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February 14, 2012

THE HAWAII STATE HOUSE

The Twenty-Sixth Legislature Regular Session of 2012



COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

The Honorable Karl Rhodes, Chair The Honorable Kyle T. Yamashita, Vice-Chair

DATE OF HEARING: Tuesday, February 14, 2012

TIME OF HEARING: 9:30 a.m.

PLACE OF HEARING: Conference Room 309

H.B. No. 2488

TESTIMONY IN OPPOSITION

By: CHARLES K.Y. KHIM, ESQ.
Attorney at Law
Labor Law Expert and Pension
Law/Retirement Benefits Law Expert

I. Introduction

My name is Charles K.Y. Khim, Esq., and I am an attorney who is licensed to practice law in the State of Hawaii, and in the Courts of the State of Hawaii, and in the United States Court of Appeals for the Ninth Circuit, and in the Supreme Court of the United States of America. I have been actively practicing law for over thirty-one years.

While normally I do not attach my curriculum vitae/resume ("C.V.") to testimony before the legislature, I have done so in the present case in order to demonstrate to this committee my expertise in the complicated area of the law that is involved in this proposed legislation. Attached hereto as Exhibit "1" is my C.V.

As my C.V. indicates, I am the only attorney who has prevailed against the Employees' Retirement System of the State of Hawaii ("ERS") in a class action lawsuit against it regarding the ERS's intentional under-calculation of State retirees' average final compensation, which is also known as the "high three." In that class action lawsuit, the ERS was found to have illegally deprived retired public school principals, vice principals and teachers of their full retirement pay by intentionally under-calculating their "high three."

The present legislation concerns the elimination from the calculation of State and County workers' "high three," the overwhelming majority of the overtime pay that State and County employees earn.

This elimination from the "high three" calculation of the overwhelming amount of overtime pay earned by State and County workers occurs notwithstanding the fact that contributions to the ERS are paid on said overtime pay by both public workers and their State and County government employers.

I, in conjunction with Paul Alston, Esq. and his law firm, are the only attorneys who have prevailed in a class action lawsuit against the State of Hawaii Employer and Union Health Benefits Trust Fund ("EUTF") wherein it was found that retirement health and welfare benefits provided for by the EUTF are protected from diminution by the Hawaii State Constitution. The titles of these lawsuits are stated in my C.V.

For the reasons stated in detail below, <u>I testify in strong</u> opposition to S.B. No. 2750, for the following reasons:

- 1. It will cause the Hawaii State and County Legislatures to be double charged by the ERS for payments they must make to the ERS for overtime hours worked by public employees;
- 2. It will cause **both**: (1) the Hawaii State and County Legislatures **and** (2) certain Hawaii State and County workers¹ to pay contributions on all overtime pay earned despite the fact that said workers cannot use the overwhelming majority of that overtime pay for the calculation of their "high three." This will cause the State and County Legislatures as well as contributory workers **to pay ERS for something workers will not receive**;
- 3. It will unfairly reduce pension payments of public workers from the current levels which these workers contracted for when they began State and/or County employment; and
- 4. It will not accomplish the purported reason for this legislation, *i.e.*, the reduction of the ERS's unfunded accrued liability, because since the ERS's unfunded accrued liability is not increased by an increase in overtime pay in the first place, the unfunded accrued liability will not be reduced by eliminating overtime pay from the calculation of the "high three."

II. <u>Preliminary Legal and Statutory Principles Which</u> <u>Apply to All ERS Pension Benefits</u>

Since the ERS is proposing this legislation in order prevent supposed increases in the ERS's "unfunded actuarial accumulated liability," in order to evaluate whether this purpose is achieved by this proposed legislation, it is important to understand the basic terminology and concepts

¹ These public workers are stated in HRS, §88-45 and §88-325, and include but are not limited to: Hybrid ERS members; fire fighters; prison guards; investigators for the prosecutors' offices; investigators for the attorney general's office; and police officers.

which apply to ERS pensions, and important to understand how ERS pensions are calculated.

State and County employees' pensions are calculated by multiplying the following multipliers, or what are known in arithmetic as "factors," to determine what a retired State or County employee's annual pension payment is:

- (1) an average of the highest three discreet and separate years of "compensation" (base pay, a/k/a straight time pay, overtime pay, premium pay, bonuses, shift differentials, etc.) received by the public worker;² multiplied by
- (2) the total amount of years a public worker was employed by the State and/or the Counties and for which contributions to the ERS were made; multiplied by
- (3) 2 percent for contributory employees and current hybrid participants, 2.5 per cent for fire fighters police officers and certain department heads, and investigators, 3.5 per cent for politicians, certain legislative employees and full time judges, and 1.25 percent for non-contributory members.

The "<u>unfunded actuarial accrued liability</u>" is the difference between the amount of money that the ERS has on hand to pay the pensions that are currently owed or will be definitely owed in the future⁴, and the amount of money that is needed to pay these pensions.

The ERS claims that an increase in the compensation of a State or County public worker who is about to retire, via a significant increase of overtime hours, causes a "spike" in the

² In rare cases a five year average is used to calculate average final compensation.

³ In actuality this is the amount of assets that the ERS owns rather than only the money that the ERS has in its bank accounts. These assets include stocks, bonds, real estate holdings and other investments that the ERS holds.

⁴ This amount is determined by an estimate that is made by the ERS's actuary.

"high three" multiplier for those workers, which supposedly will result in an increase of the accrued unfunded liability of the ERS. The term "compensation," for the purposes of calculating ERS retirement benefits, is defined in HRS, §88-21.5.

For the reasons stated below, the foregoing assertion of the ERS, namely that its unfunded accrued liability is increased by a significant increase in overtime hours, is patently wrong.

