

# S.B. NO. 2724

JAN 25 2010

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## A BILL FOR AN ACT

RELATING TO PUBLIC SECTOR COLLECTIVE BARGAINING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. This Act shall be known as the Public Sector  
2 Collective Bargaining Return to Strike Act.

3 SECTION 2. Section 89-11, Hawaii Revised Statutes, is  
4 amended by amending subsections (d) and (e) to read as follows:

5 "(d) If an impasse exists between a public employer and the  
6 exclusive bargaining representative of bargaining unit (1),  
7 nonsupervisory employees in blue collar positions; bargaining  
8 unit (2), supervisory employees in blue collar positions;  
9 bargaining unit (3), nonsupervisory employees in white collar  
10 positions; bargaining unit (4), supervisory employees in white  
11 collar positions; bargaining unit (5), teachers and other  
12 personnel of the department of education; [~~o~~] bargaining unit  
13 (6), educational officers and other personnel of the department  
14 of education under the same salary schedule; bargaining unit  
15 (7), faculty of the University of Hawaii and the community  
16 college system [~~r~~]; bargaining unit (8), personnel of the  
17 University of Hawaii and the community college system, other than

1 faculty; or bargaining unit (13), professional and scientific  
2 employees, the board shall assist in the resolution of the  
3 impasse as follows:

4 (1) Voluntary mediation. During the first twenty days of  
5 the date of impasse, either party may request the  
6 board to assist in a voluntary resolution of the  
7 impasse by appointing a mediator or mediators,  
8 representative of the public from a list of qualified  
9 persons maintained by the board;

10 (2) Mediation. If the impasse continues more than twenty  
11 days, the board shall appoint a mediator or mediators  
12 representative of the public from a list of qualified  
13 persons maintained by the board, to assist the parties  
14 in a voluntary resolution of the impasse. The board  
15 may compel the parties to attend mediation, reasonable  
16 in time and frequency, until the fiftieth day of  
17 impasse. Thereafter, mediation shall be elective with  
18 the parties, subject to the approval of the board;

19 (3) Report of the board. The board shall promptly report  
20 to the appropriate legislative body or bodies the  
21 following circumstances as each occurs:

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- 1 (A) The date of a tentative agreement and whether the
- 2 terms thereof are confidential between the
- 3 parties;
- 4 (B) The ratification or failure of ratification of a
- 5 tentative agreement;
- 6 (C) The signing of a tentative agreement;
- 7 (D) The terms of a tentative agreement; or
- 8 (E) On or about the fiftieth day of impasse, the
- 9 failure of mediation.

10 The parties shall provide the board with the requisite  
11 information; and

- 12 (4) After the fiftieth day of impasse, the parties may
- 13 resort to such other remedies that are not prohibited
- 14 by any agreement pending between them, other
- 15 provisions of this chapter, or any other law.

16 (e) If an impasse exists between a public employer and the  
17 exclusive representative of [~~bargaining unit (2), supervisory~~  
18 ~~employees in blue collar positions; bargaining unit (3),~~  
19 ~~nonsupervisory employees in white collar positions; bargaining~~  
20 ~~unit (4), supervisory employees in white collar positions;~~  
21 ~~bargaining unit (6), educational officers and other personnel of~~  
22 ~~the department of education under the same salary schedule,~~

1 ~~bargaining unit (8), personnel of the University of Hawaii and~~  
2 ~~the community college system, other than faculty,]~~ bargaining  
3 unit (9), registered professional nurses; bargaining unit (10),  
4 institutional, health, and correctional workers; bargaining unit  
5 (11), firefighters; or bargaining unit (12), police officers[~~+~~  
6 ~~or bargaining unit (13), professional and scientific employees],~~  
7 the board shall assist in the resolution of the impasse as  
8 follows:

9 (1) Mediation. During the first twenty days after the  
10 date of impasse, the board shall immediately appoint a  
11 mediator, representative of the public from a list of  
12 qualified persons maintained by the board, to assist  
13 the parties in a voluntary resolution of the impasse.

14 (2) Arbitration. If the impasse continues twenty days  
15 after the date of impasse, the board shall immediately  
16 notify the employer and the exclusive representative  
17 that the impasse shall be submitted to a three-member  
18 arbitration panel who shall follow the arbitration  
19 procedure provided herein.

20 (A) Arbitration panel. Two members of the  
21 arbitration panel shall be selected by the  
22 parties; one shall be selected by the employer

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1 and one shall be selected by the exclusive  
2 representative. The neutral third member of the  
3 arbitration panel, who shall chair the  
4 arbitration panel, shall be selected by mutual  
5 agreement of the parties. In the event that the  
6 parties fail to select the neutral third member  
7 of the arbitration panel within thirty days from  
8 the date of impasse, the board shall request the  
9 American Arbitration Association, or its  
10 successor in function, to furnish a list of five  
11 qualified arbitrators from which the neutral  
12 arbitrator shall be selected. Within five days  
13 after receipt of such list, the parties shall  
14 alternately strike names from the list until a  
15 single name is left, who shall be immediately  
16 appointed by the board as the neutral arbitrator  
17 and chairperson of the arbitration panel.

