

The Hawaii State Senate
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, March 14, 2012
TIME OF HEARING: 10:00 a.m.
PLACE OF HEARING: Conference Room 016

TESTIMONY ON H.B. 2494, H.D. 1
RELATING TO COLLECTIVE BARGAINING

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME, Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

This proposed legislation is intended to prematurely establish the amount of employer contributions for health benefit premiums for bargaining unit 10 employees (and their excluded counterparts) for the period from July 1, 2011 to June 30, 2013. The bill (a) interferes with the rights of public employees to negotiate over health benefit contribution amounts which is a mandatory subject of collective bargaining (under Section 89-3, HRS) until ten days after an arbitration decision is rendered pursuant to Section 89-11 (g), HRS, (b) disregards the rights of employees to submit their recommendation to the legislature if an agreement cannot be negotiated on the subject matter under Section 89-11 (g), HRS, and (c) erroneously assumes an "impasse" on a

subject matter covered by a December 23, 2010 memorandum of agreement which was funded pursuant to Section 89-10 (b), HRS, by 2011 Hawaii Session Laws, Act 6 at 21-22. (See attachment 3).

It is indisputable under both the private and public sector collective bargaining statutes that the amount of contributions to pay for health benefits is a mandatory subject over which an employer has a duty to bargain. As clearly stated by the Court in Professional Administrators Ltd. v. Kopper-Glo Fuel, Inc., 819 F.2d 639, 643 (6th Cir. 1987):

Collective bargaining is mandatory as to “wages, hours, and other terms and conditions of employment.” Id. at 158 (d). Fringe benefits are a component of wages and thus “it is . . . well established that contributions to health, welfare and pension fund constitute mandatory subjects of collective bargaining.” (Emphasis added).

The duty to bargain is set forth in Section 89-3, HRS (where it refers to collective bargaining over questions of wages, hours, and other terms and conditions of employment).

Under Section 89-11 (g), HRS, the duty to bargain requires public employers to negotiate over amounts of contributions up to the tenth day after an arbitration panel renders a decision for bargaining unit 10. In relevant portions Section 89-11 (g), HRS, states:

(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. (Emphasis added).

For bargaining unit 10 employees an arbitration panel was only recently selected and appointed (on February 22, 2012). See Attachment 1. An arbitration hearing is scheduled to commence on July 17 or 18, 2012. Setting the amount of employer contributions legislatively before the arbitration process has been exhausted interferes with the right of public employees to engage in collective bargaining over a mandatory subject.

This measure is also premature because under Section 89-11 (g), HRS, if the parties are unable to reach an agreement 10 days after the arbitration panel renders its decision, both sides are afforded a statutory right to submit their recommendation to the

legislature before the amounts of contributions are set by lawmakers. The statute provides in relevant portions:

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. (Emphasis added).

For the legislature to set contribution amounts at this point would violate the statutory rights of employees to submit their “recommendations” to you in accordance with the foregoing procedure (in the event no agreement is reached on employer contribution amounts).

Finally, this measure disregards the existence of a memorandum of agreement entered on December 23, 2010 (see Attachment 2) by public employers and the unions on the subject of employer contribution amounts, and the established procedure for legislative funding under Section 89-10 (b), HRS. As the memorandum of agreement indicates effective March 1, 2011 public employers agreed to restore a 60-40 ratio for employer versus employee contributions to pay for health benefits. The agreement was legislatively approved and funded under the established procedure set forth in Section 89-10 (b), HRS. See 2011 Haw. Sess. Laws, Act 6, at 21-22. The agreement is currently in effect and is the basis on which units 9, 10, 11, and 12 employees are currently receiving health benefit contribution amounts from public employers. This proposed measure contravenes the agreement, and the statutory procedure for appropriate funding after cost items have been fully negotiated.

For all of the foregoing reasons, we urge you not to adopt H.B. 2494, H.D. 1 or any version thereof.¹

¹ We would also like to correct a mistake in the House Labor Committee Report which erroneously states that UPW supported H.B. 2494 before the House of Representatives. See Attachment 4. As our testimony before the House Labor Committee indicates we are on record opposed to H.B. 2494. See Attachment 5.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Exclusive
Representative,

and

NEIL ABERCROMBIE, Governor, State of
Hawaii; PETER B. CARLISLE, Mayor, City
and County of Honolulu; MARK
RECKTENWALD, Chief Justice, the
Judiciary, State of Hawaii, and HAWAII
HEALTH SYSTEMS CORPORATION
BOARD,

Employers.