The following written testimony discusses, in detail, the following topics:

- (1) pension benefits as being deferred compensation as opposed to being charity or a gift;
- (2) inclusion of overtime wages and other non-base pay wages in the average final compensation calculation is not causing an increase of the ERS's accrued unfunded liability, despite the alleged "spike" in overtime;
- (3) the unfairness which will be caused to: (1) State and County governments; and (2) contributory members; by compelling them to make contributions on overtime wages without being able to use that paid for overtime wages in the calculation of their "high three";
- (4) the real causes of the ERS's accrued unfunded liability according to the Hawaii Supreme Court and the ERS's Annual Reports as being "legislative skimming," and reduced investment earnings, caused in a significant part by the imprudent actions of the ERS Trustees and top administrators;
- (5) the real effect of the elimination of overtime wages from the calculation of the "high three" average final compensation; and

(6) the enactment of ERISA protections and limitations as being the best legislative action to eliminate the accrued unfunded liability.

II. ERS Pension Benefits is Deferred Compensation, Not Charity

It is important at the outset to clearly define exactly what the legal status is of an ERS pension. Like all retirement benefits, an ERS pension is "deferred compensation."

Just as that phrase indicates, ERS retirement benefits are wages for work that is currently performed by the employee, which are delayed or deferred from being paid in the present, but rather are paid in the future upon the retirement of the employee.

The following statement which is adapted from a colloquy between the cartoon characters "Popeye" and "Wimpy," illustrates this principle of deferred compensation:

"I will gladly pay you Tuesday, thirty years from now when you retire, for work you do for me today."

Put in legal terms, the Hawaii Intermediate Court of Appeals, in a case titled *Linson v. Linson*, 1 Haw. App. 272, 275, 618 P.2d 748, 750 (1980), described this legal concept of retirement benefits as being deferred compensation, by stating as follows:

"Retirement benefits are not gratuities flowing from the employer's beneficence, but rather are part of the consideration earned by the employee, as a form of deferred compensation for services rendered. Therefore, the employee's right to such benefits is a contractual right, derived from the terms of the employment contract." (Emphasis added).

The fact that ERS retirement benefits are contractual rights derived from the employment contract between State and County governmental employers and public workers is buttressed by Article XVI, Section 2 of the Hawaii State Constitution, which states that:

"Membership in any employees' retirement system of the State or any political subdivision thereof shall be a **contractual relationship**, the accrued benefits of which shall **not** be diminished or impaired."

Thus, when analyzing the ERS's legislative proposal that the overtime pay and other non-base pay wages of a public worker which currently shall be included in the HRS, §88-81 "high three" average final compensation of the public workers, shall no longer be included in said average final compensation, it must be kept in mind that the retirement benefits or pension which is being reduced by this exclusion are wages that have been earned by the public workers, and unlike a welfare check or Medicaid, is **not** charity or a gift being given to these public workers out of the goodness of the hearts of the State or County governments.

Sad to say, it appears that just as in the Popeye and Wimpy example, where Tuesday is rapidly approaching with Wimpy not having the money to pay the full price for the hamburger he has already consumed, retirement is rapidly approaching for the baby boomer State and County public workers, with the Public Employers and the ERS not having enough money to pay for the pensions that they owe for work already performed, because of inadequate funding of the ERS by the State and County governments and poor investments which were made by the ERS.

The ERS and Public Employers' proposed solution is to pay the baby boomers less than the agreed upon price of employees' pensions. This legislation will accomplish this breaching of the employment contract by lowering the "high three" after the fact when calculating the pensions of public workers, by excluding overtime pay from the calculation of their "high three," after these public workers were contractually entitled to include it in their "high three," and after contributory employees such as pre-1985 employees, fire fighters, prison guards, investigators for the prosecutors' offices, and police officers paid their statutorily required share of contributions to the ERS on the whole amount of overtime and other non-base pay wages, for the years prior to this proposed legislation.

As elaborated below, the it is my expert testimony that the appropriate solution is to enact the following basic safeguard principles in ERISA⁵ of: (1) establishment of specific fiduciary standards and restrictions for the ERS's trustees and top administrative employees, including the administrator; and (2) personal civil and criminal liability for breaches of fiduciary duties of both the ERS trustees as well as the ERS top administrative employees, including the administrator; rather than to short change these retirees the retirement pay which was promised them in the employment contract, and in the case of the aforesaid contributory members, which was paid for by said contributory employees.

The foregoing remedies have already been adopted by the State Senate's Committee on Judiciary and Labor by amending S.B. No. 2750, and should be adopted by this Committee by amending the instant proposed legislation.

III. Inclusion of Overtime Pay in the "High Three" Does Not Increase the Unfunded Accrued Liability

HRS, §88-123 sets forth the arithmetic formula by which the annual contributions to the ERS by the public employers are made to the ERS's "pension accumulation fund," in order

⁵ The Employee Retirement Income Security Act of 1974, as amended.

to adequately pay for the retirement benefits for their actively employed public workers when these workers retire.

Basically, this calculation constitutes adding up the total annual payroll paid to these public workers, and multiplying that total annual payroll by a multiplier stated in HRS, §88-122(a). Copies of HRS, §88-21.5 (definition of "compensation"); §88-122(a) (scale multipliers by which to determine annual employer contribution to ERS); and §88-123 (formula for calculating annual employer contribution to ERS) are collectively attached hereto as Exhibit "2."

Since the total annual payroll, <u>including overtime pay</u>, is used to calculate the amount of contributions to the ERS that employers must pay in order to adequately fund the retirement benefits that the ERS will pay to the active employees when they retire, an increase in overtime pay will not increase the accrued unfunded liability.

The foregoing is true because when a public worker receives overtime pay, that overtime pay is included in the total annual payroll which is calculated under HRS, §88-123. Since that overtime pay causes an increase in the foregoing total annual payroll, when the ERS calculates the amount of money it is owed by the employer of the worker who received the overtime pay, the amount the employer owes the ERS is increased by the amount the total annual payroll was expanded by the overtime pay that was added to it.

In other words, since the increased amount of retirement benefits the ERS must pay the worker who received overtime pay is covered by the increased amount that worker's employer had to pay the ERS, in an amount that is actuarially equivalent to the increased pension liability caused by the receipt of overtime pay, there is no increase in the accrued unfunded liability by employees receiving overtime pay.

Thus, contrary to the ERS's assertion, the accrued unfunded liability is not increased by overtime pay which is received by a public worker.

In fact, in many cases State and County employers save money by making employees work overtime instead of curtailing overtime pay hiring more employees and having the increased workforce work only at straight time pay. This is because employer payments to the EUTF⁵ are calculated on a per employee basis, not on a per hour worked basis.

Thus, the fewer employees a public employer has the lower that public employer's contributions to the EUTF are, even though those public workers all work one and one half times their normal shift. Such a situation results in a 33.34% savings in public employer contributions to the EUTF because two employees are doing the work of three employees.

IV. For Contributory Employees, S.B. No. 2750 Will Unfairly Require Them to Make Contributions to the ERS on the Full Amount of Their Overtime Pay Without Being Able to Use the Full Amount of Their Overtime Pay to Calculate Their "High Three"

HRS, §88-45 requires contributory members of the ERS to pay the ERS a percentage of their "compensation" to the ERS in order to receive a pension from the ERS. These contributory members include, but are not limited to, pre-1985 contributory members, hybrid members, prison guards, firemen, attorney general investigators, office of the prosecutor investigators, and police officers.

The rate of contributions is as high as one-seventh (14.20%) of their compensation.

⁶ State of Hawaii Employer and Union Health Benefits Trust Fund.

S.B. No. 2750 does <u>not</u> change the definition of "compensation" in HRS, §88-21.5 to exclude overtime wages from the definition of "compensation."

This means that these contributory employees must pay the full percentage of their contributions on the overtime pay they receive.

Despite the fact that these contributory employees have to pay the full percentage on <u>all</u> of their overtime pay, under S.B. No. 2750, they are prevented from using the full amount of their overtime pay for the calculation of their "high three."

In other words, these contributory employees are paying for something that they prevented from using. That's like paying for a car, yet not being able to drive it.

The patent unfairness of paying for something that a person is prohibited from using is obvious.

What adds insult to injury, is that it is these very contributory employees who the public relies on to protect them from the biggest physical dangers they face: crime, fire and imprisoned criminals.

If S.B. No. 2750 is enacted, one could not blame a police officer from stopping his chase of an armed robber or burglar because his shift is completed since it will not be worth it for him or her to incur overtime, since he or she will have to pay one-seventh of his or her gross overtime wages to the ERS, which translates to about one-fifth (20%) of his or her take home pay, only for him or her not to be able to use it towards his or her "high three."

An equally likely scenario is for a prison guard, fireman, or police officer to decline an overtime assignment because of the foregoing unfairness, thus leaving the public in danger because these vital safety services are understaffed.

IV. The Real Reasons Why The Unfunded Accrued Liability is Large

A. Hawaii Supreme Court Adopted ERS'
Accusation that Hawaii Legislature'
"Skimming" of ERS'S Money was the
Primary Cause of ERS's Large Unfunded
Accrued Liability. This Finding is Binding
on the Legislature and the ERS.

In support of its proposal to eliminate overtime pay from the calculation of the "high three" average final compensation, the ERS Trustees stated that the so-called "spiking" of the "high three" which is allegedly caused by the earning of significant amounts of overtime in the year prior to retirement is the primary cause of the "large unfunded actuarial liability."

The foregoing assertion of the ERS Trustees is contrary to their statements to the Hawaii Supreme Court which were made in the case titled Kahoohanohano v. State of Hawaii, 114 Hawaii 302, 162 P.3d 696 (2007). In that case, the ERS Trustees stated in its 2005 Financial Report that despite "positive earnings, [in 2005] the actuarial funded ratio declined, . . . primarily [as a] result" of what the ERS Trustees referred to in their lawsuit against the State as "legislative skimming."

In repeating the ERS Trustees' accusations against the Legislature and finding that those accusations were true, the Hawaii Supreme Court stated as follows:

"[ERS] Trustees refer to this practice of taking the 'peaks,' also known as, earnings in excess of specified yield rates, as 'skimming.' As set forth in [ERS] Trustees' complaint, 'When the earnings of high-return years are skimmed, . . . the ERS loses the benefit of high yields that would offset market cycles in low-return years and is denied the benefit of full,

ongoing [e]mployer funding.' " 114 Hawaii, at 313.

"The injunctive relief sought is not to enjoin Act 100, which has already been implemented, but 'to prohibit future skimming,' and to prevent '[a] renewed pattern of **legislative skimming**.' " 114 Hawaii, at 337.

"Finally, the 2005 ERS Financial Report illustrates that despite 'positive earnings, [in 2005,] the actuarial funded ratio declined[,]... primarily [as a] result of the past diversion of excess investment earnings which prevented the ERS from establishing a rainy day fund for the years of poor investment earnings."

"Therefore, it is 'plain, clear, manifest, and unmistakable[,]' (citation omitted) that the \$349.9 million reduction in employer contributions unconstitutionally impaired the pension system." 114 Hawaii, at 352.

The phrases "diversion of excess income earnings" and the "reduction in employer contributions" which appear in the above quoted portions of the *Kahoohanohano* decision is the "legislative skimming" which the ERS Trustees specifically accused the Hawaii Legislature of in their legal briefs in that Hawaii Supreme Court case.

The Hawaii Supreme Court in the *Kahoohanohano* case adopted the ERS Trustees' above quoted position and held that the foregoing "legislative skimming" was the cause of the ERS's large unfunded actuarial liability. The Hawaii Supreme Court further held that this "legislative skimming" was unconstitutional.

Moreover, since this finding by the Hawaii Supreme Court that "legislative skimming" was the primary cause of the large unfunded actuarial accrued liability was made in a lawsuit by the ERS against the State government, the Legislature and the ERS are bound by this finding, under the doctrine of collateral estoppel and res judicata, see, Exotics Hawaii-Kona v. E.I. DuPont, 104 Hawaii 358, 365 (2004) (Demise of mutuality rule, a/k/a the ascension of non-mutual offensive doctrine, allows non-party to the Kahoohanohano case to enforce ruling in that case against a party to that case, i.e., the State of Hawaii, including both its executive and legislative branches).

Thus, it is clear that the ERS's purported reason for this legislation is untrue. Contrary the assertion of the ERS, receipt of overtime pay is not the reason for the huge unfunded actuarial liability. This is especially so, since the finding the ERS sought and obtained in the *Kahoohanohano* case, namely that "legislative skimming" was the primary cause of the unfunded actuarial accrued liability, is binding on the ERS as well as the legislature.

