



STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813-2437

February 25, 2013

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Wednesday, February 27, 2013
11:30 a.m., Conference Room 308

BY

NEIL DIETZ
CHIEF NEGOTIATOR

House Bill No. 151 HD 1
RELATING TO COLLECTIVE BARGAINING

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 151 HD1.

H.B. 151 HD1 proposes to amend Hawaii Revised Statutes §89, requiring that any complaint before the Hawaii Labor Relations Board must be resolved in a prescribed number of days.

The Office of Collective Bargaining strongly opposes H.B. 151 HD1.

H.B. 151 HD1as proposed does not specify when the calendar begins its “count down”. Does it begin when a complaint is filed? When the hearing is closed? After briefs have been filed?

But the real issue is the specification of days. Cases brought before the Hawaii Labor Relations Board can be complex and detailed. It is a disservice to both the complainant and defendant(s) to limit consideration of complaints using any arbitrary, pre-determined time limit.

In a recent case before the Hawaii Labor Relations Board, the complainant proceeded to lay out its case over eight months. There were volumes of written exhibits submitted to the Board. This was followed by the production of a written transcript and briefs filed by the parties

after those transcripts were received. The Hawaii Labor Relations Board was then required by the complainant to include specific detailed findings of fact and conclusions of law. No reasonable person expects the results of such an undertaking in a pre-determined number of days.

H.B. 151 HD1 does not allow for due deliberation in complex labor law cases, to the detriment of all parties involved.

The Office of Collective Bargaining respectfully asks the Committee to reject the terms and philosophy advocated by H.B. 151 HD1.

Once again, thank you for the opportunity to offer this testimony.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 151, H.D. 1

February 27, 2013

RELATING TO COLLECTIVE BARGAINING

House Bill No. 151, H.D. 1, amends Section 89-5, HRS, to require that any complaint brought before the Hawaii Labor Relations Board (HLRB) be resolved within an unspecified number of days.

The Department of Budget and Finance (B&F) opposes this bill because it sets an arbitrary time limit. Cases brought before the HLRB can be complex and detailed. It is a disservice to both parties involved to limit consideration of complaints to an arbitrary time limit. B&F is particularly concerned because some recent cases have had the potential for substantial fiscal impact.

For example, in a recent case before the HLRB, the complainant took over eight months to lay out its case. There were volumes of written exhibits submitted to the Board. This was followed by the production of a written transcript and filing of briefs by the parties after those transcripts were received. The bill is not clear when the time limit is to start. Even if the deadline was clarified to mean after the parties have completed presenting their cases, or after the filing of written briefs, if applicable, it is not clear whether there would be sufficient time under an arbitrary deadline to thoroughly examine all the material and understand the full impact of a potential decision in such a case.

NEIL ABERCROMBIE
GOVERNOR

DWIGHT TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR



JAMES B. NICHOLSON
CHAIR

SESNITA A.D. MOEPONO
BOARD MEMBER

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February 26, 2013

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Y. Nishimoto, Vice Chair,
Members of the House Committee on Finance

Date: Wednesday, February 27, 2013
Time: 11:30 a.m.
Place: Conference Room 308 State Capitol

From: Sesnita Moepono, Board Member
Hawaii Labor Relations Board (HLRB or Board)

Re: H.B. No. 151, H.D. 1 Relating to Collective Bargaining

I. OVERVIEW OF PROPOSED LEGISLATION

The bill requires the HLRB to resolve all Hawaii Revised Statutes (HRS) Chapter 89 complaints within a certain time to be decided by the House Committee on Finance.

II. CURRENT LAW

Current law HRS §89-5 requires the Board to execute its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.

III. COMMENTS

Unfortunately, the Board has a hearing on the merits scheduled for tomorrow from 9:00 a.m. – 4:30 p.m. and therefore a Board representative will not be able to attend. The Board has three employees: one secretary, one legal clerk (stenographer), and an executive officer who is an attorney. The Board has concerns regarding its current staff's ability to meet this bill's intent as the Board has only one attorney to draft its decisions for HRS Chapters 89 and 396 (OSHA appeals). Since last year, the Board's caseload has risen by 30 cases from 97 to 127 cases. The Board

receives on the average one new case a week and disposes approximately 20-30 cases a year.