18 (B) Final positions. Upon the selection and  
19 appointment of the arbitration panel, each party  
20 shall submit to the panel, in writing, with copy  
21 to the other party, a final position which shall  
22 include all provisions in any existing collective

1 bargaining agreement not being modified, all  
2 provisions already agreed to in negotiations, and  
3 all further provisions which each party is  
4 proposing for inclusion in the final agreement.

5 (C) Arbitration hearing. Within one hundred twenty  
6 days of its appointment, the arbitration panel  
7 shall commence a hearing at which time the  
8 parties may submit either in writing or through  
9 oral testimony, all information or data  
10 supporting their respective final positions. The  
11 arbitrator, or the chairperson of the arbitration  
12 panel together with the other two members, are  
13 encouraged to assist the parties in a voluntary  
14 resolution of the impasse through mediation, to  
15 the extent practicable throughout the entire  
16 arbitration period until the date the panel is  
17 required to issue its arbitration decision.

18 (D) Arbitration decision. Within thirty days after  
19 the conclusion of the hearing, a majority of the  
20 arbitration panel shall reach a decision pursuant  
21 to subsection (f) on all provisions that each  
22 party proposed in its respective final position

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1 for inclusion in the final agreement and transmit  
2 a preliminary draft of its decision to the  
3 parties. The parties shall review the  
4 preliminary draft for completeness, technical  
5 correctness, and clarity and may mutually submit  
6 to the panel any desired changes or adjustments  
7 that shall be incorporated in the final draft of  
8 its decision. Within fifteen days after the  
9 transmittal of the preliminary draft, a majority  
10 of the arbitration panel shall issue the  
11 arbitration decision."

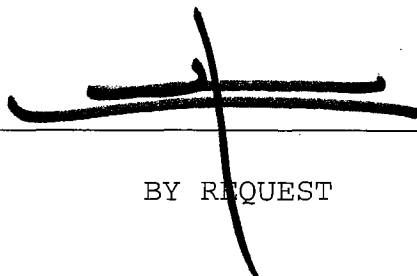
12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



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BY REQUEST

**Report Title:**

Return to Strike; Binding Arbitration

**Description:**

Remove bargaining units (2), (3), (4), (6), (8), and (13) from binding arbitration, thereby allowing these bargaining units to strike.



JUSTIFICATION SHEET

DEPARTMENT: Human Resources Development

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC SECTOR COLLECTIVE BARGAINING.

PURPOSE: Remove bargaining units (2), (3), (4), (6), (8), and (13) from binding arbitration, thereby allowing these bargaining units to strike. This change allows both employers and bargaining unit representatives to negotiate more cost-effectively in light of the State's current fiscal situation.

MEANS: Amend section 89-11(d) and (e), Hawaii Revised Statutes.

JUSTIFICATION: With the exception of units (9), (10), (11), and (12), this bill returns the right to strike to all other bargaining units. Currently, bargaining units (2), (3), (4), (6), (8), and (13) enter binding arbitration when an impasse occurs during negotiations. However, the current process greatly undermines collective bargaining negotiations by fast-tracking contract disagreements toward arbitration rather than allowing employers and bargaining unit representatives to reach consensus jointly.

Labor unions historically and traditionally use their right to strike to solve collective bargaining contract negotiation impasses. This form of grievance expression tests the resolve of both employers and employees, and the end result fairly reflects the relative strength of each party's position. As a matter of principle, it has only been in instances where disruption of government services has a direct impact on public safety that employees are prohibited from striking; such as in the case of nurses, firefighters, police and institutional workers. It is only in these limited circumstances that the

employer and the employees should allow an arbitrator or arbitration panel the extraordinary power to bypass further negotiations and impose collective bargaining terms on both parties.

By allowing most bargaining units to arbitrate rather than strike as an impasse resolution procedure, the collective bargaining process is undermined and the parties are forced to focus solely on cost items at the expense of needed contract revisions in other areas. As a result, the right to strike must be restored to certain bargaining units in order for employers and employees to take more active roles in the collective bargaining process, rather than rely on arbitrators to resolve conflicts.

Impact on the public: Taxpayers benefit by becoming the ultimate arbiter of contract negotiations between the employer and collective bargaining representatives if the right to strike is returned to certain bargaining units.

Impact on the department and other agencies: Departments will benefit from contracts negotiated by both parties, rather than those decided by a third-party arbitrator.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: All State executive agencies, the Office of Hawaiian Affairs, the Judiciary, the Hawaii Health Systems Corporation, the legislative bodies of the State, City and County of Honolulu, County of Maui, County of Hawaii, and County of Kauai.

EFFECTIVE DATE: Upon approval.