CASE NO. I-10-138

ORDER NO. 2832

ORDER APPOINTING ARBITRATION
PANEL AND NEUTRAL
ARBITRATOR AND CHAIRPERSON

ORDER APPOINTING ARBITRATION PANEL
AND NEUTRAL ARBITRATOR AND CHAIRPERSON

On February 17, 2012, Exclusive Representative UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW), by and through its attorney, filed a Motion for Order Appointing Arbitration Panel and Neutral Arbitrator and Chairperson (Motion) with the Hawaii Labor Relations Board (Board). The UPW moved the Board for an order appointing Clifford T. Uwaine (selected by the Exclusive Representative), William T. Elliott (selected by the Employers), and Ronald Hoh (a neutral arbitrator selected by the parties from a list provided by the American Arbitration Association) to the three-member arbitration panel for the resolution of the impasse in bargaining unit 10 negotiations, affecting institutional, health, and correctional workers.

Based upon a review of the UPW's Motion and its supporting documents, the Board hereby appoints Ronald Hoh, as the neutral arbitrator and chairperson of the arbitration panel and certifies Clifford T. Uwaine and William T. Elliott as members of the panel. The panel shall have such authority and duties as conferred by law.

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.

Wali Yi Kuniwote

Executive Officer
Hawaii Labor Relations Board

ATTACHMENT 1

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is entered into this 23rd day of December, 2010, by and between the State of Hawai'i, the City and County of Honolulu, the County of Hawai'i, the County of Maui, the County of Kauai, the Hawaii Health Systems Corporation, the Judiciary, the Department of Education, and the University of Hawai'i, hereinafter collectively referred to as the "EMPLOYER", and the Hawai'i Government Employees Association, Local 152, AFSCME, AFL-CIO; the United Public Workers, AFSCME, Local 646, AFL-CIO; the University of Hawai'i Professional Assembly, NEA; and the Hawai'i State Teachers Association, NEA, hereinafter collectively referred to as the "UNION".

WHEREAS, the purpose of this MEMORANDUM OF AGREEMENT is to establish the terms and conditions of Employer contributions to the Hawai'i Employer-Union Health Benefits Trust Fund (EUTF) for the period March 1, 2011 up to and including June 30, 2011.

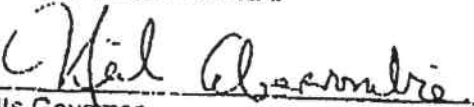
NOW THEREFORE, the UNION and the EMPLOYER (collectively, "PARTIES") mutually agree to the following:

- The attached Exhibit A shall be implemented for the EMPLOYER for the period March 1, 2011 up to and including June 30, 2011.

This MEMORANDUM OF AGREEMENT shall be effective on March 1, 2011 up to and including June 30, 2011.


IN WITNESS WHEREOF, the parties hereto, by their authorized representative, have executed this MEMORANDUM OF AGREEMENT on the day and year first written above.

FOR THE EMPLOYER:



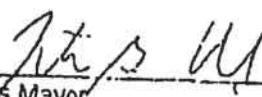
Its Governor
For the State of Hawai'i

FOR THE UNION:

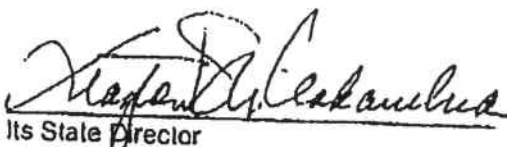


Its Executive Director
Hawai'i Government Employees
Association

CITY AND COUNTY OF HONOLULU

By 

Its Mayor



Its State Director
United Public Workers

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

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Delete the existing language in this Section in its entirety and replace with the following:

Subject to the applicable provisions of Chapters 87A and 89, Hawai'i Revised Statutes, the Employer shall pay monthly contributions to the Hawai'i Employer-Union Health Benefits Trust Fund ("Trust Fund" or EUTF) as follows:

A. "Health Benefit Plan" shall mean the medical PPO, HMO, HDHP, prescription drug, dental, vision, and dual coverage medical plans.

B. Effective March 1, 2011.

Effective March 1, 2011 for plan year 2010-2011, the Employer shall pay to the Trust Fund monthly contribution amounts as specified.