B. ERS's Annual Report Claimed that Poor Returns on Investments Caused Large Unfunded Liability. Irresponsible Investing Caused Some of the Poor Returns on Investments

In the Kahoohanohano case, the Hawaii Supreme Court quoted the ERS's annual report in stating that in the early 2000s, poor investment returns as well as the recapturing or "legislative skimming" of \$346,900,000.00 of the ERS's money by the Hawaii Legislature caused the ERS's unfunded actuarial liability. In so quoting, the Hawaii Supreme Court stated as follows:

"The 2004 ERS Financial Report reiterated that the ERS' large 'unfunded actuarial accrued liability [was] primarily the result of unfavorable investment returns in FY 2001 and FY 2002' and also because of 'the previous use of the ERS' excess investment earnings to reduce the

State and county government contributions to the ERS.' ERS Financial Report for the Fiscal Year Ended June 30, 2004 at 9 (Dec. 13, 2004)."

While there is no doubt that poor investment results were also a significant factor in the making of the large unfunded actuarial accrued liability of the ERS during the early and middle 2000s, it is apparent that the ERS and its Trustees' grossly negligent, which, at times, bordered on an intentional breach of the fiduciary duty of loyalty to the ERS, was the cause of at a significant amount of the investment losses suffered by the ERS, both at that time as well as historically.

For example, it was front page, headline news in the Honolulu Advertiser in the early 2000s, that the ERS Trustees' renewed an investment contract with an investment company named Three Bridges despite the fact that the ERS's investment monitor or "watchdog" advised the ERS to cancel the investment contract instead, because Three Bridges lost large sums of the ERS's money in bad investments. At the time, the retired head of the ERS, Administrator-Executive Secretary Stanley Siu was an investment account executive of Three Bridges.

If memory serves me correctly, the ERS, in renewing the Three Bridges investment contract against the advice of its investment "watchdog," gave and/or allowed Three Bridges to continue to invest over \$150,000,000.00 of the ERS's money.

Another example of the ERS's grossly negligent, and possibly intentionally imprudent investment actions, was the purchase of the then newly built leasehold building in which ERS's current offices are in, for about fifty percent over the cost of constructing the building, without first obtaining an appraisal of the building. This resulted in an annual profit of fifty percent for the sellers, with that profit constituting about \$20,000,000.00, if I remember correctly.

The sellers' profit would have been about one hundred percent, if I remember correctly, but for the fact that one of the union/employee Trustees complained about original purchase price being too high.

Retired Hawaii Supreme Court Justice Edward Nakamura, who was an ERS Trustee at the time, resigned from his position as Trustee over this imprudent transaction.

If memory serves me correctly, on of the ERS Trustees at the time was financially involved in the real estate transactions which resulted in this purchase of the ERS building, possibly as a real estate broker who earned either directly or indirectly a commission on the sale. Again, the Honolulu Advertiser covered this story.

While I have not had the time to research these news articles at the State Library, the now defunct Honolulu Advertiser's news files are currently inaccessible. I will research these articles and present them to you at a later date.

GECC Financial maintained a contract with the ERS to provide ERS participants-beneficiaries home mortgages at a time when GECC loan executive Kenneth Matsuura was a Trustee on the ERS's Board of Trustees.

I received anecdotal information from a former bank official that there was a bank executive who was a relative of a top ERS administrative employee received money from the ERS to invest, short term, in that bank.

This morning's Star Advertiser states that the <u>ERS lost</u> \$1,400,000,000.00 between July I, and September 30, 2011. During that period of time the stock market and investment market did not crash. This fiscal year the ERS is \$900,000,000.00 in the red. A copy of this news article is attached hereto as Exhibit "3".

There was probably no investigation as to why such a catastrophic loss occurred against the investment market trend during that period of time.

ERS Trustees and top administrators are routinely treated to free trips to the mainland by their investment managers. ERS Trustees and top managers are routinely treated to free dinners at lavish restaurants of their choice both here in Hawaii and while on these all expenses paid for trips by their investment managers.

It is these very same investment managers who wine and dine the ERS Trustees and top administrators who lost the foregoing \$1,400,000,000.00 of the retirees' money in three months at the beginning of this fiscal year.

The ERS cannot tell how many free mainland trips and free meals these ERS Trustees and top administrators took from the people who lost all that ERS money because unlike the Federal Law which governs private sector pension funds, the ERS is exempt from that Federal Law and State Law does not require the ERS to keep track of these free trips and meals.

The foregoing indicates that these poor investment decisions are a major factor in the ERS's large unfunded actuarial accrued liability.

None of the transactions described above outwardly violate any statute or regulatory law. This is because unlike private sector pensions which are protected by the Federal Law known as the Employee Retirement Income Security Act ("ERISA") against the foregoing insider trading, self dealing actions and imprudent decisions of the ERS Trustees and high level administrators, the ERS Trustees and high level administrators are exempt from ERISA. There is no statute or written rules or regulations which restrict their actions.

To the contrary, HRS, §26-35.5 almost assuredly gives the ERS Trustees immunity from lawsuits for their foregoing actions, notwithstanding the grossly negligent nature of their actions. This is because that statute gives these Trustees absolute immunity unless they acted in a malicious or improper purpose.

Moreover, the doctrine of sovereign immunity shields both the Trustees and the ERS high level administrators from liability, especially since the Hawaii Tort Claims Act, HRS, Chapter 662, has not waived sovereign immunity over these actions since said actions were engaged in as part of their discretionary functions and such discretionary functions may be abused without any consequences under HRS, §662-15 of the Hawaii Tort Claims Act.

V. The Real Effect of This Legislation is to Currently
Make the State and County Legislatures Pay the ERS
Twice for the Inclusion of the Same Overtime Pay in
the "High Three, and" and to Cut the Retirement Pay
of Employees, Thus Eventually Reducing
Employment Costs for Public Employers

H.B. No. 2488, Section 1 increases the amount the State and County Legislatures must appropriate to pay the ERS for the inclusion of overtime pay into the "high three" of employees who began employment before July 1, 2012, who earn overtime in an amount that is more than approximately ten percent of their base pay and who retired in the previous year.

