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LATE TESTIMONY

COMMENTS

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: Thursday, January 26, 2012
TIME OF HEARING: 2:30 p.m.
PLACE OF HEARING: Conference Room 229

TESTIMONY ON S.B. 2069 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 redefines the process of negotiations for bargaining units 1, 2, 3, 4, 9, 10, and 11 by authorizing each employer jurisdiction to negotiate separate master collective bargaining agreements on their own. The measure a) eliminates the multi-employer bargaining process essential to protect employees who share common interests on a statewide basis, b) causes unnecessarily fragmentation and duplication, and c) threatens to undermine stable collective bargaining relationships which have been established for nearly forty (40) years.

As you know when chapter 89 was enacted in 1970 the legislature established collective bargaining units taking into account a statewide merit system and the community of interests shared by employees according to the "nature of their work." See 1970 Hawaii Session Laws Act 171, § 6, at 313-314. For example, the blue collar workers who were covered under pre-existing compensation plans were placed in bargaining units 1 and 2 accordingly. By basing bargaining

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unit determinations on the nature of work the principle of equal pay for equal work was recognized. The nature of work and the need to avoid disparity in compensation for those performing similar work also served to establish the bargaining unit for "nonprofessional hospital and institutional workers" in unit 10. The same principle applied for all 13 bargaining units. Multi-employer bargaining was deemed most appropriate to continue the merit principle, and to implement a statewide policy on collective bargaining for all public employees.

In 2000 the legislature re-affirmed in Act 253 the continuing need for multi-employer bargaining and the involvement of the State and various counties in the negotiation process for master agreements under Section 89-6 (d), HRS. See 2000 Hawaii Session Laws Act 253, § 96, at 892 to 894. At the same time you recognized that the counties, the Judiciary, the Hawaii Health Systems Corporation and other employer jurisdictions should be afforded a greater measure of flexibility to independently address unique and separate concerns through supplemental agreements under Section 89-6 (e), HRS. The legislature in turn recognized, however, that allowing separate jurisdictions to negotiate separate master agreements would result in unnecessary fragmentation and duplication. Our experience with charter schools within the Department of Education raises concerns about unnecessary fragmentation and duplication. We have mutually worked with the counties, the judiciary, and HHSC, to negotiate supplemental agreements where the need for flexibility is apparent.

The UPW has negotiated approximately sixteen successive collective bargaining agreements for blue collar non-supervisory employees and institutional, health, and correctional workers on a multi-employer basis since 1972. The relationships with public employers are constructive and stable. Allowing each employer jurisdiction to renegotiate separate wages, hours, and other conditions of employment in the master agreements threatens to undermine what has developed over a period of forty years.

For all of the foregoing reasons, we urge you to maintain the statewide policies for collective bargaining, protect the multi-employer bargaining process for master agreements, and continue to recognize flexibility for separate jurisdictions through bargaining over supplemental agreements only. Thank you.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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LATE TESTIMONY

AFSCME LOCAL 152, AFL-CIO

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
January 26, 2012

S.B. 2069 – RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 2069 which allows for the State, Judiciary, Hawaii Health Systems Corporation and each of the four (4) counties to separately and independently negotiate with the exclusive representative of Bargaining Units 01, 02, 03, 04, 09, 10, 11, 12 and 13 over a collective bargaining agreement.

Separate and independent jurisdiction-based negotiations are contrary and diametrically opposed to the fundamental, core values of the merit principle – equal work for equal pay. Independent agreements will likely result in employees performing identical jobs in different jurisdictions being compensated, both monetarily and in their total benefits package, disparately. A clerk typist in Honolulu County could theoretically receive a significantly higher salary and have a starkly different discipline and grievance process than an identical counterpart who works for the State. All articles contained within our existing collective bargaining agreements could be subject to the individual whim of a single Employer. Statewide collective bargaining for employees within the same unit and with a collective and collaborative Employer position, ensures fairness for all.

As currently written in Ch. 89, Hawaii Revised Statues, the Employer group must collectively bargain with the Exclusive Representative on a master contract, while each individual jurisdiction has the flexibility to negotiate additional supplemental agreements for their employees. This process, as already statutorily established, works and is beneficial for both the Exclusive Representatives and the Employers.