1. The amounts paid by the Employer in plan year 2010-2011 for each Employee-Beneficiary with no dependent-beneficiaries shall be limited to those enrolled in the following Trust Fund Health Benefit Plans and shall be no more than:

<u>BENEFIT PLAN</u>	<u>TOTAL MONTHLY CONTRIBUTION</u>
<u>a. Medical (PPO, HMO, or HDHP)(& chiro)</u>	<u>\$189.34</u>
<u>b. Prescription Drug</u>	<u>\$ 42.74</u>
<u>c. Dental</u>	<u>\$ 19.50</u>
<u>d. Vision</u>	<u>\$ 3.64</u>
<u>e. Dual Coverage (medical, drug, chiro):</u>	
<u>(1) HMSA</u>	<u>\$136.02</u>
<u>(2) Royal State</u>	<u>\$ 27.20</u>

The Employer shall pay the same monthly contribution for each Employee-Beneficiary enrolled in a self-only medical plan (PPO, HMO, or HDHP), regardless of which plan is chosen.

2. The amounts paid by the Employer in plan year 2010-2011 for each Employee-Beneficiary with one dependent-beneficiary shall be limited to those enrolled in the following Trust Fund Health Benefit Plans and shall be no more than:

<u>BENEFIT PLAN</u>	<u>TOTAL MONTHLY CONTRIBUTION</u>
<u>a. Medical (PPO, HMO, or HDHP)(& chiro)</u>	<u>\$ 459.32</u>
<u>b. Prescription Drug</u>	<u>\$ 103.68</u>

SESSION LAWS
OF
HAWAII
PASSED BY THE
TWENTY-SIXTH STATE LEGISLATURE
STATE OF HAWAII

REGULAR SESSION
2011

Convened on Wednesday, January 19, 2011 and
Adjourned sine die on Thursday, May 5, 2011

Published under Authority of
Section 23G-13, Hawaii Revised Statutes
by the
Revisor of Statutes
State of Hawaii
Honolulu, Hawaii

ACT 7

in the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2009-2011 the Hawaii employer-union health benefits trust fund costs contained in the agreement negotiated with the exclusive bargaining representative of collective bargaining units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13:

General Funds FY 2010-2011
\$16,847,076

Of the above listed amounts, the following amounts are for the department of education, including the Hawaii state public library system:

General Funds FY 2010-2011
\$8,119,044

SECTION 3. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to make health care premium payments (BUF 761) in the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2009-2011, the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13:

General Funds FY 2010-2011
\$1,248,090

Of the above listed amounts, the following amounts are for the department of education, including the Hawaii state public library system:

General Funds FY 2010-2011
\$257,402

SECTION 5. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2011, shall lapse as of that date.

SECTION 7. This Act shall take effect upon its approval.
(Approved March 17, 2011.)

agreement reached separate from the arbitration decision, or if no agreement has been reached within ten working days after the arbitration decision has been issued, then the public employers and the respective union each submits its recommendations for contributions directly to the Legislature for legislative determination and enactment. The public employer's proposed contributions are being submitted through this measure.

Your Committee has amended this measure by:

- (1) Removing the language referencing a dollar amount equivalent to 50 percent of the premium rates established by the Board of Trustees of the Hawaii Employer-Union Health Benefits Trust Fund for the respective health benefit plan plus 50 percent of the administrative fees was being provided by this measure;
- (2) Removing all contribution amounts for the Hawaii Employer-Union Health Benefits Trust Fund plan premium costs for plan years 2011-2012 and 2012-2013; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

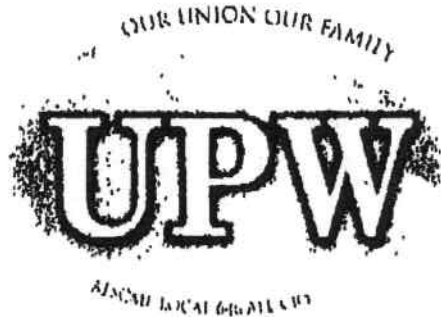
As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2494, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2494, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



KARL RHOADS, Chair





THE HAWAII STATE SENATE
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON JUDICIARY AND LABOR
The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile S. I. Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, March 14, 2012
TIME OF HEARING: 10:00 a.m.
PLACE OF HEARING: Conference Room 016

TESTIMONY ON HB 2494 HD1 RELATING TO COLLECTIVE BARGAINING

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

UPW is in strong opposition to HB 2494 HD1, which provides employer contribution amounts for plan years 2011-2012 and 2012-2013 for the Hawaii Employer-Union Health Benefits Trust Fund health benefit plan premiums for employees in collective bargaining unit 10 and their excluded counterparts.

As contract negotiations with the employer are ongoing, the legislature should not make a decision on this issue until those negotiations have been completed.

Thank you for the opportunity to testify on this measure.