

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1642
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam President:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1642 entitled:

"A BILL FOR AN ACT RELATING TO LABOR,"

begs leave to report as follows:

The purpose of this measure is to amend sections 89-9(d),
Hawaii Revised Statutes (H.R.S.) by clarifying that certain
statutory actions shall not be used to invalidate collective
bargaining agreements in effect on and after June 30, 2007, and
such actions may be included in collective bargaining agreements.

Testimony in support of this measure was received from the
Hawai'i State Teachers Association (HSTA) and the Hawaii Government
Employees Association (HGEA).

Testimony opposing the measure was received from the Attorney
General, Office of Collective Bargaining, Department of Human
Resources Development, Department of Education, Judiciary, County
of Maui Police Department and Department of Personnel Services and
the County of Hawai'i Department of Human Resources.

In 2005, the Hawai'i Supreme Court ruled in United Public
Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawaii 359,



105 P.3d 236, that the Hawaii Labor Relations Board (HLRB) erred in concluding that the City and County of Honolulu's proposed transfer was subject to collective bargaining under Hawaii Revised Statutes, section 89-9(a), H.R.S. The facts of this case included a 1991 Memorandum of Agreement (MOA) between the United Public Workers (UPW) and the City and County of Honolulu (CCH) agreeing to the automated refuse collection system. In 1993, the same parties entered into another Memorandum of Agreement agreeing to no reduction of staff and that reassignment and transfer will be determined on the basis of seniority. (emphasis added) In 2001, the CCH gave UPW notice of its intent to unilaterally transfer thirteen manual collectors from the over-staffed Pearl City base yard to the understaffed base yard in Honolulu.

Under Section 89-9(d), H.R.S., " . . . the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge, or other disciplinary actions taken against employees, and procedures governing the layoff of employees;" (emphasis added)

In interpreting the *Hanneman* case, one cannot disregard the two MOAs that determined the transfer of these employees. Therefore, the transfer was found to be in concert with these MOAs. The MOAs were allowed under section 89-9(d), H.R.S., and therefore, either party had the right to exercise their rights under these MOAs. Your Committee believes that the Hawaii Supreme Court was upholding the management rights as derived from the MOAs.

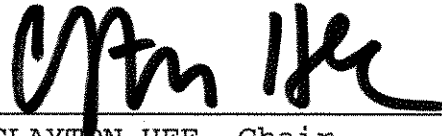
However, some have viewed the *Hanneman* case allowing management rights generally whether or not MOAs are involved. Your Committee finds that discussion needs to be continued and therefore is placing a delayed effective date in the measure. Nonsubstantive and technical changes have been made as recommended by the Legislative Reference Bureau.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B.



No. 1642, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1642, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




CLAYTON HEE, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1642	JDL	2/26/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUYE, Lorraine R.	/			
NISHIHARA, Clarence K.	/			
GABBARD, Mike	/			
TOTAL	5			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes