

JAN 18 2013

A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes that all employees
2 within the State should have the freedom to independently form
3 an employee organization within their appropriate bargaining
4 unit for the purpose of collectively bargaining with their
5 employers. The purpose of this Act is to protect employees'
6 freedom to form employee organizations within an appropriate
7 bargaining unit, and to cease exclusive representation
8 requirements.

9 SECTION 2. Section 89-1, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) The legislature declares that it is the public policy
12 of the State to promote harmonious and cooperative relations
13 between government and its employees and to protect the public
14 by assuring effective and orderly operations of government.

15 These policies are best effectuated by:

16 (1) Recognizing the right of public employees to organize
17 for the purpose of collective bargaining;



- 1 (2) Requiring public employers to negotiate with and enter
2 into written agreements with [exclusive
3 ~~representatives~~] employee organizations on matters of
4 wages, hours, and other conditions of employment,
5 while, at the same time, maintaining the merit
6 principle pursuant to section 76-1; and
7 (3) Creating a labor relations board to administer the
8 provisions of chapters 89 and 377."

9 SECTION 3. Section 89-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§89-2 Definitions.** As used in this chapter:

12 "Appropriate bargaining unit" means the unit designated to
13 be appropriate for the purpose of collective bargaining pursuant
14 to section 89-6.

15 "Arbitration" means the procedure whereby parties involved
16 in an impasse submit their differences to a third party, whether
17 a single arbitrator or an arbitration panel, for an arbitration
18 decision. It may include mediation whereby the neutral third
19 party is authorized to assist the parties in a voluntary
20 resolution of the impasse.

21 "Board" means the Hawaii labor relations board created
22 pursuant to section 89-5.



1 "Collective bargaining" means the performance of the mutual
2 obligations of the public employer and an [exclusive
3 ~~representative~~] employee organization to meet at reasonable
4 times, to confer and negotiate in good faith, and to execute a
5 written agreement with respect to wages, hours, amounts of
6 contributions by the State and counties to the Hawaii employer-
7 union health benefits trust fund, and other terms and conditions
8 of employment, except that by any such obligation neither party
9 shall be compelled to agree to a proposal or be required to make
10 a concession. For the purposes of this definition, "wages"
11 includes the number of incremental and longevity steps, the
12 number of pay ranges, and the movement between steps within the
13 pay range and between the pay ranges on a pay schedule under a
14 collective bargaining agreement.

15 "Cost items" means all items agreed to in the course of
16 collective bargaining that an employer cannot absorb under its
17 customary operating budgetary procedures and that require
18 additional appropriations by its respective legislative body for
19 implementation.

20 "Day" means a calendar day unless otherwise specified.

21 "Employee" or "public employee" means any person employed
22 by a public employer, except elected and appointed officials and



1 other employees who are excluded from coverage in section [~~89-~~
2 ~~6(f)~~].

3 "Employee organization" means any organization of any kind
4 in which public employees participate and which exists for the
5 primary purpose of dealing with public employers concerning
6 grievances, labor disputes, wages, hours, amounts of
7 contributions by the State and counties to the Hawaii employer-
8 union health benefits trust fund, and other terms and conditions
9 of employment of public employees. An employee organization is
10 certified by the board under section 89-8 as a collective
11 bargaining agent to represent a group of employees in an
12 appropriate bargaining unit without discrimination and without
13 regard to employee organization membership.

14 "Employer" or "public employer" means the governor in the
15 case of the State, the respective mayors in the case of the
16 counties, the chief justice of the supreme court in the case of
17 the judiciary, the board of education in the case of the
18 department of education, the board of regents in the case of the
19 University of Hawaii, the Hawaii health systems corporation
20 board in the case of the Hawaii health systems corporation, and
21 any individual who represents one of these employers or acts in
22 their interest in dealing with public employees. In the case of



1 the judiciary, the administrative director of the courts shall
2 be the employer in lieu of the chief justice for purposes which
3 the chief justice determines would be prudent or necessary to
4 avoid conflict.

5 ~~["Exclusive representative" means the employee organization~~
6 ~~certified by the board under section 89-8 as the collective~~
7 ~~bargaining agent to represent all employees in an appropriate~~
8 ~~bargaining unit without discrimination and without regard to~~
9 ~~employee organization membership.]~~

10 "Impasse" means failure of a public employer and an
11 ~~[exclusive representative]~~ employee organization to achieve
12 agreement in the course of collective bargaining. It includes
13 any declaration of an impasse under section 89-11.

14 "Jurisdiction" means the State, the city and county of
15 Honolulu, the county of Hawaii, the county of Maui, the county
16 of Kauai, the judiciary, and the Hawaii health systems
17 corporation.

18 "Legislative body" means the legislature in the case of the
19 State, including the judiciary, the department of education, the
20 University of Hawaii, and the Hawaii health systems corporation;
21 the city council, in the case of the city and county of



1 Honolulu; and the respective county councils, in the case of the
2 counties of Hawaii, Maui, and Kauai.

3 "Mediation" means assistance by a neutral third party to
4 resolve an impasse between the public employer and [~~the~~
5 ~~exclusive representative~~] an employee organization through
6 interpretation, suggestion, and advice.

7 "Strike" means a public employee's refusal, in concerted
8 action with others, to report for duty, or the employee's wilful
9 absence from the employee's position, or the employee's stoppage
10 of work, or the employee's abstinence in whole or in part from
11 the full, faithful, and proper performance of the duties of
12 employment, for the purpose of inducing, influencing, or
13 coercing a change in the conditions, compensation, rights,
14 privileges, or obligations of public employment; and except in
15 the case of absences authorized by public employers, includes
16 such refusal, absence, stoppage, or abstinence by any public
17 employee out of sympathy or support for any other public
18 employee who is on strike or because of the presence of any
19 picket line maintained by any other public employee; provided
20 that, nothing herein shall limit or impair the right of any
21 public employee to express or communicate a complaint or opinion
22 on any matter related to the conditions of employment."



1 SECTION 4. Section 89-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§89-3 Rights of employees. Employees shall have the
4 right of self-organization and the right to form, join, or
5 assist any employee organization for the purpose of bargaining
6 collectively through representatives of their own choosing on
7 questions of wages, hours, and other terms and conditions of
8 employment, and to engage in lawful, concerted activities for
9 the purpose of collective bargaining or other mutual aid or
10 protection, free from interference, restraint, or coercion. An
11 employee shall have the right to refrain from any or all of such
12 activities[~~, except for having a payroll deduction equivalent to~~
13 ~~regular dues remitted to an exclusive representative as provided~~
14 ~~in section 89-4]."~~

15 SECTION 5. Section 89-6, Hawaii Revised Statutes, is
16 amended by amending subsection (e) to read as follows:

17 "(e) In addition to a collective bargaining agreement
18 under subsection (d), each employer may negotiate, independently
19 of one another, supplemental agreements that apply to their
20 respective employees; provided that any supplemental agreement
21 reached between the employer and [~~the exclusive representative]~~
22 an employee organization shall not extend beyond the term of the



1 applicable collective bargaining agreement and shall not require
2 ratification by employees in the bargaining unit."

3 SECTION 6. Section 89-8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§89-8 Recognition and representation; employee**
6 **participation.** (a) The employee organization which has been
7 certified by the board as representing [~~the majority~~] a group of
8 employees in an appropriate bargaining unit shall be the
9 [~~exclusive~~] representative of [~~all~~] those employees [~~in the~~
10 ~~unit~~]. As [~~exclusive~~] representative, it shall have the right
11 to act for and negotiate agreements covering [~~all~~] those
12 employees [~~in the unit~~] and shall be responsible for
13 representing the interests of [~~all such~~] those employees without
14 discrimination and without regard to employee organization
15 membership. Any other provision herein to the contrary
16 notwithstanding, whenever two or more employee organizations
17 which have been duly certified by the board as [~~the exclusive~~]
18 representatives of employees in bargaining units merge, combine,
19 or amalgamate or enter into an agreement for common
20 administration or operation of their affairs, all rights and
21 duties of such employee organizations as [~~exclusive~~]
22 representatives of employees in such units shall inure to and



1 shall be discharged by the organization resulting from such
2 merger, combination, amalgamation, or agreement, either alone or
3 with such employee organizations. [~~Election by the employees in~~
4 ~~the unit involved, and certification~~] Certification by the board
5 of such resulting employee organization shall not be required.

6 (b) An individual employee may present a grievance at any
7 time to the employee's employer and have the grievance heard
8 without intervention of an employee organization; provided that
9 the [~~exclusive~~] employees' representative is afforded the
10 opportunity to be present at such conferences and that any
11 adjustment made shall not be inconsistent with the terms of an
12 agreement then in effect between the employer and the
13 [~~exclusive~~] representative.

14 (c) Employee participation in the collective bargaining
15 process conducted by [~~the exclusive representative~~] an employee
16 organization of the appropriate bargaining unit shall be
17 permitted during regular working hours without loss of regular
18 salary or wages. The number of participants from each
19 bargaining unit with over 2,500 members shall be limited to one
20 member for each five hundred members of the bargaining unit.
21 For bargaining units with less than 2,500 members, there shall
22 be at least five participants, one of whom shall reside in each



1 county; provided that there need not be a participant residing
2 in each county for the bargaining unit established by section
3 89-6(a)(8). The bargaining unit shall select the participants
4 from representative departments, divisions or sections to
5 minimize interference with the normal operations and service of
6 the departments, divisions or sections."

7 SECTION 7. Section 89-8.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§89-8.5 Negotiating authority; Hawaii health systems**
10 **corporation.** Notwithstanding any law to the contrary, including
11 section 89-6(d), the Hawaii health systems corporation or any of
12 the regional boards, as a sole employer negotiator, may
13 negotiate with the [~~exclusive representative~~] employee
14 organization of any appropriate bargaining unit and execute
15 memorandums of understanding for employees under its control to
16 alter any existing or new collective bargaining agreement on any
17 item or items subject to section 89-9."

18 SECTION 8. Section 89-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§89-9 Scope of negotiations; consultation.** (a) The
21 employer and [~~the exclusive representative~~] an employee
22 organization shall meet at reasonable times, including meetings



1 sufficiently in advance of the February 1 impasse date under
2 section 89-11, and shall negotiate in good faith with respect to
3 wages, hours, the amounts of contributions by the State and
4 respective counties to the Hawaii employer-union health benefits
5 trust fund to the extent allowed in subsection (e), and other
6 terms and conditions of employment which are subject to
7 collective bargaining and which are to be embodied in a written
8 agreement as specified in section 89-10, but such obligation
9 does not compel either party to agree to a proposal or make a
10 concession; provided that the parties may not negotiate with
11 respect to cost items as defined by section 89-2 for the
12 biennium 1999 to 2001, and the cost items of employees in
13 bargaining units under section 89-6 in effect on June 30, 1999,
14 shall remain in effect until July 1, 2001.

15 (b) The employer or the [~~exclusive representative~~]
16 employee organization desiring to initiate negotiations shall
17 notify the other party in writing, setting forth the time and
18 place of the meeting desired and the nature of the business to
19 be discussed, sufficiently in advance of the meeting.

20 (c) Except as otherwise provided in this chapter, all
21 matters affecting employee relations, including those that are,
22 or may be, the subject of a rule adopted by the employer or any



1 director, shall be subject to consultation with the [~~exclusive~~
2 ~~representatives~~] employee organization of the employees
3 concerned. The employer shall make every reasonable effort to
4 consult with [~~exclusive representatives~~] employee organizations
5 and consider their input, along with the input of other affected
6 parties, prior to effecting changes in any major policy
7 affecting employee relations.

8 (d) Excluded from the subjects of negotiations are matters
9 of classification, reclassification, benefits of but not
10 contributions to the Hawaii employer-union health benefits trust
11 fund, recruitment, examination, initial pricing, and retirement
12 benefits except as provided in section 88-8(h). The employer
13 and the [~~exclusive representative~~] employee organization shall
14 not agree to any proposal which would be inconsistent with the
15 merit principle or the principle of equal pay for equal work
16 pursuant to section 76-1 or which would interfere with the
17 rights and obligations of a public employer to:

- 18 (1) Direct employees;
- 19 (2) Determine qualifications, standards for work, and the
20 nature and contents of examinations;
- 21 (3) Hire, promote, transfer, assign, and retain employees
22 in positions;



- 1 (4) Suspend, demote, discharge, or take other disciplinary
2 action against employees for proper cause;
- 3 (5) Relieve an employee from duties because of lack of
4 work or other legitimate reason;
- 5 (6) Maintain efficiency and productivity, including
6 maximizing the use of advanced technology, in
7 government operations;
- 8 (7) Determine methods, means, and personnel by which the
9 employer's operations are to be conducted; and
- 10 (8) Take such actions as may be necessary to carry out the
11 missions of the employer in cases of emergencies.

12 This subsection shall not be used to invalidate provisions
13 of collective bargaining agreements in effect on and after June
14 30, 2007, and shall not preclude negotiations over the
15 procedures and criteria on promotions, transfers, assignments,
16 demotions, layoffs, suspensions, terminations, discharges, or
17 other disciplinary actions as a permissive subject of bargaining
18 during collective bargaining negotiations or negotiations over a
19 memorandum of agreement, memorandum of understanding, or other
20 supplemental agreement.

1 Violations of the procedures and criteria so negotiated may
2 be subject to the grievance procedure in the collective
3 bargaining agreement.

4 (e) Negotiations relating to contributions to the Hawaii
5 employer-union health benefits trust fund shall be for the
6 purpose of agreeing upon the amounts which the State and
7 counties shall contribute under section 87-4, toward the payment
8 of the costs for a health benefits plan, as defined in section
9 87-1(8), and group life insurance benefits, and the parties
10 shall not be bound by the amounts contributed under prior
11 agreements; provided that section 89-11 for the resolution of
12 disputes by way of arbitration shall not be available to resolve
13 impasses or disputes relating to the amounts the State and
14 counties shall contribute to the Hawaii employer-union health
15 benefits trust fund.

16 (f) The repricing of classes within an appropriate
17 bargaining unit may be negotiated as follows:

18 (1) At the request of the [~~exclusive representative~~]
19 employee organization and at times allowed under the
20 collective bargaining agreement, the employer shall
21 negotiate the repricing of classes within the
22 bargaining unit. The negotiated repricing actions



1 that constitute cost items shall be subject to the
2 requirements in section 89-10; and
3 (2) If repricing has not been negotiated under paragraph
4 (1), the employer of each jurisdiction shall ensure
5 establishment of procedures to periodically review, at
6 least once in five years, unless otherwise agreed to
7 by the parties, the repricing of classes within the
8 bargaining unit. The repricing of classes based on
9 the results of the periodic review shall be at the
10 discretion of the employer. Any appropriations
11 required to implement the repricing actions that are
12 made at the employer's discretion shall not be
13 construed as cost items."

14 SECTION 9. Section 89-10, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§89-10 Written agreements; enforceability; cost items.**

17 (a) Any collective bargaining agreement reached between the
18 employer and [~~the exclusive representative~~] an employee
19 organization shall be subject to ratification by the employees
20 concerned, except for an agreement reached pursuant to an
21 arbitration decision. Ratification is not required for other
22 agreements effective during the term of the collective



1 bargaining agreement, whether a supplemental agreement, an
2 agreement on reopened items, or a memorandum of agreement, and
3 any agreement to extend the term of the collective bargaining
4 agreement. The agreement shall be reduced to writing and
5 executed by both parties. Except for cost items and any non-
6 cost items that are tied to or bargained against cost items, all
7 provisions in the agreement that are in conformance with this
8 chapter, including a grievance procedure and an impasse
9 procedure culminating in an arbitration decision, shall be valid
10 and enforceable and shall be effective as specified in the
11 agreement, regardless of the requirements to submit cost items
12 under this section and section 89-11.

13 (b) All cost items shall be subject to appropriations by
14 the appropriate legislative bodies. The employer shall submit
15 within ten days of the date on which the agreement is ratified
16 by the employees concerned all cost items contained therein to
17 the appropriate legislative bodies, except that if any cost
18 items require appropriation by the state legislature and it is
19 not in session at the time, the cost items shall be submitted
20 for inclusion in the governor's next operating budget within ten
21 days after the date on which the agreement is ratified. The
22 state legislature or the legislative bodies of the counties



1 acting in concert, as the case may be, may approve or reject the
2 cost items submitted to them, as a whole. If the state
3 legislature or the legislative body of any county rejects any of
4 the cost items submitted to them, all cost items submitted shall
5 be returned to the parties for further bargaining.

6 (c) Because effective and orderly operations of government
7 are essential to the public, it is declared to be in the public
8 interest that in the course of collective bargaining, the public
9 employer and the [~~exclusive representative~~] employee
10 organizations for each bargaining unit shall by mutual agreement
11 include provisions in the collective bargaining agreement for
12 that bargaining unit for an expiration date which will be on
13 June 30th of an odd-numbered year.

14 The parties may include provisions for reopening during the
15 term of a collective bargaining agreement; provided that cost
16 items as defined in section 89-2 shall be subject to the
17 requirements of this section.

18 (d) Whenever there is a conflict between the collective
19 bargaining agreement and any of the rules adopted by the
20 employer, including civil service or other personnel policies,
21 standards, and procedures, the terms of the agreement shall



1 prevail; provided that the terms are not inconsistent with
2 section 89-9(d).

3 Whenever there are provisions in a collective bargaining
4 agreement concerning a matter under chapter 76 or 78 that is
5 negotiable under chapter 89, the terms of the agreement shall
6 prevail; provided that the terms are not inconsistent with
7 section 89-9(d)."

8 SECTION 10. Section 89-10.55, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§89-10.55 Charter school collective bargaining; bargaining**
11 **unit; employer; [~~exclusive representative.~~] employee**

12 **organization.** (a) Employees of charter schools shall be
13 assigned to an appropriate bargaining unit as specified in
14 section 89-6; provided that if a charter school employee's job
15 description contains the duties and responsibilities of an
16 employee that could be assigned to more than one bargaining
17 unit, the duties and responsibilities that are performed by the
18 employee for the majority of the time, based on the employee's
19 average workweek, shall be the basis of bargaining unit
20 assignment for the employee.

21 (b) For the purpose of negotiating a collective bargaining
22 agreement for charter school employees who are assigned to an



1 appropriate bargaining unit, the employer shall be determined as
2 provided in section 89-6(d).

3 (c) For the purpose of negotiating a memorandum of
4 agreement or a supplemental agreement that only applies to
5 employees of a charter school, the employer shall mean the local
6 school board, subject to the conditions and requirements
7 contained in the applicable sections of this chapter governing
8 any memorandum of agreement or supplemental agreement.

9 (d) Negotiations over matters covered by this section
10 shall be conducted between the employer and [~~exclusive~~
11 ~~representative~~] employee organization pursuant to this chapter.
12 Cost items that are appropriated for and approved by the
13 legislature and contained in a collective bargaining agreement,
14 memorandum of agreement, or supplemental agreement covering,
15 wholly or partially, employees in charter schools shall be
16 allocated by the department of budget and finance to the charter
17 school administrative office for distribution to charter
18 schools. However, if the charter school administrative office
19 deems it appropriate, the cost items may be funded from a
20 charter school's existing allocation or other sources of revenue
21 received by a charter school."



1 SECTION 11. Section 89-10.8, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "[~~§89-10-8~~] **Resolution of disputes; grievances.** (a) A
4 public employer shall enter into written agreement with the
5 [~~exclusive representative~~] an employee organization setting
6 forth a grievance procedure culminating in a final and binding
7 decision, to be invoked in the event of any dispute concerning
8 the interpretation or application of a written agreement. The
9 grievance procedure shall be valid and enforceable and shall be
10 consistent with the following:

11 (1) A dispute over the terms of an initial or renewed
12 agreement shall not constitute a grievance;

13 (2) No employee in a position exempted from chapter 76,
14 who serves at the pleasure of the appointing
15 authority, shall be allowed to grieve a suspension or
16 discharge unless the collective bargaining agreement
17 specifically provides otherwise; and

18 (3) With respect to any adverse action resulting from an
19 employee's failure to meet performance requirements of
20 the employee's position, the grievance procedure shall
21 provide that the final and binding decision shall be



1 made by a performance judge as provided in this
2 section."

3 SECTION 12. Section 89-11, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§89-11 Resolution of disputes; impasses.** (a) A public
6 employer and an [~~exclusive representative~~] employee organization
7 may enter, at any time, into a written agreement setting forth
8 an alternate impasse procedure culminating in an arbitration
9 decision pursuant to subsection (f), to be invoked in the event
10 of an impasse over the terms of an initial or renewed agreement.
11 The alternate impasse procedure shall specify whether the
12 parties desire an arbitrator or arbitration panel, how the
13 neutral arbitrator is to be selected or the name of the person
14 whom the parties desire to be appointed as the neutral
15 arbitrator, and other details regarding the issuance of an
16 arbitration decision. When an impasse exists, the parties shall
17 notify the board if they have agreed on an alternate impasse
18 procedure. The board shall permit the parties to proceed with
19 their procedure and assist at times and to the extent requested
20 by the parties in their procedure. In the absence of an
21 alternate impasse procedure, the board shall assist in the
22 resolution of the impasse at times and in the manner prescribed



1 in subsection (d) or (e), as the case may be. If the parties
2 subsequently agree on an alternate impasse procedure, the
3 parties shall notify the board. The board shall immediately
4 discontinue the procedures initiated pursuant to subsection (d)
5 or (e) and permit the parties to proceed with their procedure.

6 (b) An impasse during the term of a collective bargaining
7 agreement on reopened items or items regarding a supplemental
8 agreement shall not be subject to the impasse procedures in this
9 section. The parties may mutually agree on an impasse
10 procedure, but if the procedure culminates in an arbitration
11 decision, the decision shall be pursuant to subsection (f).

12 (c) An impasse over the terms of an initial or renewed
13 agreement and the date of impasse shall be as follows:

14 (1) More than ninety days after written notice by either
15 party to initiate negotiations, either party may give
16 written notice to the board that an impasse exists.
17 The date on which the board receives notice shall be
18 the date of impasse; and

19 (2) If neither party gives written notice of an impasse
20 and there are unresolved issues on January 31 of a
21 year in which the agreement is due to expire, the



1 board shall declare on January 31 that an impasse
2 exists and February 1 shall be the date of impasse.

3 (d) If an impasse exists between a public employer and
4 [~~the exclusive bargaining~~] an employee organization
5 representative of [~~bargaining unit (1)~~], nonsupervisory
6 employees in blue collar positions; [~~bargaining unit (5)~~],
7 teachers and other personnel of the department of education; or
8 [~~bargaining unit (7)~~], faculty of the University of Hawaii and
9 the community college system, the board shall assist in the
10 resolution of the impasse as follows:

11 (1) Voluntary mediation. During the first twenty days of
12 the date of impasse, either party may request the
13 board to assist in a voluntary resolution of the
14 impasse by appointing a mediator or mediators,
15 representative of the public from a list of qualified
16 persons maintained by the board;

17 (2) Mediation. If the impasse continues more than twenty
18 days, the board shall appoint a mediator or mediators
19 representative of the public from a list of qualified
20 persons maintained by the board, to assist the parties
21 in a voluntary resolution of the impasse. The board
22 may compel the parties to attend mediation, reasonable



1 in time and frequency, until the fiftieth day of
2 impasse. Thereafter, mediation shall be elective with
3 the parties, subject to the approval of the board;

4 (3) Report of the board. The board shall promptly report
5 to the appropriate legislative body or bodies the
6 following circumstances as each occurs:

7 (A) The date of a tentative agreement and whether the
8 terms thereof are confidential between the
9 parties;

10 (B) The ratification or failure of ratification of a
11 tentative agreement;

12 (C) The signing of a tentative agreement;

13 (D) The terms of a tentative agreement; or

14 (E) On or about the fiftieth day of impasse, the
15 failure of mediation.

16 The parties shall provide the board with the requisite
17 information; and

18 (4) After the fiftieth day of impasse, the parties may
19 resort to such other remedies that are not prohibited
20 by any agreement pending between them, other
21 provisions of this chapter, or any other law.



1 (e) If an impasse exists between a public employer and
2 [~~the exclusive representative~~] an employee organization of
3 [~~bargaining unit (2),~~] supervisory employees in blue collar
4 positions; [~~bargaining unit (3),~~] nonsupervisory employees in
5 white collar positions; [~~bargaining unit (4),~~] supervisory
6 employees in white collar positions; [~~bargaining unit (6),~~]
7 educational officers and other personnel of the department of
8 education under the same salary schedule; [~~bargaining unit (8),~~]
9 personnel of the University of Hawaii and the community college
10 system, other than faculty; [~~bargaining unit (9),~~] registered
11 professional nurses; [~~bargaining unit (10),~~] institutional,
12 health, and correctional workers; [~~bargaining unit (11),~~]
13 firefighters; [~~bargaining unit (12),~~] police officers; or
14 [~~bargaining unit (13),~~] professional and scientific employees,
15 the board shall assist in the resolution of the impasse as
16 follows:

17 (1) Mediation. During the first twenty days after the
18 date of impasse, the board shall immediately appoint a
19 mediator, representative of the public from a list of
20 qualified persons maintained by the board, to assist
21 the parties in a voluntary resolution of the impasse.



1 (2) Arbitration. If the impasse continues twenty days
2 after the date of impasse, the board shall immediately
3 notify the employer and the exclusive representative
4 that the impasse shall be submitted to a three-member
5 arbitration panel who shall follow the arbitration
6 procedure provided herein.

7 (A) Arbitration panel. Two members of the
8 arbitration panel shall be selected by the
9 parties; one shall be selected by the employer
10 and one shall be selected by the exclusive
11 representative. The neutral third member of the
12 arbitration panel, who shall chair the
13 arbitration panel, shall be selected by mutual
14 agreement of the parties. In the event that the
15 parties fail to select the neutral third member
16 of the arbitration panel within thirty days from
17 the date of impasse, the board shall request the
18 American Arbitration Association, or its
19 successor in function, to furnish a list of five
20 qualified arbitrators from which the neutral
21 arbitrator shall be selected. Within five days
22 after receipt of such list, the parties shall



1 alternately strike names from the list until a
2 single name is left, who shall be immediately
3 appointed by the board as the neutral arbitrator
4 and chairperson of the arbitration panel.

5 (B) Final positions. Upon the selection and
6 appointment of the arbitration panel, each party
7 shall submit to the panel, in writing, with copy
8 to the other party, a final position which shall
9 include all provisions in any existing collective
10 bargaining agreement not being modified, all
11 provisions already agreed to in negotiations, and
12 all further provisions which each party is
13 proposing for inclusion in the final agreement.

14 (C) Arbitration hearing. Within one hundred twenty
15 days of its appointment, the arbitration panel
16 shall commence a hearing at which time the
17 parties may submit either in writing or through
18 oral testimony, all information or data
19 supporting their respective final positions. The
20 arbitrator, or the chairperson of the arbitration
21 panel together with the other two members, are
22 encouraged to assist the parties in a voluntary



1 resolution of the impasse through mediation, to
2 the extent practicable throughout the entire
3 arbitration period until the date the panel is
4 required to issue its arbitration decision.

5 (D) Arbitration decision. Within thirty days after
6 the conclusion of the hearing, a majority of the
7 arbitration panel shall reach a decision pursuant
8 to subsection (f) on all provisions that each
9 party proposed in its respective final position
10 for inclusion in the final agreement and transmit
11 a preliminary draft of its decision to the
12 parties. The parties shall review the
13 preliminary draft for completeness, technical
14 correctness, and clarity and may mutually submit
15 to the panel any desired changes or adjustments
16 that shall be incorporated in the final draft of
17 its decision. Within fifteen days after the
18 transmittal of the preliminary draft, a majority
19 of the arbitration panel shall issue the
20 arbitration decision.

21 (f) An arbitration panel in reaching its decision shall
22 give weight to the following factors and shall include in its



1 written report or decision an explanation of how the factors
2 were taken into account:

- 3 (1) The lawful authority of the employer, including the
4 ability of the employer to use special funds only for
5 authorized purposes or under specific circumstances
6 because of limitations imposed by federal or state
7 laws or county ordinances, as the case may be;
- 8 (2) Stipulations of the parties;
- 9 (3) The interests and welfare of the public;
- 10 (4) The financial ability of the employer to meet these
11 costs; provided that the employer's ability to fund
12 cost items shall not be predicated on the premise that
13 the employer may increase or impose new taxes, fees,
14 or charges, or develop other sources of revenues;
- 15 (5) The present and future general economic condition of
16 the counties and the State;
- 17 (6) Comparison of wages, hours, and conditions of
18 employment of the employees involved in the
19 arbitration proceeding with the wages, hours, and
20 conditions of employment of other persons performing
21 similar services, and of other state and county
22 employees in Hawaii;



1 (7) The average consumer prices for goods or services,
2 commonly known as the cost of living;

3 (8) The overall compensation presently received by the
4 employees, including direct wage compensation,
5 vacation, holidays and excused time, insurance and
6 pensions, medical and hospitalization benefits, the
7 continuity and stability of employment, and all other
8 benefits received;

9 (9) Changes in any of the foregoing circumstances during
10 the pendency of the arbitration proceedings; and

11 (10) Such other factors, not confined to the foregoing,
12 which are normally or traditionally taken into
13 consideration in the determination of wages, hours,
14 and conditions of employment through voluntary
15 collective bargaining, mediation, arbitration, or
16 otherwise between the parties, in the public service
17 or in private employment.

