



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 1848, RELATING TO COLLECTIVE BARGAINING.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, February 7, 2012 **TIME:** 9:30 a.m.
LOCATION: State Capitol, Room 309
TESTIFIER(S): David M. Louie, Attorney General, or
James E. Halvorson, Supervising Deputy Attorney General
Maria C. Cook, Deputy Attorney General

Chair Karl Rhoads and Members of the Committee:

The Department of the Attorney General has serious concerns about this bill.

First, amounts of contributions to health benefits comprise a substantial portion of the State's overall budget. Consequently, the current language of section 89-11, Hawaii Revised Statutes (HRS), which gives the authority to the Legislature to decide the amounts of contributions if an impasse occurs, is preferable over this proposed bill that gives such authority to an arbitration panel. This bill provides that for bargaining units that are subject to interest arbitration, if the parties fail to reach an agreement on the amounts of contributions paid by the State to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), these issues would be submitted to a final and binding arbitration.

We believe that the Legislature should seriously consider whether it wishes to transfer its current authority over these matters to an arbitration panel. Giving the decision-making authority over amounts of contributions to an arbitration panel, thus removing legislative oversight and involvement, poses significant risks. Although the statutes provide legal criteria for the arbitrators to consider in reaching their decisions, there are significant variances among

arbitrators in the weight that they attach to the different criteria. The employer's ability to pay and overall economic conditions, two important legal criteria, seem to play little role in shaping arbitral decisions. Further, the ability to maintain a well-paid workforce must be balanced against other government priorities and public needs. An arbitration panel need not keep all these interests in mind, unlike elected officials accountable to the public. The spending that will be imposed by mandatory arbitration relating to amounts of contributions removes the ability of the government to control a major portion of its budget. The net effect is that binding arbitration takes critical decisions out of the hands of elected leaders and puts them in the hands of unelected and unaccountable arbitrators to the possible detriment of the State's fiscal condition.

Second, although section 89-11, HRS, states that all items requiring any moneys for implementation shall be subject to appropriation, there may be some significant legal issues if the Legislature decides to reject the arbitration award relating to amounts of contributions. Section 89-11, HRS, which governs interest arbitration, is silent on the issue of what happens if the Legislature decides to reject any cost items, such as the amounts of contributions. This is not true of agreements negotiated pursuant to section 89-10, HRS. Section 89-10 provides that in the event the Legislature rejects any cost items negotiated by the parties, all cost items submitted would be returned to the parties for further bargaining. It is our opinion that sections 89-10 and 89-11 must be read together so that if the Legislature rejects any cost items awarded by an arbitration panel, all cost items must be returned to the parties for further bargaining. Thus, under the proposed measure, if the Legislature decides to reject the amounts of contributions awarded by an arbitration panel, the Legislature will have to return to the parties for further bargaining all cost-items awarded in arbitration. Under the current statute, however, it passes on

the amounts of contributions are decided by the Legislature through legislative enactment and are, therefore, not tied to other cost items submitted to arbitration.

The Department of the Attorney General respectfully requests that the Committee consider these comments in determining whether to pass this bill. Alternatively, we recommend the bill be amended to address the above concerns by adding the following wording in the bill (see highlighted wording):

SECTION __. Section 89-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor’s next operating budget within ten days after the date on which the agreement is ratified. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining[-], provided that cost items relating to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, may be deemed discrete cost items apart from other cost items submitted to them as a result of an arbitration award or negotiated agreement.

The legislature may approve, reject, or modify the arbitration award or negotiated agreement on the amounts of contributions. A modification or rejection by the legislature shall not invalidate any other provisions in the negotiated agreement or arbitration award. Notwithstanding the binding nature of interest arbitration, the parties may submit their respective recommendations on the appropriate amounts of contributions to the legislature within five days from the issuance of the arbitration award, if it is in session, and if the legislature is not in session the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on the amounts of contributions shall consist of the amounts of contributions established by the legislature.

SECTION __ Section 89-11, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. ~~[If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel’s decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision,~~

~~the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund.]~~ The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies as provided in section 89-10(b) and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.”

Thank you for the opportunity to provide the Committee with our comments and recommendation.

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PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

February 7, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor and
Public Employment
The House of Representative
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Bill 1848
Relating to the Collective Bargaining

Although the Departments of Budget and Fiscal Services and Human Resources believe the intent of House Bill 1848 is good, we find we must oppose this measure due to our overriding concerns regarding the provision allowing the employer contributions towards health benefits to be decided by an outside party if an agreement cannot be reached on the issue.

House Bill 1848 provides that if an agreement cannot be reached on the Employer contribution for Employer-Union Trust Fund (EUTF) benefits, then for those units that cannot strike, the decision on the amount of the contribution is made by an arbitration panel

We believe that previously the Legislature wisely determined that decisions on the EUTF employer contributions should not be made by a third party, but should rather be made by the parties that would have to "live" with the outcome and understand the true costs of health care. Deferring the decision to a third party may result not only in widely differing contribution amounts between bargaining units, but also within the same bargaining unit from one contract to the next. Also, due to the high cost of medical and health care, where an award requires the employer to pay for a percentage of the total premium, the true cost of an arbitrator's award will be unknown since insurance rates have steadily increased.