The Board's backlog of cases began in 1997 when the Board's legal staff was cut by three positions (two staff attorneys and one paralegal). Since 1997, the backlog of cases has steadily increased which proves that the three staff members were critical in resolving cases in a timely manner. The Board unfortunately cannot support this bill without the reinstatement of the three legal positions.

The Board functions as a three-member administrative law body. The Board processes each complaint filed similar to cases filed with the circuit court. The Board schedules for all cases: (1) a preliminary hearing to encourage the parties to settle and to set deadlines for dispositive motions, discovery, identification of witnesses, exchange of witness/exhibits lists and (2) a hearing on the merits that may take one day or 30 days depending on the number of witnesses. For each dispositive motion filed, a hearing is held and a decision and order is filed by the Board. Each case is different depending on the number and complexity of the issues. All cases are regulated by chapter 91.

All final orders rendered by the Board may be appealed to a circuit court and a circuit court order may be appealed to the appellate courts.

As an example of a Board case: CE-05-781 was filed in 2011 and the hearing was conducted over a nine month period with 26 witnesses testifying over approximately 36 days. Complainant introduced 327 exhibits and Respondents introduced 35 exhibits. The hearing transcripts consist of 4,703 pages and the motion transcripts total 306 pages. There were numerous motions throughout the hearing. There has been three Writs of Mandamus filed by Complainant with the Supreme Court and one preliminary motion with the First Circuit Court. The Complainant appealed the Board's Order Denying Complainant's Motion to Shorten Time to Hear Motion for Interlocutory Relief and to Expedite Issues Before the Board, filed on July 26, 2011 on September 30, 2011 in the First Circuit Court. The circuit court judge granted the Respondent's Motion to Dismiss for lack of Jurisdiction in November, 2011 and dismissed the appeal. The Complainant's appealed the circuit court ruling in December, 2011 to the Supreme Court and Intermediate Court of Appeal (the ICA). The ICA rendered its ruling last week affirming the circuit court order.

Thank you for this opportunity to testify on this bill. Please free to contact me if you have any questions.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

**The Twenty-Seventh Legislature, State of Hawaii
House of Representatives
Committee on Finance**

**Testimony by
Hawaii Government Employees Association
February 27, 2013**

**H.B. 151, H.D. 1 – RELATING TO
COLLECTIVE BARGAINING**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes the intent of H.B. 151, H.D. 1, which amends Section 89-5 of the Hawaii Revised Statutes by requiring the Hawaii Labor Relations Board (HLRB) to resolve complaints within an unspecified amount of days.

Although we can understand the intent behind the proposed amendments and the potential frustration caused by delayed decisions, we respectfully question if a statutorily set deadline would have unintended adverse consequences for both the Employers and the Exclusive Representatives, and the employees for whom they represent. Requiring that decisions be expediently adjudicated lends to decisions made in haste, without the flexibility to conduct additional fact finding or research to supplement positions. Further, we question whether or not HLRB has the staffing capacity and support to issue rulings within a set deadline.

Thank you for the opportunity to testify in opposition of H.B. 151, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



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Wil Okabe
President

Joan Kamila Lewis
Vice President

Colleen Pasco
Secretary-Treasurer

Alvin Nagasako
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: WEDNESDAY, FEBRUARY 27, 2013

RE: H.B. 151, HD1 – RELATING TO COLLECTIVE BARGAINING

Person Testifying: WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

To the Honorable Chair Luke and Members of the Committee:

The Hawaii State Teachers Association (HSTA) **supports** H.B. 151, HD1, which requires the Hawaii Labor Relations Board (HLRB) to resolve complaints.