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



1 by the tenth working day after the arbitration panel issues its
2 decision, the final and binding agreement of the parties on all
3 provisions shall consist of the panel's decision and the amounts
4 of contributions agreed to by the parties. If the parties have
5 not reached agreement with respect to the amounts of
6 contributions by the State and counties to the Hawaii employer-
7 union health benefits trust fund by the close of business on the
8 tenth working day after the arbitration panel issues its
9 decision, the parties shall have five days to submit their
10 respective recommendations for such contributions to the
11 legislature, if it is in session, and if the legislature is not
12 in session, the parties shall submit their respective
13 recommendations for such contributions to the legislature during
14 the next session of the legislature. In such event, the final
15 and binding agreement of the parties on all provisions shall
16 consist of the panel's decision and the amounts of contributions
17 established by the legislature by enactment, after the
18 legislature has considered the recommendations for such
19 contributions by the parties. It is strictly understood that no
20 member of a bargaining unit subject to this subsection shall be
21 allowed to participate in a strike on the issue of the amounts
22 of contributions by the State and counties to the Hawaii



1 employer-union health benefits trust fund. The parties shall
2 take whatever action is necessary to carry out and effectuate
3 the final and binding agreement. The parties may, at any time
4 and by mutual agreement, amend or modify the panel's decision.

5 Agreements reached pursuant to the decision of an
6 arbitration panel and the amounts of contributions by the State
7 and counties to the Hawaii employer-union health benefits trust
8 fund, as provided herein, shall not be subject to ratification
9 by the employees concerned. All items requiring any moneys for
10 implementation shall be subject to appropriations by the
11 appropriate legislative bodies and the employer shall submit all
12 such items within ten days after the date on which the agreement
13 is entered into as provided herein, to the appropriate
14 legislative bodies.

15 (h) Any time frame provided in an impasse procedure,
16 whether an alternate procedure or the procedures in this
17 section, may be modified by mutual agreement of the parties. In
18 the absence of a mutual agreement to modify time frames, any
19 delay, failure, or refusal by either party to participate in the
20 impasse procedure shall not be permitted to halt or otherwise
21 delay the process, unless the board so orders due to an



1 unforeseeable emergency. The process shall commence or continue
2 as though all parties were participating.

3 (i) Nothing in this section shall be construed to prohibit
4 the parties from reaching a voluntary settlement on the
5 unresolved issues at any time prior to the issuance of an
6 arbitration decision.

7 (j) The costs and expenses for mediation provided under
8 subsection (d) or (e) shall be borne by the board. The costs
9 and expenses for any other services performed by neutrals
10 pursuant to mutual agreement of the parties and the costs for a
11 neutral arbitrator shall be borne equally by the parties. All
12 other costs incurred by either party in complying with this
13 section, including the costs of its selected member on the
14 arbitration panel, shall be borne by the party incurring them."

15 SECTION 13. Section 89-12, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) It shall be lawful for an employee, who is not
18 prohibited from striking under subsection (a) and who is in the
19 appropriate bargaining unit involved in an impasse, to
20 participate in a strike under the following conditions:



- 1 (1) The requirements of section 89-11 relating to the
2 resolution of disputes have been complied with in good
3 faith;
- 4 (2) The proceedings for the prevention of any prohibited
5 practices have been exhausted;
- 6 (3) The collective bargaining agreement and any extension
7 of the agreement has expired; and
- 8 (4) The [~~exclusive representative~~] employee organization
9 has given a ten-day notice of intent to strike,
10 together with a statement of its position on all
11 remaining issues in dispute, to the employer and the
12 board.

13 Within three days of receipt of the notice of intent to
14 strike, the employer shall submit its position on the remaining
15 issues in dispute that are included in the statement transmitted
16 by the [~~exclusive representative~~] employee organization with its
17 notice of intent to strike. The board shall immediately release
18 the information on the positions of the parties to the public."

19 SECTION 14. Section 89-13, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§89-14 Prohibited practices; evidence of bad faith. (a)**

2 It shall be a prohibited practice for a public employer or its
3 designated representative wilfully to:

4 (1) Interfere, restrain, or coerce any employee in the
5 exercise of any right guaranteed under this chapter;

6 (2) Dominate, interfere, or assist in the formation,
7 existence, or administration of any employee
8 organization;

9 (3) Discriminate in regard to hiring, tenure, or any term
10 or condition of employment to encourage or discourage
11 membership in any employee organization;

12 (4) Discharge or otherwise discriminate against an
13 employee because the employee has signed or filed an
14 affidavit, petition, or complaint or given any
15 information or testimony under this chapter, or
16 because the employee has informed, joined, or chosen
17 to be represented by any employee organization;

