

NEIL ABERCROMBIE
GOVERNOR



NEIL DIETZ
CHIEF NEGOTIATOR

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

TESTIMONY TO THE
SENATE COMMITTEE ON THE JUDICIARY AND LABOR

For Hearing on Friday, February 1, 2013
10:30 a.m., Conference Room 016

BY

NEIL DIETZ
CHIEF NEGOTIATOR

Senate Bill No. 1248
RELATING TO COLLECTIVE BARGAINING

TO CHAIRPERSON CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on S.B. No. 1248.

S.B. No. 1248 proposes to amend Hawaii Revised Statutes §89, requiring that any complaint before the Hawaii Labor Relations Board must be resolved in thirty days and if not so resolved, the decision on such complaint shall be found in favor of the complainant.

The Office of Collective Bargaining strongly **opposes** S.B. No. 1248.

S.B. No. 1248 as proposed does not specify when the "thirty days" 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 an arbitrary 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 filing of briefs 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 thirty days.

Further, it is not an appropriate remedy to find a defendant guilty simply because the Hawaii Labor Relations Board is unable to render a decision in thirty days. The defendant has no control over the Board's process and should not be penalized.

S.B. No. 1248 as proposed is structurally and substantively flawed. It does not allow for due deliberation in complex labor law cases, to the detriment of all parties involved. S.B. No. 1248 improperly penalizes a defendant for conditions beyond that defendant's control.

The Office of Collective Bargaining respectfully asks the Committee to reject the terms and philosophy advocated by S.B. No. 1248.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE RN-JK

February 1, 2013

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 1248, Relating to Collective Bargaining

I am Alan K. Bluemke, Major of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 1248, Relating to Collective Bargaining. This bill makes no allowances for reason or fault of delays in resolving complaints, which could be due to the complainant or the Hawaii Labor Relations Board. This bill lacks a sense of fairness and due process.

The HPD urges you to oppose Senate Bill No. 1248.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan K. Bluemke".

ALAN K. BLUEMKE, Major
Human Resources Division

Approved:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa".

LOUIS M. KEALOHA
Chief of Police

Serving and Protecting With Aloha



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary and Labor
Friday, February 1, 2013
10:30 a.m.

By
Dr. Linda K. Johnsrud
Executive Vice President for Academic Affairs/Provost
University of Hawai'i

SB 1248 RELATING TO COLLECTIVE BARGAINING

Chair Hee, Vice Chair Shimabukuro and Members of the Senate Committee on Judiciary and Labor, I am submitting written testimony on behalf of the University of Hawai'i regarding Senate Bill 1248 – Relating to Collective Bargaining which proposes to amend HRS, §89-5, to statutorily provide that any complaint that is not resolved within 30 days by the Hawai'i Labor Relations Board shall be deemed resolved in the favor of the complainant.

The University of Hawai'i **opposes** this proposed legislation.

One of the main purposes for the establishment of the Hawai'i Labor Relations Board is to *“ensure that collective bargaining is conducted in accordance with this chapter”* that chapter referenced as HRS, Chapter 89, Collective Bargaining in Public Employment. One part of their statutory powers and functions is to *“Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper.”* Placing a caveat that a complaint that is not resolved within 30 would be deemed resolved in the favor of the complainant without having the Board exercise its duty in conducting a proceeding or hearing on the merits of the complaint runs contrary to the Board's purpose and intent. The Board cannot fulfill its mandate without affording all affected parties an opportunity to respond to the merits of the complaint via a proceeding or hearing. Adopting such legislation would negatively impact the Board's role in ensuring that collective bargaining is being conducted in accordance with HRS, Chapter 89.

The University also recognizes that the Board's legal staff was cut by three positions in 1997, which included two staff attorneys and one paralegal, and that the Board's caseload over the past year has risen from 30 cases to 127 cases. With the reduction of the Board's legal staff and its backload of cases, it would be highly doubtful that all future complaints filed by the Board will be properly heard and resolved within 30 days. Therefore, all complaints will be resolved in favor of the complainant by default. This is not considered responsible governance.

The University rather supports concepts that will require the Board to issue a decision on a complaint within a reasonable period of time after the complaint has been heard and after all affected parties had an opportunity to respond.

Thank you for the opportunity to testify on this bill.



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
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
February 1, 2013

S.B. 1248 – RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes the purpose and intent of S.B. 1248, which amends Section 89-5 of the Hawaii Revised Statutes by requiring that a complaint not resolved by Hawaii Labor Relations Board (HLRB) in thirty days be deemed resolved in favor of the complainant.

