



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

LATE TESTIMONY
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ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, January 26, 2012 TIME: 2:30 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
James E. Halvorson, Supervising Deputy Attorney General
Maria C. Cook, Deputy Attorney General

2:30 pm

Chair Hee and Members of the Committee:

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

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

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

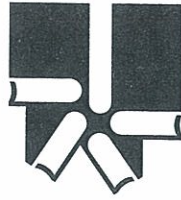
and overall economic conditions, two important legal criteria, seem to play little role in shaping arbitral decisions. Further, the ability to maintain a well-paid workforce must be balanced against other government priorities and public needs. An arbitration panel need not keep all these interests in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

Second, although section 89-11, HRS, states that all items requiring any moneys for implementation shall be subject to appropriation, there may be some significant legal issues if the Legislature decides to reject the arbitration award relating to amounts of contributions. Section 89-11, 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. In our prior Attorney General Opinion, we took the position that sections 89-10 and 89-11 must be read together so that if the Legislature rejects any cost items awarded by an arbitration panel, all cost items must be returned to the parties for further bargaining. Thus, under the proposed measure, if the Legislature decides to reject the amounts of contributions awarded by an arbitration panel, the Legislature will have to return to the parties for further bargaining all cost-items awarded in arbitration. Under the current statute, however, 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 Attorney General respectfully requests the committee consider these comments in determining whether to pass this bill.

LATE TESTIMONY



John Skim
89c

Senate Committee on Judiciary and Labor
Thursday, January 26, 2012
2:30 p.m.

SB 2214, Relating to Collective Bargaining.

Dear Chairmen Hee and Committee Members:

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

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

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

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SB2214 will not injure either the public employers of the State of Hawaii nor its citizens. Rather it will be a more honest approach to collective bargaining as set forth in our State Constitution. Impasse resolution puts the burden on both the employer and the union to come to a resolution that balances the total compensation package to be paid to public employees.

Any references to HRS Chapter 87A-33, etc., in SB2214 to retired employees should be eliminated since their benefits are not subject to bargaining under Chapter 89.

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

Respectively submitted,

A handwritten signature in black ink, appearing to read "J.N. Musto", written in a cursive style.

J.N. Musto, Ph.D
Executive Director



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
2305 S. BERETANIA ST., RM. 202, HONOLULU, HAWAII 96826-1493
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
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LATE TESTIMONY

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

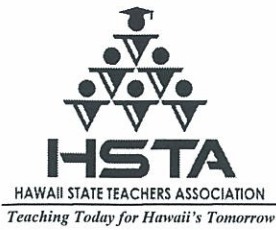
Testimony by
Hawaii Fire Fighters Association

S.B. No. 2214 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 supports S.B. No. 2214 as applicable to active employees.

HFFA believes that this bill encourages more meaningful discussion and possible settlement during the negotiation process relating to employer contributions to the EUTF for active employees. Furthermore, albeit an agreement on the EUTF contribution during the negotiation process, this bill provides the arbitration panel to reach a decision after thorough review of the total cost of both salary and fringe benefits for the entire bargaining unit.

We respectfully request the Committee pass S.B. No. 2214. Thank you for the opportunity to testify.



LATE TESTIMONY

1200 Ala Kapuna Street λ Honolulu, Hawaii 96819
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Wil Okabe
President

Karolyn Mossman
Vice President

Joan Kamila Lewis
Secretary-Treasurer

Alvin Nagasako
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

RE: **SB 2214** – RELATING TO COLLECTIVE BARGAINING

January 26, 2012

WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Hee and Members of the Committee:

The Hawaii State Teachers Association **supports** SB 2214. This bill will allow the unions an opportunity to negotiate health benefits for its members by having the ability to declare an impasse and enter into arbitration when both employer and union agree.

Health benefits continue to be a looming issue for our members' ability to enjoy a decent standard of living. We request support of this bill to allow us an opportunity to negotiate health benefits and to research the best plans and benefits for our working class member.

Thank you for the opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE TESTIMONY

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

Testimony by
Hawaii Government Employees Association
January 26, 2012

S.B. 2214 – RELATING TO
COLLECTIVE BARGAINING

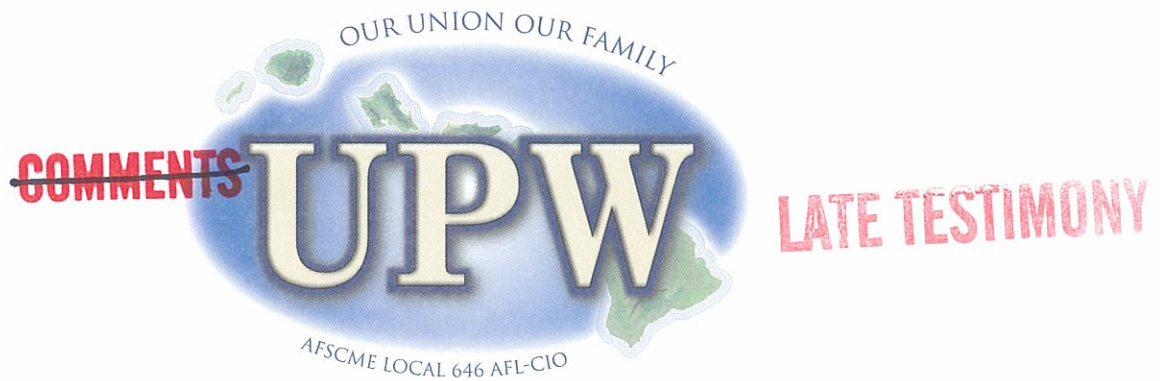
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO **strongly supports** the purpose and intent of S.B. 2214 which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Chapter 89, Hawaii Revised Statutes (HRS) and makes other technical, conforming amendments.

Chapter 89, HRS lacks a dispute resolution mechanism 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.

Respectfully submitted,

Randy Perreira
Executive Director



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.
PLACE OF HEARING: Conference Room 229

TESTIMONY ON SB 2214 REALATING 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 provides that bargaining units subject to mandatory interest arbitration will be able to resolve impasse or disputes in collective bargaining negotiations relating to amounts the state and counties contribute to Hawaii employer union health benefits fund through arbitration the decision of the arbitration panel would be final and binding.

For other bargaining units, impasse in collective bargaining negotiations over a renewed agreement, which may include disputes relating to employers' contribution amounts to EUTF permits the parties to resort to other remedies that are not prohibited by any agreement between them, other provision of Chapter 89, or any other law.

Accordingly, the UPW is in support of SB 2214.

Thank you for opportunity to testify on this measure.