However, as mentioned above, HRS, §88-123 already requires the State and County Legislatures to pay to the ERS the actuarial cost of including overtime into the "high three" of government workers.

Since S.B. No. 2750 does not provide an for a reduction in the contribution amount payable under HRS, §88-123 in

order to offset the payment by the State and County Legislatures of the amount they owe the ERS under H.B. No. 2488, Section I for inclusion of overtime pay into these public workers' "high three," the net effect is that the <u>State and County Legislatures pay the ERS monetary contributions twice for the same hour of overtime pay earned by these public workers.</u>

The ERS may view this double payment as poetic justice for what it called the "legislative skimming" which was engaged in by the State and County Legislatures, since the ERS was precluded in the *Kahoohanohano* case from recovering monetary damages from the State and County Legislatures for the so-called "legislative skimming." But as stated in that case, the ERS could not recover that money in a legitimate manner.

However, such double payment is being obtained in a deceitful way because H.B. No. 2488 fails to disclose that this double payment is occurring.

The other major effect of H.B. No. 2488 is that the retirement pay received by public workers will be reduced because: overtime pay; pay differentials such as those paid for working at remote or unpleasant locations (servicing remote locations that have no wooden dwellings, no toilet or no shower facilities), etc.; bonuses; and lump sum salary supplements are eliminated from the calculation of the "high three."

Under H.B. No. 2488 when the foregoing double payment which is required by Section 1 thereof stops, the State and County Legislatures will reduce their payments to the ERS in an amount which is commensurate actuarially to the reduction in the "high three" which is caused by the exclusion of the overtime pay and other non-straight time pay from the public workers' "high three."

The foregoing constitutes the true effects of the enactment of H.B. No. 2488.

VI. The Enactment of the Restrictions and Protections Contained in ERISA is the Best Method by Which to Eliminate the Unfunded Accrued Liability of the ERS

The underfunding problems facing the ERS are not a unique situation. Human nature is such that: the excesses committed by the ERS and its Trustees in terms of its investments; as well as and the State and County's underfunding of the ERS; are not unique to the ERS. Prior to the enactment of ERISA, the foregoing financial problems facing the ERS existed in with many private sector pension funds.

These problems caused the U.S. Congress to enact ERISA in order to cure these under funding problems and breach of fiduciary problems. Many of the finest legal minds in the retirement pay field collaborated to enact ERISA.

Thus, I recommend that the enactment of ERISA restrictions and protections in order to eliminate the unfunded accumulated liability problem facing ERS.

In view of the foregoing, I suggest that the Legislature enact ERISA: "prohibited transactions" restrictions; "prudent man" standard of care; and ability to hold the ERS Trustees and top administrative employees of ERISA personally liable to pay from their personal funds and property for the damage caused by their breach of the "prudent man" be enacted to eliminate the "self dealing" and the preferred treatment of "insiders" problem that has afflicted the ERS for many years; in order to remedy the above mentioned problems.

Also, when the State and County governments are in a better financial condition to fulfill the ERISA minimum funding requirements, said requirements should be enacted by the Hawaii Legislature.

VII. Conclusion

Thank you for this opportunity to present written testimony to this honorable committee and your collective attention to these matters. If any committee member has any questions, I will be more than glad to answer them at the appropriate time.

CKYK:rwd

Attachments

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2000 - 2004 Executive V.P. and Chief Legal Counsel

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1984 – 2000 Attorney – Principal

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1983 – 1984 Attorney – Field

National Labor Relations Board

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1980 – 1983 Attorney – Associate

Shim, Sigal, Tam & Naito Melim Building, Suite 900

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1979 – 1980 Attorney – Law Clerk

National Labor Relations Board

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EXHIBIT "1"

EDUCATIONAL PROFILE:

1977 - 1980

Juris Doctor (Law Degree) May 1980

Georgetown University Washington, D.C.

Law School Honors:

Dean's List 2nd and 3rd years (3 yr. curriculum)

1972 - 1976

Bachelor of Arts - Sociology

University of Hawaii – Manoa Campus

Honolulu, Hawaii

College Honors:

B.A. Degree Awarded with Distinction (Equivalent to

Summa Cum Laude)

Class Valedictorian/Representative (4.0 GPA/4.0 Scale)

Phi Beta Kappa - National Honor Society

Phi Kappa Phi — National Honor Society (Early Admin.)

Phi Eta Sigma — National Honor Society Myrtle Clark English Dept. Writing Award

1960 - 1972

University Laboratory School

(Elementary and Secondary School Education)

High School Honors:

Editor-in-Chief, Ke Kupina'i Newspaper

LABOR/EMPLOYMENT PROFILE:

- Legal Counsel to international/national/local labor organizations;
- Legal Counsel to trustees of international/national/local joint Taft-Hartley
 Pension and Employee fringe benefits trust funds;
- Legal Counsel to international/national insurance corporations;
- Legal Counsel to educational, charitable and private trusts;
- Legal Counsel to individuals regarding federal employment and state employment matters;
- ♦ Legal Counsel to individual defendants and plaintiffs in employment discrimination cases;
- Arbitrator in tort cases appointed by the court annexed arbitration program.

LEGAL PROFILE

A. Class Action Litigation

- Successful litigation culminating before the Hawaii State Supreme Court Chun v. Employees' Retirement Sys. Cases (Chun, et al. v. Employees' Retirement System of the State of Hawaii ("ERS"), 828 P.2d 260 (Haw. 1992); Chun, et al. v. ERS, 952 P.2d 1215 (Haw. 1998); Chun, et al. v. ERS, 992 P.2d 127 (Haw. 2000); Chun, et al. v. ERS, 106 P.3d 339 (Haw. 2005) }. In the Chun cases, approximately 1100 class members consisting of retired public school principals, vice principals and teachers were successfully represented in obtaining full back pay and front pay compensation via a totally successful class action for: declaratory and injunctive relief; and money damages. (Pension Benefits/Administrative Law/Civil Law case)
- Successful litigation before the State of Hawaii First Circuit Court on behalf of the Hawaii Government Employees Association and its approximately 260 Bargaining Unit 03 members (men and women) who were underpaid because said members held job positions that were considered "women's work" vis-à-vis job positions that were considered "men's work." A successful settlement was entered into in this action for: declaratory and injunctive relief; and money damages affording class members front pay via an upgrade in their pay scales to equivalent "men's work" job positions' pay scales. (Employment Discrimination/Civil Rights case)