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 thirty day deadline would have unintended adverse consequences for both the Employers and the Exclusive Representatives, and the employees for whom they represent. Forcing decisions to be found in the complainant's favor if the statutorily set timeline is not met lends to haphazard, reckless and arbitrary rulings. We may find ourselves in a situation in which one party files a complaint similar to a previously filed complaint, with two conflicting rulings due to the amendments proposed in this bill. The HLRB should strive for consistency in application and interpretation of the law – this bill clearly obstructs the Board from doing so. 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 the thirty day deadline and what specific day the deadline begins – the day a complaint is filed vs. the last day of the hearing – as the intent of the bill is unclear.

Thank you for the opportunity to testify in opposition of S.B. 1248.

Respectfully submitted,

Randy Perreira
Executive Director



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

TESTIMONY FOR SENATE BILL 1248, RELATING TO COLLECTIVE BARGAINING

Senate Committee on Judiciary and Labor
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair

Friday, February 1, 2013, 10:30 AM
State Capitol, Conference Room 016

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the IMUAlliance, 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 SB 1248, 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 in thirty days, but failing to state from when the thirty day period begins. Does the clock begin when a complaint is filed or following the last hearing? Accordingly, we humbly request that one of the following two amendments be made to the current proposal. To start the thirty-day period from the time a complaint is filed, please change the proposed language to: “(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it[-]; provided that a decision on any complaint filed with the board shall be resolved within thirty days of the initial filing date of the complaint.” To start the thirty-day 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 a decision on a complaint filed with the board shall be resolved within thirty days of the date on which the board adjourns the final hearing on such complaint.” Additionally, we are concerned that thirty days may not be enough time to complete all of the fact-finding tasks required to adjudicate a case before the board. Thus, we respectfully request that you blank out the number of days defining the deadline proposed by the bill, allowing the Senate Ways and Means Committee to determine the appropriate number of days based upon resources allocated to the HLRB in the the FY 2013-2015 biennium budget.

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

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance



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TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

RE: SB 1248 -- RELATING TO COLLECTIVE BARGAINING

DATE: FRIDAY, FEBRUARY 1, 2013

PERSON TESTIFYING: WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Honorable Chair Hee and Members of the Committee:

The Hawaii State Teachers Association (HSTA) **supports SB 1248** which requires the Hawaii Labor Relations Board (HLRB) to resolve complaints promptly and if the complaint is not resolved within 30 days, the HLRB will default to the complainant.

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 (NEA), HSTA has been adversely affected by the ineffectiveness of the HLRB.

In July of 2011, HSTA filed a complaint with the HLRB after the Hawaii State Department of Education (Department) forced its last, best, and final offer (LBFO) on teachers. The LBFO was not negotiated with HSTA. As such, within weeks before the expiration of the teachers' contract, HSTA was informed by the Department that it would implement a combination of salary cuts and Department Leave Without Pay (DWLOP) on non-instructional days to achieve a 5% labor savings.

The imposed contract forced a 5% pay reduction and a 10% increase in health care contributions resulting in a 50/50 split of employer/employee health premiums as well as a loss of essential teacher planning and preparation time for teachers.

We strongly believe that the Department prematurely declared impasse and instead, should have continued bargaining and honoring the contractual status quo, as the State did with other unions.

As a result, teachers have been denied a "prompt" decision from the HLRB as lawfully provided under HRS §377-9D.

Over five months after the final hearing date, the HLRB stated that they have the discretion to respond when they're good and ready.

Meanwhile, 9 months later, teachers are continuing to be deprived of exercising their constitutional rights to collective bargaining and prohibited from exercising their statutory right to strike.

Our motion for interlocutory relief was filed over a year ago to stop the forced contract take-aways at least until the HLRB rendered a decision to address the Department's legal issues.

Too many teachers sought out relief from the deep cuts to their pay and health care premiums by taking second jobs just to make ends meet from the imposed furlough days.

The HLRB has failed to respond to HSTA's motion as ordered by the Supreme Court. As such, the HRLB's response to the Supreme Court was that they have the discretion to take as long as they want, possibly years, to render a decision. The labor board has offered no timetable. This position makes the statute virtually meaningless.

Until we exhaust the HLRB process, we cannot proceed to the court on the constitutional issues. As such, we ask that the law include language to enforce a penalty on the HRLB for not ruling within the given timetable.

Teachers as well as the public cannot speculate on how or when the Supreme Court will react to the HLRB's response, but we hope the legislature will consider the harm caused to teachers and potentially all public employees by the HLRB delays.

Thank you for the opportunity to testify in **support to SB 1248**.