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor and
Public Employment
The House of Representative
February 7, 2011
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We are also concerned that the bill appears to provide for negotiations over the EUTF contribution for retirees. (Although we note that the bill does not make changes to the sections in Chapter 87A that currently establish these contribution amounts.) We believe this would have the very beneficial result of keeping the cost of providing retiree health benefits in the minds of all parties involved. However, we do have some questions regarding this provision and are unable to formulate a position on it at this time.

Our questions center on whether the intent of the bill is to leave the employer contribution towards retiree health benefits strictly to negotiations between the unions and the employer for all current and future retirees. If this is the case, our concerns regarding having this cost item determined by a third party are magnified as the arbitrator or arbitration panel could decide to provide the same contribution for all retirees irrespective of when they retired or their years of service. We acknowledge this could result in more or less cost to us, but also note our concerns about the potential for legal challenges from retirees if it is perceived that what was agreed to or determined via arbitration is less favorable than what was previously provided in statute

The City recognizes that EUTF costs in general and the unfunded liability in particular are major concerns for all of us and we appreciate this and other bills that attempt to address this issue. However, based on our concerns we strongly oppose this bill at this time.

Thank you for the opportunity to testify on House Bill 1848.

Yours truly,



Michael R. Hansen, Director
Department of Budget & Fiscal Services



Noel T. Ono, Director
Department of Human Resources



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
February 7, 2012

H.B. 1848 – RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1848 which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes (HRS) and makes other technical, conforming amendments.

Ch. 89, HRS lacks a dispute resolution over the contributions to the EUTF. As currently written, if the Employer and the Exclusive Representative cannot agree on the contributions, then the pro-rata share shall be determined by the Legislature, while all other negotiable items can proceed to impasse. The amendments contained in H.B. 1848 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either arbitration or strike, depending on the bargaining unit. Adoption of this language will increase conformity between public-sector and private-sector employee bargaining, as the Exclusive Representatives can fully utilize their dispute resolution mechanisms for all negotiable items.

Thank you for the opportunity to testify in strong support of this legislation.

Respectfully submitted,

Randy Perreira
Executive Director



House Committee on Labor & Public Employment
Tuesday, February 7, 2012
9:30 a.m.

HB 1848, Relating to Collective Bargaining.

Dear Chairman Rhoads and Committee Members:

On behalf of the University of Hawaii Professional Assembly (UHPA), our union strongly supports the proposed changes set forth in this bill that eliminate the exclusion of the public employers' contributions to the Hawaii Employer-Union Health Benefits Trust Fund from the statutory impasse procedures set forth in HRS Chapter 89.

Although it may be counter intuitive, the broader the scope of bargaining, the more likely it will be for the parties to find a joint resolution to issues which encompass employment agreements. This is particularly true with respect to issues of compensation that include both salary and fringe benefits. When new people are hired as public employees in the State of Hawaii, they are astounded to discover that health insurance coverage is not negotiable, and that we cannot go to impasse if there is not agreement over the portion of the health insurance premiums to be paid by the employer. Since the payment of health insurance premiums is a form of compensation that has significant federal tax advantages to both the employee and the Public Employers, since it is directly related to the amount of net wages an employee would receive, then why is there any exclusion to bargaining process? In fact, it was not until the 1980's that public sector unions were able to change the scope of negotiations to include bargaining over just the employer's contribution to the then Public Employees' Health Fund for each bargaining unit. The contribution was then subject to the impasse procedures. Even this limited right to bargain has been eroded over the course of time with the advent of the Hawaii Employer-Union Health Benefits Trust Fund under the auspices of "civil service reform." The new "reform" excluded the topic from the impasse procedures, whether it is interest arbitration or the right to strike. Obviously, the costs of health insurance premiums are part of any employee's total compensation, yet the law does not allow the exclusive representative, i.e., UHPA, to pursue the issue through the impasse procedures.

For collective bargaining to properly function, the parties must broad set of topics to discuss that directly relate to the conditions of employment. This allows the construction of comprehensive employment contracts that include alternatives for creative settlements. The proposed change in

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HB1848 will not injure either the public employers of the State of Hawaii nor its citizens. Rather it will be a more honest approach to collective bargaining as set forth in our State Constitution. Impasse resolution puts the burden on both the employer and the union to come to a resolution that balances the total compensation package to be paid to public employees.

Any references to HRS Chapter 87A-33, etc., in HB1848 to retired employees should be eliminated since their benefits are not subject to bargaining under Chapter 89.

This is a small step for the Legislature to take, but one that is critical to the effectiveness and functioning of the constitutional commitment of the State to joint decision making.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'J.N. Musto'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J.N. Musto, Ph.D
Executive Director