B. Conventional Litigation – Administrative Law Litigation

- Successful litigation before U.S. Supreme Court (Washington, D.C.)
 (Employment discrimination/Civil Rights cases)
- Successful litigation before U.S. 9th Circuit Court of Appeals (San Francisco, CA) (Employment discrimination cases as well as other matters);
- Successful litigation before National Labor Relations Board (Washington, D.C. & Honolulu, HI);
- Successful litigation before U.S. Merit Systems Protection Board (Washington, D.C. & Honolulu, HI);
- Successful litigation before U.S. District Court for the District of Hawaii
- Successful litigation before State of Hawaii Supreme Court (Honolulu, HI);
- Successful litigation before State of Hawaii Intermediate Court of Appeals (Honolulu, HI);

LEGAL PROFILE

- B. Conventional Litigation Administrative Law Litigation (Continued):
- Successful litigation before Hawaii State Circuit Courts (1st Cir.-Honolulu, 2nd Cir.-Kahului, 3nd Cir.-Hilo, 5th Cir.-Lihue);
- Successful litigation before Hawaii State District Courts (Honolulu, HI);
- Successful litigation before Hawaii Labor Relations Board (Honolulu, HI);
- Successful litigation before State & County Civil Service Commissions (Honolulu, HI and Hilo, HI);
- Successful resolutions before State & Federal Commissions, Departmental Boards and Panels (Civil Rights Commission, EEOC, DHHL, DOT, DOH, DPED, DLIR, DLNR).
- Successful litigation of cases (my clients prevailed) establishing new law:

Chun v. Employees' Retirement Sys., 952 P.2d 1215 (Haw. 1998) – Haw. Sup. Ct.;

<u>Sussel v, City & County of Honolulu Civil Serv. Com.</u>, 784 P.2d 867 (Haw. 1989) – Haw. Sup. Ct.;

Caldeira v. County of Kauai, and the Hawaii Government Employees Assn. (HGEA), 866 F.2d 1175 (9th Cir. 1989), U.S. 9th Cir. Ct. of Appeals - cert. denied 493 U.S. 817 (1989), U.S. Sup. Ct.;

Everson, et al. v. State of Hawaii, et al., 228 P.3d 282 (2010) - Haw. Sup. Ct – Co-Counsel with Alston Hunt Floyd & Ing Attorneys at Law (Established that State & County retirees health insurance benefits are Constitutionally protected against being diminished)

<u>Chun v. Employees' Retirement Sys.</u>, 992 P.2d 127 (Haw. 2000) – Haw. Sup. Ct.;

<u>Doe v. Doe</u>, 34 P.3d 1059 (Haw. App. 2001) – Haw. Intermediate Court of Appeals (Pro bono case affording divorced custodial parents – primarily single mothers – greater access to legal rights in collecting delinquent child support payments from so-called "deadbeat dads," thus helping alleviate in Hawaii a nationwide problem).

<u>Lingle v. Hawaii Government Employees Assn. (HGEA)</u>, 111 P.3d 587 (2005) – Haw. Sup. Ct.

C. Community Service - Legal Community

- Successful service as member on judicial committee to appoint members to the Board of Hawaii Bar Examiners;
- Successful service as member on judicial committee to appoint members to the Office of Disciplinary Counsel Board.
- Successful service as seminar panelist of American Bar Association National Convention – Labor & Employment Section.

<u>LICENSES - PRACTICE OF LAW PROFILE:</u>

Licensed to practice law before all State of Hawaii Courts.

Licensed to practice law before the U.S. District Court for the District of Hawaii.

Licensed to practice law before the U.S. Court of Appeals for the Ninth Circuit (San Francisco, CA).

Licensed to practice law before the U.S. Supreme Court (Washington, D.C.).

COMMUNITY SERVICE PROFILE:

- Univ. of Haw. Lab Charter School Founding Member of Local School Board
- Punahou School Judge (volunteer) of Oxford Debate Program
- Wailuna Homeowners Assn. President & Member of Board of Directors
- Ronald McDonald House Attorney (volunteer) & Advisor of Non-Profit Org.
- American Diabetes Association of Hawaii Attorney (volunteer) & Legislative Action Committee Member

- \$88-21.5 Compensation. Unless a different meaning is plainly required by context, as used in this part, "compensation" means normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed; overtime, differentials, and supplementary payments; bonuses and lump sum salary supplements; and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended. Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months prior to the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:
 - (1) During the period agreed-upon by the employer and employee, but in any event over a period of not less than twelve months; or
 - (2) In the absence of an agreement between the employer and the employee, over the twelve months prior to the date on which the bonus or lump sum salary supplement is payable. [L 2004, c 182, §2]

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- **588-122** Determination of employer normal cost and accrued liability contributions. (a) Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board, on the basis of successive annual actuarial valuations, shall determine the employer's normal cost and accrued liability contributions for each fiscal year beginning July 1 separately for the following two groups of employees:
 - Police officers, firefighters, and corrections officers;
 and
 - (2) All other employees.
- (b) The actuarial valuations shall be based on the contribution rates approved by the legislature, and the tables, assumptions, and factors adopted by the board for actuarial valuations of the system; provided that the investment yield rate assumption for the year ending June 30, 2011, shall be seven and three-quarters per cent.
- (c) With respect to each of the two groups of employees in subsection (a), the normal cost for each year after June 30, 1994, shall be the percentage of the aggregate annual compensation of employees as of March 31 of the valuation year as determined by the actuary using the entry age normal cost funding method. On each June 30 the board shall determine the allocation of the assets of the pension accumulation fund between the two groups of employees in subsection (a); provided that the assets of the pension accumulation fund as of June 30, 1976, shall be allocated between the two groups in the same proportion as the aggregate annual compensation of each group as of March 31, 1976.
- (d) Commencing with fiscal year 1994-1995 and each subsequent fiscal year, the actuary shall determine the total unfunded accrued liability using the entry age normal cost funding method separately for each of the two groups of employees in subsection (a). The accrued liability contribution for each of the two groups of employees shall be the annual payment required to liquidate the unfunded accrued liability over a period of twenty-nine years beginning July 1, 2000. Any increase or decrease in the total unfunded accrued liability resulting from legislative changes in the benefit provisions of the employees' retirement system shall be liquidated over a period of time to be determined by the actuary.
- (e) Commencing with fiscal year 2005-2006 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on fifteen and three-fourths per cent of the member's compensation for police officers, firefighters, and corrections officers and thirteen and three-fourths per cent of the member's compensation for all other employees. Commencing with fiscal year 2008-2009 and each subsequent fiscal year until fiscal year 2011-2012, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on nineteen and seven-tenths per cent of the member's compensation for police officers, firefighters, and corrections officers and fifteen per cent of the member's compensation for all