HSTA is the exclusive representative of more than 13,500 public and charter school teachers statewide. As the state affiliate of the 2.2 million member National Education Association, HSTA has been adversely affected by the ineffectiveness of the HLRB.

It is concerning that the HLRB, in its testimony on January 25, 2013 to the House Committee on Labor and Public Employment admitted to several serious issues. It was stated that they have had a problem for over 15 years-since 1997 by allowing approximately 100 more cases to stand idle instead of seeking ways to hear them.

Their testimony further states that if the HLRB had “three legal positions”, they would support H.B. 151, HD1 as they would now have a mechanism to resolve future complaints.

The Department of Education’s (DOE) five sentence testimony relating to H.B. 151, HD1 offered no remedy to the problem at hand.

Teachers, as well as the public cannot speculate on when the Supreme Court will react to the HLRB's response, however we are hopeful that the legislature will consider the harm caused to teachers and potentially all state employees by the HLRB delays.

Thank you for the opportunity to testify in **support** of H.B. 151, HD1.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY FOR HOUSE BILL 151, HOUSE DRAFT 1, RELATING TO
COLLECTIVE BARGAINING**

**House Committee on Finance
Hon. Sylvia Luke, Chair
Hon. Scott Y. Nishimoto, Vice Chair
Hon. Aaron Ling Johanson**

**Wednesday, February 27, 2013, 11:30 AM
State Capitol, Conference Room 308**

Honorable Chair Luke and committee members:

I am Kris Coffield, representing the IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of, with proposed amendments for HB 151, relating to collective bargaining.

Since July 1, 2011, local teachers have been working under an imposed “last, best, final” offer. According to the terms of this “contract” (if one can call it that), teachers, like other bargaining units, have continued to take a 5 percent pay cut, as well as a 50/50 healthcare premium split. Problematically, teachers were notified of LBFO implementation as of June 29, 2011, several days prior to the negotiations deadline a deal covering the school years falling between fall of 2011, to spring of 2013. Not surprisingly, HSTA (bargaining unit 5) filed a complaint with the Hawaii Labor Relations Board, which subsequently vetted the case over a period of ten months. From the outset, the board's prospective decision was viewed as significant in that it will likely determine the legality of LBFO implementation, something that current collective bargaining statutes do not address and, therefore, tacitly permit.

Whether or not one believes the tenets of the state's imposed LBFO to be meritorious, the issue of whether or not unilateral imposition of contractual terms is legal has yet to be resolved. It has been approximately seven months since the final HLRB hearing on HSTA's complaint, yet no resolution appears imminent. Without question, the state's unilateral contractual gesture has clouded ongoing negotiations over BU-5's next contract and contributed to a culture of fear regarding state-sanctioned education initiatives, like the state's forthcoming “educator effectiveness system” (teacher evaluations). Along with teachers and the general public, we feel compelled to ask the HLRB: On an issue as important as this, what is taking so long?

HLRB is plagued by an ongoing case backlog. According to the board's 2012 annual report, 90 cases were pending at the close of FY 2010, 96 cases at the close of FY 2011, and 127 cases at the close of FY 2012. Additionally, reduced operating expenses led the board to eliminate court reporting (transcription of proceedings), increasing members' reliance on audio recordings for the purposes of decision-making. We encourage lawmakers to provide funds to restore staff positions to assist in researching the complex issues presented to HLRB, promulgating administrative rules, and drafting decisions. At the same time, we do not feel that the backlog is entirely the result of administrative budget cuts, but instead stems from chaotic, non-streamlined proceedings. Forcing HLRB to consummate its cases within three months incentivizes efficiency for all parties involved in board-related matters, while providing the necessary deadline to ensure that rulings are issued in time for implementation—if, for example, HSTA and the state reach a contract agreement for FY 2013-2015 (the biennium succeeding the LBFO), HLRB's ruling on the LBFO becomes less exigent, further obfuscating the status of the law and potential retroactive pay restoration for teachers.