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

Respectfully submitted,

Randy Perreira
Executive Director

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LATE TESTIMONY

LATE

The Senate
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on Judiciary and Labor
January 25, 2012

Testimony by
Hawaii Fire Fighters Association

S.B. No. 2069 RELATING TO COLLECTIVE BARGAINING

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 strongly opposes S.B. No. 2069.

S.B. No. 2069 is contrary to the public policy of the State as articulated in Chapter 76. Including but not limited to the public policy of "equal pay for equal work" and working towards "harmonious and cooperative relations between government and its employees, including employee organizations representing them, to develop and maintain a well-trained, efficient, and productive work force that utilizes advanced technology to ensure effective government operations and delivery of public services." All members of Bargaining Unit 11 in their respective classes have essentially identical duties and responsibilities across the State.

We respectfully request the Committee hold S.B. No. 2069 in committee. Thank you for the opportunity to testify.

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January 25, 2012

LATE TESTIMONY

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

COMMITTEE ON JUDICIARY & LABOR
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Thursday, January 26, 2012
TIME OF HEARING: 2:30 p.m.
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SB No. 2069

TESTIMONY IN OPPOSITION

By CHARLES K.Y. KHIM, ESQ. CKYK
Labor Law Expert

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, the U.S. Court of Appeals for the Ninth Circuit, and the U.S. Supreme Court.

I have been actively practicing law for over the past thirty-one years and have concentrated my law practice almost exclusively in the area of labor law, with an emphasis on union and management labor law. I almost exclusively represent labor organizations both in the public sector of the State of Hawaii and the political subdivisions thereof, Federal public sector (Pearl Harbor Naval Shipyard employees), as well as private sector employees.

As an expert in labor law, I hereby express my strong OPPOSITION to this bill which, if enacted, will unconstitutionally infringe on the Hawaii

State Constitutional right of Hawaii State and County Civil Service employees to be employed in accord with the Hawaii Constitutional merit principle of **equal pay for equal work** for civil servants who are covered by a collective bargaining agreement.

Article XVI, Section 1 of the Hawaii State Constitution states as follows:

> "The employment of persons in the civil service, as defined by law, of or under the State, **shall be governed by the merit principle**."

This "merit principle" in the Hawaii State Constitution has been applied by the Hawaii Supreme Court to protect Hawaii State and County civil service employees against unreasonable State and County employment actions implemented under the color of a State of Hawaii statute.[1]

The enabling clause in the Hawaii State Constitution has, in some circumstances, given the Hawaii State Legislature the authority to define and effectuate the protections stated in this Constitutional merit principle when the definition and implementation thereof provides greater protection to civil service employees than the a judicial decision does.

The Hawaii State Legislature has defined and effectuated this Constitutional merit principle by amending HRS, §76-1(5) to state, in pertinent part, as follows:

> "**Equal pay for equal work** shall apply between the classes in the **same bargaining unit among jurisdictions**, for those classes . . ."

[1] Of course this constitutional provision states that exactly who is a person in the civil service, as opposed to a civil service exempt employee, is determined by statute and not this constitutional provision.

By utilizing the word "**jurisdictions**" in the plural, the legislature made it clear that it intended to define and implement this Constitutional merit principle to make the wages received by State and County civil service employees in the same class or job classification uniform or equal, no matter what employer jurisdiction those civil service employees were employed in.

By utilizing the phrase "**bargaining unit**" the Legislature made it clear that it intended this enunciation of this aspect of the Constitutional merit principle to apply exclusively to all civil servants who are subject to collective bargaining.

By combining the foregoing conclusions, it is obvious that the Legislature, in enacting this provision, intended this enunciation of this aspect of the Constitutional merit principle to apply to all unionized State and County employees in the same bargaining unit State wide irrespective of which public employer that unionized bargaining unit member worked for.

In explaining the enactment thereof, the House Committee on Labor and Public Employment, in its Standing Committee Report Number 1344-00, stated as follows:

> "**It is well established that uniformity in the law is essential to its success.** A decentralized system would add to the confusion of a statewide merit system by promoting inequities within similar classifications of employees and **violating the [merit] principle of equal pay for equal work.**"

The current bill under consideration will destroy this constitutional merit principle of "**equal pay for equal work**" by allowing public employers in different governmental jurisdictions to pay public workers holding the same job classification and performing the same work, **unequal pay for equal work**.

In other words, this proposed legislation will violate the Constitutional merit principle of **equal pay for equal work** by subjecting State and County civil service employees who hold the same job classification and perform the same work to disparate wages depending on which government, and in the case of the State government which sub-unit of the same government, he or she works for.