other employees. In fiscal year 2012-2013, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twentytwo per cent of the member's compensation for police officers, firefighters, and corrections officers and fifteen and one-half per cent of the member's compensation for all other employees. year 2013-2014, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-three per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen per cent of the member's compensation for all other employees. In fiscal year 2014-2015, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-four per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen and onehalf per cent of the member's compensation for all other employees. Commencing with fiscal year 2015-2016 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-five per cent of the member's compensation for police officers, firefighters, and corrections officers and seventeen per cent of the member's compensation for all other employees. The contribution rates shall amortize the total unfunded accrued liability of the entire plan over a period not to exceed thirty years.

The contribution rates shall be subject to adjustment:

- If the actual period required to amortize the unfunded accrued liability exceeds thirty years;
- (2) If there is no unfunded accrued liability; or
- (3) Based on the actuarial investigation conducted in accordance with section 88-105. [L 1925, c 55, pt of §8; am imp L 1927, c 251, §4; am L 1933, c 181, §3; am L Sp 1933, c 10, §§2, 3; RL 1935, pt of §7927; am L 1935, c 48, §§2, 4; RL 1945, pt of §712, subs 3; RL 1955, §6-89; am L 1964, c 62, §12; am L 1965, c 222, §15; HRS §88-113; am L 1969, c 110, pt of §1; am L 1973, c 19, §1; am L 1977, c 171, §2 and c 191, §2; am L 1981, c 201, §1; am L 1982, c 147, §6; am L 1983, c 190, §1; am L 1985, c 128, §1; gen ch 1985; am L 1987, c 291, §1; am L 1988, c 41, §7; am L 1989, c 184, \$1; am L 1991, c 170, §1; am L 1993, c 144, §1; am L 1994, c 276, §9; am L 1996, c 79, §1; am L 1997, c 327, §3; am L 1998, c 151, §1; am L 2001, c 104, §1; am L 2002, c 147, \$2; am L 2004, c 181, \$2; am L 2007, c 256, \$3; am L 2011, c 163, §§16, 22]

- \$88-123 Amount of annual contributions by the State and counties. The contribution payable in each year to the pension accumulation fund by the State and by each county shall be determined by allocating the sum of the normal cost and the accrued liability contribution for:
 - (1) Police officers, firefighters, and corrections officers, the latter after the actual transfer of all county jails pursuant to executive order of the governor; and
- in the same proportion as the aggregate annual compensation of each group employed by the State and by each county, respectively, as of March 31 of the valuation year. Commencing with fiscal year 2005-2006, the contribution payable in each year to the pension accumulation fund by the State and each county, respectively, shall be determined by multiplying the contribution rates in section 88-122 (e) by the actual covered payroll in a given fiscal year for each of the two groups of employees in section 88-122(a). [L 1925, c 55, pt of §8; am imp L 1927, c 251, §4; am L 1933, c 181, §3; am L Sp 1933, c 10, §§2, 3; RL 1935, pt of §7927; am L 1935, c 48, §§2, 4; RL 1945, pt of §712, subs 3; RL 1955, §6-91; am L 1964, c 62, §13; HRS §88-114; am L 1969, c 110, pt of §1; am L 1977, c 171, §3; am L 1983, c 124, §15; am L 1997, c 327, §4; am L 2004, c 181, §3]

Cross References

Trustees to submit estimates of amount due from county, see \$248-3.

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Employees' Retirement System portfolio down in 2011 despite fine final quarter

POSTED: 01:30 a.m. HST, Feb 14, 2012

StarAdvertiser.com

By Dave Segal

TRACKING THE MONEY

The state Employees' Retirement System peristion fulfil rose in the second quarter of fiscal 2012.

fiscal year	ea(m) Loss	TOTAL ATSETS (IN BILLIANS)	TIBEAL TEAR'	ries Less	TOTAL APPETS (M BILLIDES)
2012 1Q**	*-11 2%	\$10.2	2006	¥11.18	\$9.9
N. P. S. S. S.					
2010	<i>3</i> 11.7%	19.8	2004	¥15.8%	\$8.6
TO SEE	THE RES				
2008	3.4%	\$10.8	2002	-3,5%	\$7.9

Ends line 30 of each year, * Ended thee 31, 2011;

***Ended Sept. 30, 2011

Source State of Hawnii Engagyers featrement System

STAR-ADVERTISER

The state's largest public pension fund bounced back last quarter but ended the calendar year with a 1.3 percent investment loss that dragged down the asset value in its portfolio by nearly a half-billion dollars.

Hawaii's Employees' Retirement System reported Monday its portfolio gained 5.5 percent in the October-December period to match the median return of 26 public funds with assets of \$1 billion or more. In the July-September quarter, the portfolio slumped 11.2 percent

Assets rose to \$10.7 billion from \$10.2 billion at the end of the previous quarter. For the full year, assets decreased by \$453.9 million from \$11.2 billion on Dec. 31, 2010.

The ERS fund provides retirement, disability and survivor benefits to more than 111,000 active, retired and inactive vested state and county employees.

"Throughout the year, long-term investors were plagued by the markets' continuously alternating appetite between 'risk-on' and 'risk-off," the report said. "Although the second and third quarters of 2011 saw some of the largest historical short-term declines and subsequent recoveries, the fourth quarter endured with less volatility and mostly positive returns."

The report said that improved economic news and statistics continued to slowly trickle in and provide support for the markets.

