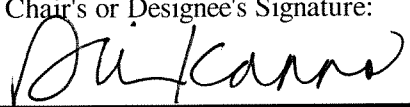
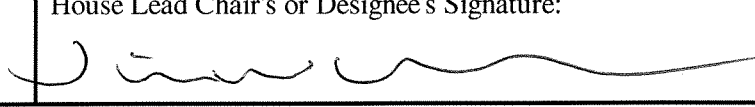
The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KANNO, Brian, Chr.	✓				CALDWELL, Kirk, Co-Chr.	✓			
TANIGUCHI, Brian T., Co-Chr.	✓				TAKAMINE, Dwight Y., Co-Chr.	✓			
HANABUSA, Colleen				✓	NAKASONE, Bob	✓			
					STEWART	✓			
TOTAL	2	0	0	1	TOTAL	4	0	0	0

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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