Thus, this proposed legislation would allow the City & County of Honolulu to pay a person holding a Building Custodian I job position who works in Honolulu Hale a different salary than a Building Custodian I employee who does the same work but is employed by the State of Hawaii in the Kalanimoku Building which is less than 250 yards mauka of Honolulu Hale.

Moreover, this bill, if enacted, will create the situation where three State employees who hold the job position of Senior Clerk Typist, and work in the circuit court building, one who is processing record for the Judiciary, another who is processing records for the State Hospital at Kaneohe, and third clerk/typist who processing records for Maluhia Hospital, work elbow to elbow doing the same work at three different rates of pay, despite the fact that they are all State government civil service employees, because one is employed by the Judiciary, another is employed by the State Department of Health, and the third is employed by the Hawaii Health Systems Corporation.

This disparity, aside from being a breach of the Constitutional right to be employed under the merit principle, will cause great dissension and loss of morale if it is enacted, because it will pit State employees against other State employees, as well as pit State employees against County employees.

The finest minds from the career management team of the State and County governments created this unitary civil service system; outstanding personnel managers such as retired State Personnel Director James Takushi, retired City & County of Honolulu Personnel Director Wallace Kunioka, retired Maui

County Personnel Director James Izumi, retired Kauai County Personnel Director Herbert Doi and his brother retired State Department of Education Personnel Department Director Manfred Doi.

Currently the same cannot be said for the management from the City government who are proposing this legislation. **These City management personnel are hypocrites, as the following demonstrates**.

HRS, Chapter 87C sets forth the working conditions that State and County's top management employees who control public workers who are afforded collective bargaining rights. All of these top management employees who are covered by HRS, Chapter 89C are exempt from collective bargaining. Many of these top management employees are not in civil service positions, but rather hold patronage positions. These civil service excluded top management employees are not hired on the basis of merit, and do not have to pass any civil service minimum qualifications entrance examinations in order to qualify for their jobs.

HRS, Chapter 89C affords these top management employees the same "equal pay for equal work" protection even though they are not entitled to that protection under Article XVI, Section 1 of the Hawaii Constitution.[2]

This HRS, Chapter 89C "equal pay for equal work" protection that these top management officials enjoy is exactly the same "equal pay for equal work" protection that these top City management officials seek to take away from unionized State and County workers via the enactment of this bill.

Yet, these top management officials who, via this bill, seek to take away the "equal pay for equal work" protection from unionized employees, have excluded from this bill any provision which will

[2] For example, HRS, §89C-2(5) provides that the wages of these top management officials who are excluded from the civil service shall nevertheless be uniformly adjusted by the same amount "to ensure fairness." HRS, §89C-2(4) provides that top management officials who are civil service covered shall receive at a minimum the same pay as their counterparts who are covered by collective bargaining.

take away from themselves their HRS, Chapter 89C "equal pay for equal work" protection. This is a classic case of "do as I say not as I do."

This unitary civil service system was created to eliminate the inequities and disparities that plagued government service prior to the creation of the civil service system.

The destruction of this unitary civil service system will do a great disservice to the people of the State of Hawaii and its County government sub-divisions, by diverting public workers from their government work because they will be focusing a substantial amount of their work time figuring out which vacant government job with higher pay for the same work to apply for and transfer to.

The concept for the State and County Civil Service System was patterned after the Federal law known as the "Pendleton Civil Service Reform Act." This Federal law, which reformed Federal government employment by effectuating an employment policy based on merit and equal pay for equal work, was enacted in response to the assassination of President James Garfield.

A deranged man who claimed to be aligned with the "Stalwarts" faction of the Republican Party, a faction which was adverse to President Garfield's "Half Breed" faction of the Republican Party. When President Garfield defeated the "Stalwarts" and became President, through a series of political maneuvers he fired practically all of "Stalwarts" who held Federal government positions.

The deranged man who claimed he was allied with the "Stalwarts" assassinated President Garfield because of this dispute between the "Stalwarts" and the "Half Breeds," and President Garfield's above mentioned heavy handed handling of this dispute.

For all of these reasons, I strongly urge this honorable committee to hold this bill in this committee.

Thank you for this opportunity to present testimony to this honorable committee. If any member of this committee has any questions of me, I will be more than glad to answer them at the appropriate time.