

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2214, S.D. 1

February 29, 2012

RELATING TO COLLECTIVE BARGAINING

Senate Bill No. 2214, S.D. 1, repeals the prohibition of using arbitration to resolve impasses or disputes relating to State and county Hawaii Employer-Union Health Benefits Trust Fund (EUTF) contributions and authorizes arbitration panels to decide on EUTF contributions. The bill also repeals the prohibition on the right to strike over EUTF contributions.

The Department of Budget and Finance (B&F) believes the best way to maintain control of EUTF costs is to leave the final decision for EUTF contributions in the hands of the Legislature if the parties are unable to reach an agreement. While arbitration panels are tasked to consider the employer's ability to pay and overall economic conditions, panels often fail to grasp the complexities of the State budget.

Recent fiscal conditions have made it increasingly difficult to reach resolution in collective bargaining negotiations. B&F recognizes that giving arbitration panels the opportunity to award a more comprehensive package on salary and benefits might possibly help bring resolution to this process. Accordingly, if the Legislature desires to allow arbitration panels to consider EUTF contribution amounts, a better approach would be that proposed by the Department of the Attorney General which would allow panels to make awards concerning EUTF contributions, but would still

allow the Legislature to reject or modify contribution amounts without impacting the rest of the arbitration panel's decision. The following language could be added:

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

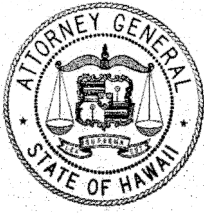
“(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any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

award. Notwithstanding the binding nature of interest arbitration, the parties may submit their respective recommendations on the appropriate amounts of contributions to the legislature within five days from the issuance of the arbitration award, if it is in session, and if the legislature is not in session the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on the amounts of contributions shall consist of the amounts of contributions established by the legislature.

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

~~“(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. [If the parties have reached agreement with respect to the amounts of contributions by the state and counties to the Hawaii employer-union health benefits trust fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel’s decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit~~

~~their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the state and counties to the Hawaii employer-union health benefits trust fund.]~~The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision. Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the state and counties to the Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies as provided in section 89-10(b) and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.”



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2214, S.D. 1, RELATING TO COLLECTIVE BARGAINING.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 29, 2012 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
James E. Halvorson, Supervising Deputy Attorney General
Maria C. Cook, Deputy Attorney General at 587-2900.

Chair Ige and Members of the Committee:

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

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

We believe that the Legislature should seriously consider whether it wishes to delegate its current authority over these matters to an arbitration panel, subject to legislative approval. Giving the decision-making authority over amounts of contributions to an arbitration panel, reducing legislative oversight and involvement. Although the statutes provide legal criteria for the arbitrators to consider in reaching their decisions, there are significant variances among arbitrators in the weight that they attach to the different criteria. The employer's ability to pay and overall economic conditions, two important legal criteria, seem to play little role in shaping arbitral decisions. Further, the ability to maintain a well-paid workforce must be balanced against other government priorities and public needs. An arbitration panel need not keep all these interests in mind, unlike elected officials accountable to the public. Including an

arbitration panel reduces the ability of the government to control its budget. The net effect is that binding arbitration takes critical decisions out of the hands of elected leaders and puts them in the hands of unelected and unaccountable arbitrators.

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

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

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

“(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor’s next

operating budget within ten days after the date on which the agreement is ratified. The state legislature or the legislative body of any county acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining[-]; provided that cost items relating to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund may be deemed discrete cost items apart from other cost items submitted to them as a result of an arbitration award or negotiated agreement. The legislature or the legislative body of any county may approve, reject, or modify the arbitration award or negotiated agreement on the amounts of contributions. A modification or rejection by the legislature or the legislative body of any county shall not invalidate any other provisions in the negotiated agreement or arbitration award. Notwithstanding the binding nature of interest arbitration, the parties may submit their respective recommendations on the appropriate amounts of contributions to the legislature or the legislative body of any county within five days from the issuance of the arbitration award, if it is in session, and if the legislature or the legislative body of any county is not in session the parties shall submit their respective recommendations for such contributions to the legislature or the legislative body of any county during the next session of the legislature or the legislative body of any county. In such event, the final and binding agreement of the parties on the amounts of contributions shall consist of the amounts of contributions established by the legislature or the legislative body of any county.”

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

“(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. ~~[If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the tenth~~

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

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

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
February 29, 2012

S.B. 2214, S.D. 1 – RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2214, S.D. 1 which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes (HRS) and makes other technical, conforming amendments. We respectfully request the Committee amend the current defective date of July 1, 2050 to July 1, 2012 or upon approval.

Ch. 89, HRS lacks a dispute resolution over the contributions to the EUTF. As currently written, if the Employer and the Exclusive Representative cannot agree on the contributions, then the pro-rata share shall be determined by the Legislature, while all other negotiable items can proceed to impasse. The amendments contained in S.B. 2214 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either arbitration or strike, depending on the bargaining unit. Adoption of this language will increase conformity between public-sector and private-sector employee bargaining, as the Exclusive Representatives can fully utilize their dispute resolution mechanisms for all negotiable items.

Thank you for the opportunity to testify in strong support of this legislation, with the requested amendment.

Respectfully submitted,

Randy Perreira
Executive Director