



The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
February 15, 2013

S.B. 1374 – RELATING TO
COLLECTIVE BARGAINING.

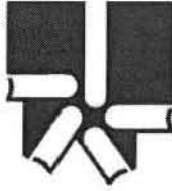
The Hawaii State AFL-CIO strongly opposes S.B. 1374 which allows an employer to remit the amount of an employee's union dues to a personal representative selected by the employee in the event the employee's union decides not to represent the employee's position in a grievance.

S.B. 1374 as proposed is anti-union and resembles “right to work” legislation. We respectfully request the measure to be deferred.

Thank you for the opportunity to testify.

Respectfully submitted,

Jason Bradshaw
COPE Director



The Senate
Committees on Judiciary and Labor
Friday, February 15, 2013
10:00 a.m.

SB 1374, Relating to Collective Bargaining.

Dear Chairman Hee and Committee Members:

The University of Hawaii Professional Assembly (UHPA) strenuously opposes SB 1374 as an effort to severely undermine Hawaii Revised Statutes Chapter 89 and to harm collective bargaining and the exclusive representative through a scheme to defund unions. The exclusive representative must act in a manner that supports the common interest of bargaining unit members. There are sound reasons that not all employee complaints are grievances and have merit. This legislation would allow any bargaining unit member who disagrees with a decision by the bargaining agent to simply move their dues dollars elsewhere for representation. This is a version of right to work that encourages anti-union activities to be funded through union dues dollars.

UHPA urges the committee to defer indefinitely SB 1374.

Respectively submitted,

A handwritten signature in black ink, which appears to read "Kristeen Hanselman".

Kristeen Hanselman
Associate Executive Director

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

1017 Palm Drive • Honolulu, Hawaii 96814-1928
Telephone: (808) 593-2157 • Facsimile: (808) 593-2160
Web Page: <http://www.uhpa.org>





UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary and Labor
Friday, February 15, 2013
10:00 a.m.

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

SB 1374 RELATING TO COLLECTIVE BARGAINING

Chair Hee and Vice Chair Shimabukuro and Members of Senate Committee on Judiciary and Labor, I am submitting written testimony on behalf of the University of Hawai'i regarding Senate Bill 1374 – Relating to Collective Bargaining which proposes - to amend HRS, Chapter 89, §89-4, to allow an employer to remit the amount of an employee's union dues to a personal representative selected by the employee in the event the employee's union decides not to represent the employee's position in a grievance.

The University of Hawai'i has reservations regarding the impact, intended or otherwise, of the proposed legislation if enacted.

The University of Hawai'i has covered employees in Units 1, 2, 3, 4, 7, 8, 9 and 10. Unit 7 and 8 consists of employees who only work for the University of Hawai'i system, and thus, we are considered their only employer.

As an Employer we have considerable administrative and logistical concerns over the process of allowing an employee to direct union dues to a personal representative. First, the State's payroll system will need to establish another agent code for the personal representative in order for the State to remit payment in a form of a check to the personal representative. Second, the affected union will need to be informed that a covered employee has selected another personal representative to receive the employee's union dues. Third, the UH payroll office will need to be informed of the exact dollar amount of the union dues payment to the personal representative and will need to input this amount manually each pay period. Fourth, the UH Office of Human Resources (OHR) and Informational Technology Services (ITS) will need to create an entry on the electronic payroll change schedule (ePCS) in order for the UH Payroll Office to place the dollar amount of the deduction for union dues. Finally, the UH departments will need to be aware of this deduction and to coordinate with UH Payroll Office and OHR that these deductions are being followed per the employee's request.

In addition, we have concerns related to who will be responsible for notifying and authorizing the UH Payroll Office when the remittance to a personal representative rather than the union will start and when it will end. All of the union contracts for covered employees in Units 1, 2, 3, 4, 7, 8, 9 and 10 have contractual language governing the methodology and processing for union dues deduction. Without consent from the union, the UH could be faced with challenges such as grievances, arbitrations, and Hawai'i Labor Relations Board (HLRB) prohibited practice complaints over this matter.

These matters of concerns mentioned above must be addressed statutorily in order to protect us as the employer in attempting to enforce and comply with this proposed legislation.

Bargaining unit employees already have the statutory right to pursue grievances on their own without the use or intervention of the union. HRS, Chapter 89, §89-8 Recognition and representation; employee participation, (b), states: *"An individual employee may present a grievance at any time to the employee's employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative."* Under this section, an employee would not only be able to pursue a grievance without the use of the union but also to use a personal representative in lieu of a union representative. The only difference here is the remittance of union dues to the personal representative.

If an employee believes that the union's conduct was arbitrary, discriminatory or in bad faith as the reason why the union decided not to represent the employee's position in a grievance, the employee is entitled to pursue a duty of fair representation (DFR) claim against the union through the HLRB under §89-13(b)(4). If the HLRB finds that the union did not comply with its duty of fair representation, sanctions and possibly monetary remedies could be awarded to the employee as part of its decision or settlement in turn could be used to compensate an employee's personal representative.

The UH believes that there is enough statutory provisions covered under Chapter 89, HRS, to afford all bargaining unit employees with the ability to pursue actions and grievances against not only the employer but the unions as well.

Thank you for the opportunity to testify on this bill.

Testimony of Gary W. Rodrigues
Twenty-Seventh Legislature, 2013

On SB 1374, Relating to Collective Bargaining

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

Date: Friday 15th February, 2013
Time: 10:00 a.m.
Place: Conference Room 016
State Capitol
415 South Beretania Street

Amendment to:

SECTION 1. Section 89-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate bargaining unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative[,] or, in cases where there is a grievance filed by the employee and the employee's union decides not to represent the employee's position in the grievance, to a personal representative selected by the employee. The personal representative shall not be any other exclusive representative as defined in section 89-2.

Section 89-8(b) provides the right of an employee to pursue a grievance without the representation of the exclusive representative:

"§89-8 Recognition and representation; employee participation

(b) An individual employee may present a grievance at any time to the employee's employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative."

Section 89-10 provides that collective bargaining agreements include a grievance procedure and the resolution of grievances:

"§89-10 Written agreements; enforceability; cost items. (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned, except for an agreement reached pursuant to an arbitration decision. Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any agreement to extend the term of the collective bargaining agreement. The agreement shall be reduced to writing and executed by both parties. Except for cost items and any non-cost items that are tied to or bargained against cost items, all provisions in the agreement that are in conformance with this chapter, including a grievance procedure and an impasse procedure culminating in an arbitration decision, shall be valid and enforceable and shall be effective as specified in the agreement, regardless of the requirements to submit cost items under this section and section 89-11."

"[§89-10.8] Resolution of disputes; grievances. (a) A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. The grievance procedure shall be valid and enforceable and shall be consistent with the following:"

Section 89-13(1) provides protection of the employee's rights in chapter 89:

"§89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;

Section 89-14 provides the process for violations of section 89-13:

"§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

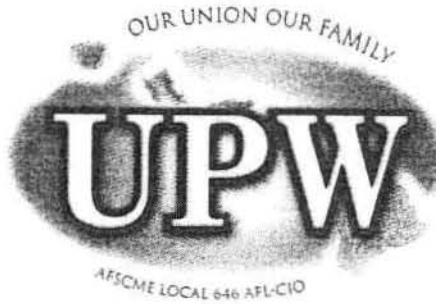
jurisdiction over such a controversy except that nothing herein shall preclude (1) the institution of appropriate proceedings in circuit court pursuant to section [89-12(c)] or (2) the judicial review of decisions or orders of the board in prohibited practice controversies in accordance with section 377-9 and chapter 91. All references in section 377-9 to "labor organization" shall include employee organization. [L 1970, c 171, pt of §2; am L 1982, c 27, §1; am L 1985, c 251, §6]"

Chapter 89 provides employees that do not receive representation of the exclusive representative a choice to represent themselves, pay someone to represent them or have a volunteer represent them. However in the event the exclusive representative refuses to represent the employee but does notify the employee before the time limits to file a grievance expires the employee is prohibited from pursuing the grievance the employee has one option which is to file a prohibited practice complaint with the HLRB under section 89-13 within the time limits provided.

Most employees cannot represent themselves, cannot pay someone to represent them or have a volunteer represent them therefore their grievance is lost. A lost grievance have various impacts on the employee, the ultimate is what I consider capitol punishment, which is termination that was not based on just cause. The amendment provides the employee an opportunity to pay someone to represent them in the grievance procedure and in the HLRB process.

The failure to represent an employee denies the employee the basic reasons for paying union dues. There is no doubt that some grievances do not have merit however employees that are denied representation must be provided with justification for the exclusive representatives denial of representation and the employee has the right to challenge the justification. HLRB have heard numerous cases and have found both the exclusive representative and the employer in violation of chapter 89.

The following is an example of a refusal to represent an employee that was terminated without just cause. A review of the merits of the case by the HLRB would have brought a different result. The notice does not provide details that support the exclusive representative's reasons for not pursuing the grievance to the additional steps of the grievance procedure. The employee in this case did not know what to do and the financial means to protect rights provided by chapter 89. The amendment would provide protection for the employee.



July 26, 2012

[REDACTED]

RE: WITHDRAWAL OF GRIEVANCE - GRIEVANCE CASE [REDACTED]

Dear Mr. [REDACTED]

As the affected employee, the Union is informing you that it processed the above-cited grievance through the grievance procedure of the collective bargaining agreement (CBA).

Based on a review of the entire matter, including but not limited to the applicable provisions of the CBA and the evidence presented, the Union has accepted the enclosed Step-2 decision letter, dated July 9, 2012, and decided not to pursue the above-cited grievance because there is insufficient proof that there is a violation of the CBA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dayton M. Nakanelua', is written over the word 'Sincerely,'.

DAYTON M. NAKANELUA
State Director

DMN:ctu

Enclosure

c: [REDACTED]

HEADQUARTERS - 1426 North School Street ♦ Honolulu, Hawaii 96817-1914 ♦ Phone: (808) 847-2631
HAWAII - 362 East Lanikaula Street ♦ Hilo, Hawaii 96720-4336 ♦ Phone: (808) 961-3424
KAUAI - 4211 Rice Street ♦ Lihue, Hawaii 96766-1325 ♦ Phone: (808) 245-2412
MAUI - 841 Kolu Street ♦ Wailuku, Hawaii 96793-1436 ♦ Phone: (808) 244-0815
1-866-454-4166 (Toll Free, Molokai/Lanai only)