That said, we note that the deadline imposed by this bill is vague, mandating that a decision be resolved within a specified number of days, but failing to state from when the specified period begins. Does the clock begin when a complaint is filed or following the last hearing? We also believe that this measure would be strengthened by specifying what happens if the HLRB fails to meet the deadline imposed by the bill, something not currently detailed. We suggest allowing the complaining party to immediately retract their complaint without penalty and subsequently file the complaint in circuit court. Finally, we feel that the provisions of this measure should be limited to prohibited practice complaints, over which the HLRB currently exercises exclusive original jurisdiction under HRS 89-14. Accordingly, we humbly request that one of the following two amendments be incorporated into the current proposal. To start the specified period from the time a complaint is filed, please use the following language or some variant thereof: “(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it[-]; **provided that if a decision on any prohibited practice complaint filed with the board is not resolved within [BLANK] days of the initial filing date of the complaint, the complaining party may withdraw the complaint from the board and file the complaint in circuit court.**” To start the specified period from the time of the last hearing, please employ the following language or some variant thereof: “(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it[-]; **provided that if a decision on any prohibited practice complaint filed with the board is not resolved within [BLANK] days of the date on which the board adjourns the final hearing on such complaint, the complaining party may withdraw the complaint from the board and file the complaint in circuit court.**” This change would allow the complaining party to transfer adjudication of a complaint to Circuit Court if the HLRB does rule within a timely manner. We note that this change would also require an amendment to HRS 89-14, to read: “**§89-14 Prevention of prohibited practices.** Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided

in section 377-9; provided that the board shall have exclusive original jurisdiction over such a controversy except that nothing herein shall preclude (1) the institution of appropriate proceedings in circuit court pursuant to section **[89-5(i)(10)]** or [89-12(c)]; or (2) the judicial review of decisions or orders of the board in prohibited practice controversies in accordance with section 377-9 and chapter 91. All references in section 377-9 to "labor organization" shall include employee organization."

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

Testimony in SUPPORT of HB 151
Doug Robertson

I am a 4th grade teacher here in Hawaii and I support HB 151. Teachers have been working under an imposed contract for nearly two years and our only legal recourse is submitting complaints through the Hawaii Labor Relations Board. We did that months ago and when we asked what is taking so long we were told nothing. The Board's refusal to render a decision on our case is impacting our legal options to take further action, forcing us to work under an imposed and unfair contract. There is no reason for the Hawaii Labor Relations Board to take so long to come to decisions in the cases they hear. In no other line of work is the excuse, "Well, it's taking a longer time than we expected and no, we don't know when we will know anything," acceptable. But Hawaii's teachers have been waiting for months, with nothing to show for it. This severely inhibits our ability to negotiate and to move forward. The HLRB is supposed to exist to aid and solve disputes. By not giving a decision they only extend a conflict already tearing Hawaii apart.

By passing this bill, you will help ensure that what Hawaii's teachers are going through will not happen to any other island labor group. It will level the playing field and create clarity and understanding for all parties involved in labor disputes. Why shouldn't there be a time limit? No one can put off decisions, no matter how difficult they are, forever. This is what the HLRB seems to be trying to do. I support this bill because that is wrong.

Feb. 25, 2013

Esteemed Senators of Hawaii,

Gov. Abercrombie just today declared at the National Governor's Conference that he will impose another contract on the states' public school teachers. His timing is even more blatantly showing he is not interested in bargaining with the teachers' union in good faith. To announce such an edit on the national stage in the midst of ongoing negotiations with absolutely no shame demonstrates an abuse of power. This is setting a dangerous precedent for the state. I urge you to pass SB 151 as soon as possible so that the system of checks and balances can prevent political stalling and expedite justice. The HSTA has a valid complaint as may other collective bargaining units, and all must be given fair consideration in order to prevent further abuse on hard-working people in Hawai'i.

YES ON SB 151! Stop the corruption! Uphold fairness!

Thank you for your consideration,

Mireille Ellsworth,

Teacher, Waiakea High School,

Hilo, Hawai'i