18 (5) Refuse to bargain collectively in good faith with [~~the~~
19 ~~exclusive representative~~] an employee organization as
20 required in section 89-9;

21 (6) Refuse to participate in good faith in the mediation
22 and arbitration procedures set forth in section 89-11;



- 1 (7) Refuse or fail to comply with any provision of this
2 chapter;
- 3 (8) Violate the terms of a collective bargaining
4 agreement;
- 5 (9) Replace any nonessential employee for participating in
6 a labor dispute; or
- 7 (10) Give employment preference to an individual employed
8 during a labor dispute and whose employment
9 termination date occurs after the end of the dispute,
10 over an employee who exercised the right to join,
11 assist, or engage in lawful collective bargaining or
12 mutual aid or protection through the labor
13 organization involved in the dispute.
- 14 (b) It shall be a prohibited practice for a public
15 employee or for an employee organization or its designated agent
16 wilfully to:
- 17 (1) Interfere, restrain, or coerce any employee in the
18 exercise of any right guaranteed under this chapter;
- 19 (2) Refuse to bargain collectively in good faith with the
20 public employer [~~, if it is an exclusive~~
21 ~~representative, as required in section 89-9~~];



- 1 (3) Refuse to participate in good faith in the mediation
- 2 and arbitration procedures set forth in section 89-11;
- 3 (4) Refuse or fail to comply with any provision of this
- 4 chapter; or
- 5 (5) Violate the terms of a collective bargaining
- 6 agreement."

7 SECTION 15. Section 89-7, Hawaii Revised Statutes, is

8 repealed.

9 ~~["§89-7 Elections. (a) Whenever, in accordance with~~

10 ~~regulations as may be prescribed by the board pursuant to~~

11 ~~chapter 91, a petition is filed by an employee organization to~~

12 ~~determine whether or by which organization employees desire to~~

13 ~~be represented for the purpose of collective bargaining, the~~

14 ~~board shall conduct an investigation and may conduct an election~~

15 ~~where appropriate as specified herein. A petition to decertify~~

16 ~~or to change the exclusive bargaining representative must be~~

17 ~~supported by fifty per cent of employees in an appropriate~~

18 ~~bargaining unit, through verifiable written proof of the names~~

19 ~~and signatures of employees. Signatures of employees supporting~~

20 ~~such a petition must be obtained within two months of the date~~

21 ~~of the petition to be valid with the board. In its~~



1 ~~investigation of the showing of interest, the board shall afford~~
2 ~~all interested parties a contested case hearing.~~

3 ~~(b) In any election where none of the choices on the~~
4 ~~ballot receives a majority of the votes cast, a runoff election~~
5 ~~shall be conducted with the ballot providing for a selection~~
6 ~~between the two choices receiving the largest number of valid~~
7 ~~votes cast in the election. The board shall certify the~~
8 ~~election results and the employee organization receiving a~~
9 ~~majority of the votes cast shall be certified as the exclusive~~
10 ~~representative of all employees in the appropriate bargaining~~
11 ~~unit for the purpose of collective bargaining. The employee~~
12 ~~organization shall remain certified as the exclusive~~
13 ~~representative until it is replaced by another employee~~
14 ~~organization, decertified, or dissolved.~~

15 ~~(c) No election shall be directed by the board in any~~
16 ~~appropriate bargaining unit within which (1) a valid election~~
17 ~~has been held in the preceding twelve months; or (2) a valid~~
18 ~~collective bargaining agreement is in force and effect.~~

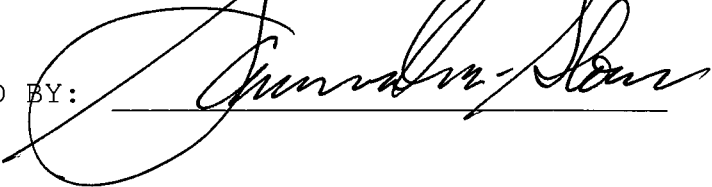
19 ~~(d) The board shall adopt rules and regulations consistent~~
20 ~~with this section governing the conduct of elections to~~
21 ~~determine representation, including the time, place, manner of~~
22 ~~notification, and reporting the results of elections, and the~~



1 ~~manner for filing any petition for an election and~~
2 ~~decertification election or any petition concerning the results~~
3 ~~of an election. No mail ballots shall be permitted by the board~~
4 ~~except when for reasonable cause a specific individual would~~
5 ~~otherwise be unable to cast a ballot. No names, addresses or~~
6 ~~information regarding the work location of employees eligible to~~
7 ~~vote shall be provided to employee organizations involved in an~~
8 ~~election. The board shall have the final determination on any~~
9 ~~controversy concerning the eligibility of an employee to vote."]~~

10 SECTION 16. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 17. This Act shall take effect upon its approval.

13 INTRODUCED BY: 



S.B. NO. 289

Report Title:

Collective bargaining; employee organizations

Description:

Repeals exclusive representation requirements and protects employees' freedom to independently form an employee organization within their appropriate bargaining unit for the purpose of collectively bargaining with their employer.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

