

# **HB 578 LATE LATE**

NEIL ABERCROMBIE  
GOVERNOR



# LATE TESTIMONY

NEIL DIETZ  
CHIEF NEGOTIATOR

STATE OF HAWAII  
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January 28, 2013

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on Tuesday, January 29, 2013  
9:00 a.m., Conference Room 309

BY

NEIL DIETZ  
CHIEF NEGOTIATOR

**House Bill No. 578**  
**RELATING TO COLLECTIVE BARGAINING**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. No. 578.

H.B. No. 578 proposes to make unilateral implementation of a collective bargaining proposal by an employer or exclusive representative a prohibited practice in accordance with Hawaii Revised Statutes §89.

The Office of Collective Bargaining respectfully opposes this bill to the extent that it interferes with the Employer's rights and obligations as currently outlined in Hawaii Revised Statutes §89.

Unilateral implementation is not explicit proof, in and of itself, of bad faith bargaining. In the private sector, unilateral implementation of collective bargaining terms is an accepted practice, if in short, an impasse exists in bargaining and the parties have engaged in good faith bargaining. H.B. No. 578 as proposed would make the result (i.e. unilateral

implementation) proof of bad faith bargaining in and of itself even if other generally accepted requirements are met prior to any unilateral implementation.

Although H.B. No. 578 as proposed would apply to both the employer and the exclusive representative, the real world application would apply to the employer. Thus, even if the employer complied with all the commonly accepted requirements to unilaterally implement collective bargaining terms, H.B. No. 578 would make that employer statutorily guilty of bad faith bargaining.

If the Committee's concern is to continue to ensure the parties engage in good faith bargaining, the requirement to bargain in good faith is there long before any terms could be unilaterally implemented. Hawaii Revised Statutes §89 already requires the parties to engage in good faith bargaining. In a case of unilateral implementation, if the moving party does not engage in good faith bargaining, it is doubtful unilateral implementation would withstand legal challenge.

Therefore, Hawaii Revised Statutes §89 already adequately addresses the requirement that public employers and exclusive representatives bargain in good faith. HB 578 does not further that requirement. The Office of Collective Bargaining respectfully recommends that you do not approve the terms of H.B. No. 578.

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