

HB 1173

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 1173

February 1, 2013

RELATING TO COLLECTIVE BARGAINING

House Bill No. 1173 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) does not support this bill. 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. However, altering what is done in these situations to allow binding arbitration would take this critical decision out of the hands of elected leaders and put it in the hands of unelected and unaccountable arbitrators. While the Legislature would still have the authority to reject an arbitration award, it appears all cost items would be rejected, not just EUTF contributions. The end result of this bill could result in giving the Legislature a choice of fully conceding control of this significant portion of the budget to arbitration panels or risk unending collective bargaining negotiations.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Twenty-Seventh Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
February 1, 2013

H.B. 1173 – RELATING TO
COLLECTIVE BARGAINING

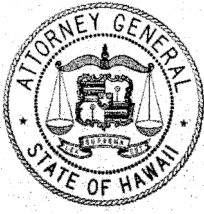
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1173, which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes, and makes other technical, conforming amendments.

As currently written, Ch. 89, HRS lacks a dispute resolution mechanism to address the Employee and Employer share of the contributions to medical premiums in the EUTF. As written, if the Employer and the Exclusive Representative cannot agree on the contribution amount, 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. 885 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either interest arbitration or strike, depending upon the bargaining unit. Adoption of this language increases conformity between public-sector and private-sector employee bargaining, as both parties can fully utilize their dispute resolution mechanisms for all negotiable items, and also allows for consideration of a full benefits and compensation package.

Thank you for the opportunity to testify in strong support of H.B. 1173.

Respectfully submitted,

Randy Perreira
Executive Director



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

H.B. NO. 1173, RELATING TO COLLECTIVE BARGAINING.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, February 1, 2013

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Maria C. Cook or Richard H. Thomason, Deputy Attorneys General

Chair Nakashima and Members of the Committee:

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

The purpose of this bill is to amend chapter 89 of the Hawaii Revised Statutes (HRS) to transfer from the Legislature to an arbitration panel the authority to decide amounts of contributions paid by public employers to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) in case of disputes or impasses between the unions and the public employers. This would make the arbitration award as to EUTF contributions final and binding on the parties.

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, 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. 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 reduces legislative oversight and involvement. Although the statutes provide legal criteria for the arbitrators to consider in reaching their decisions, there may be 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. Allowing an arbitration

panel to make these decisions 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, there is the increased likelihood of variability in the EUTF contribution amounts for all state employees. The involvement of multiple arbitration panels from different bargaining units subject to interest arbitration will increase the likelihood of variability in the EUTF contribution amounts. Similarly, bargaining units subject to interest arbitrations and those that are not subject to interest arbitrations such as bargaining unit 1 (non-supervisory employees in blue collar), bargaining unit 5 (teachers and other personnel of the department of education), and bargaining unit 7 (faculty of the University of Hawaii and the community college system) will have variations in the EUTF contribution amounts. Having variations in the amounts of contributions would make the planning and administration of health premiums more difficult.

Third, 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.