However, the report noted, "European and U.S. fiscal problems, along with a still-struggling housing sector, remain as considerable headwinds on the road to a global economic recovery."

The ERS fund received a big boost last quarter by the 11 9 percent return of its domestic equity holdings



In other areas, real estate, which is reported on a one-quarter lag, gained 2.5 percent; inflation-adjusted returns linked to oil and other commodities rose 2.3 percent; total fixed income edged up 0.9 percent; and private equity inched up 0.3 percent.

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By Dave Segal TRACKING THE MONEY

The state Employees' Retirement System pension fund rose in the second quarter of fiscal 2012.

fich ta	TAIN:	TOTAL ASSETS (IN BILLIBUS)	FISCAL YEAR	gain <i>i</i> Less	TOTAL ASSETS (IN PILLIONS)
			2007		
2012 10***		elleikiisti kaaniuse	2006	+11.1%	\$9,9
22 22 22 22 22 22 22 22 22 22 22 22 22	11.7%	50.8	2002	*15.8%	
			2003		77
2008	3.4%	*10.8	2002	-5.5X	\$7.9

^{*}Ends hine 30 of each year, **Ended thee 31, 2011;

Source State of Housail

Employees Retirement System

STAR-ADVERTISER

^{***}Ended Sept. 20, 2011



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1468, AFL-CIO 2305 S. BERETANIA ST., RM. 202, HONOLULU, HAWAII 96826-1493 TELEPHONE (808) 949-1566 FAX: (808) 952-6003 WEBSITE: www.hawaiifirefighters.org

House of Representatives
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on Labor and Public Employment
February 14, 2012

Testimony by Hawaii Fire Fighters Association

H.B. No. 2488 RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO. HFFA represents the 2,800 active and retired professional fire fighters throughout the State. HFFA opposes H.B. No. 2488.

Employee contributions to the ERS and pension calculations are based on work performed inclusive of hours worked in addition to their normal scheduled work shifts as directed by management to meet appropriate staffing levels for the safety of the community and our members. This bill penalizes employees who fulfill work schedules assigned and unfairly impacts all public employees.

HFFA appreciates the efforts to ensure the fiscal stability of the Employees' Retirement System for all current and prospective members and strongly believe that engaging in meaningful discussions among the stakeholders, public employers and exclusive representatives would best serve all beneficiaries. Thank you for the opportunity to testify.

Committee on Labor and Public Trust Representative Karl Rhoads, Chair Representative Kyle Yamashita, Vice Chair

Re: H. B. 2488 RELATING TO THE EMPLOYEE'S RETIREMENT SYSTEM

Dear Chairman Rhoads and Members of the Committee,

This testimony is submitted on behalf of the City and County of Honolulu Emergency Services Department ("ESD") and its Divisions, Emergency Medical Services ("EMS") and Ocean Safety. My name is Mark K. Rigg, and I am the Deputy Director of ESD. Prior to this appointment, I worked for EMS since 1983, from the time of my internship as an entry level EMT, on through the management ranks, most recently as a District Chief. As a result of my experiences as field level personnel, a line operations supervisor, and today as a cabinet-level administrator, I believe I am well versed in the issues concerning ESD with respect to this proposed legislation.

While ESD and its Divisions support the intent of H.B. 2488 in theory, the Department has tangible concerns regarding the impact that passage of such a measure might have on a number of critical elements in our public service agency, including the possible effect on current personnel, retirees, and upon departmental budget and operations. In so much as ESD has only recently seen this bill, and has not been privy to the financial models and analysis employed in support of the proposed legislation, we are unable to effectively evaluate the potential impact upon our Department. As with many of our fellow public service agencies, ESD would like to be involved in any future discussions concerning this issue in order to effectuate a fair and equitable solution.

EMS and Ocean Safety provide critical services to our community. The delivery of these services is expected by the public and necessary for the well-being and safety of our community. Our operations proceed 24 hours a day, seven days a week, without regard for time, weather, or a litany of other known and unknown conditions that may impact the public. The very nature of staffing a public safety function with a workforce that is primarily subject to a collective bargaining agreement has many built-in constraints. From first-hand experience, I can attest that managing an around-the-clock public safety function while attempting to control and mitigate overtime, is difficult.

Using EMS as an example, Unit assignments are based upon seniority, as determined through an annual bid. Certain units, often in the more rural or more remote parts of the island, are statistically less busy than their more urban counterparts. In theory, personnel with greater seniority have the ability to choose locations where the pace of work may be slower and more conducive to maintaining the mental and physical energy needed to work overtime assignments. Likewise, there is issue of filling vacant shifts, which may arise due to sickness, vacation, or industrial injury. EMS and Ocean Safety are physically and emotionally demanding job functions, and it is often difficult, at best, to find individuals who are even willing to accept an overtime offer due to fatigue, family obligations or other competing interests.

Because of the highly inflexible nature of our staffing needs, the line supervisor's toughest decisions often come in the form of deciding which personnel may be "stuck" or unable to leave at the end of their eight-hour shift due to the unavailability of personnel. When faced with the choice between cost containment and the delivery of critical public safety functions, EMS and Ocean Safety management all

too often have to make the "right" choice and proceed in favor of the health, safety, and welfare of our community.

You must also consider the role that seniority plays in the assignment of overtime under the existing collective bargaining agreements. Simply put, there is little to no management discretion or leeway with respect to the protocol for extending offers of overtime. Any diversion from the specific process, either intentional or as a result of operational necessity, the departments are automatically subject to a potential grievance.

We are actively monitoring our use of overtime and taking steps to recruit and train additional personnel in order to reduce the necessity for overtime. However, because we must respond with sufficient personnel whenever an emergency or natural disaster strikes, some degree of overtime is inevitable.

Together with the other public safety agencies, ESD will be seeking further dialogue with ERS board representatives in order to gain a better understanding of this proposal and its impact on our Department and we hope to actively participate in future discussions on this bill.

Thank you for the opportunity to provide this testimony on behalf of ESD.

Sincerely,

MARK K. RIGG
DEPUTY DIRECTOR
CITY AND COUNTY OF HONOLULU
EMERGENCY SERVICES DEPARTMENT