



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1375, RELATING TO COLLECTIVE BARGAINING.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 11, 2013

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
James H. Halvorson, Jeffrey A. Keating, or Maria Cook Deputy Attorneys
General

Chair Hee and Members of the Committee:

The Department of the Attorney General opposes the bill.

The bill amends the definition of “collective bargaining” in section 89-2, Hawaii Revised Statutes (HRS), to clarify that “other terms and conditions of employment” are limited to what is specifically incorporated into a collective bargaining agreement, among others.

Restricting the definition of “other terms and conditions of employment” to those terms that are specifically incorporated into a collective bargaining agreement creates ambiguity and unintended consequences because it limits the ability of the parties to engage in negotiation over subjects that are not covered by the expiring collective bargaining agreements and contradicts the broad scope of negotiation provided in section 89-9(a), HRS. Under section 89-9(a), HRS, the public employers and the exclusive representative are required to negotiate with respect to wages, hours, the amounts of contributions to the Hawaii employer-union health benefits trust fund, and *other terms and conditions of employment which are subject to collective bargaining*. The terms “subject to collective bargaining” encompasses a much broader scope of subjects than those that are already incorporated into an expiring collective bargaining agreement.

We respectfully ask this Committee to delete the amendment regarding the definition of “other terms and conditions of employment” within the term “collective bargaining” in section 89-2, HRS.

NEIL ABERCROMBIE
GOVERNOR



NEIL DIETZ
CHIEF NEGOTIATOR

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

February 8, 2013

TESTIMONY TO THE
SENATE COMMITTEE ON THE JUDICIARY AND LABOR

For Hearing on Monday, February 11, 2013
10:00 a.m., Conference Room 016

BY

NEIL DIETZ
CHIEF NEGOTIATOR

Senate Bill No. 1375
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. 1375.

S.B. No. 1375 proposes to amend Hawaii Revised Statutes §89 to further restrict the interest arbitration process and procedures..

The Office of Collective Bargaining opposes this bill.

S.B. No. 1375 would amend Hawaii Revised Statutes §89-2 to specify a meaning for the phrase "other terms and conditions of employment." However, S.B. No. 1375 as proposed apparently ignores the provisions of Hawaii Revised Statutes §89-9 that clearly delineate areas that are negotiable, areas that are not negotiable and areas of permissive (not mandatory) negotiations. The Office of Collective Bargaining believes that S.B. No. 1375, as drafted, sets up a potential conflict between Hawaii Revised Statutes §89-2 and Hawaii Revised Statutes §89-9.

Further, the above-referenced draft opens to negotiations other sections of the collective bargaining agreement that are included in the agreement, but not subject to arbitration to resolve an impasse between the parties. The Office of Collective Bargaining continues to oppose such expansion of the terms subject to interest arbitration.

S.B. No. 1375 proposes to amend Hawaii Revised Statutes §89-11, subsection (e)(2)(A) by not allowing the parties to develop and implement an alternate impasse procedure. This prevents the parties from addressing their specific needs to resolve individual points of disagreement and applies a "cookie cutter" approach to resolution. Currently, Hawaii Revised Statutes §89 provides a workable framework for impasse resolution that can be amended or customized with the agreement of BOTH PARTIES in a sincere effort to resolve their differences. The proposed change offered by S.B. No. 1375 does not further the ability to resolve differences but, rather, serves to restrict the parties' ability to recognize and work with their individually unique circumstances.

S.B. No 1375 further proposes to amend Hawaii Revised Statutes §89-11(e)(2)(C) by requiring an arbitration hearing to commence within 20 days of the arbitration panel's appointment. This amendment ignores the very practical reality of scheduling, particularly the availability of the neutral chair of the arbitration panel. This amendment removes the parties' ability to schedule a hearing taking into account the schedule of the neutral chair. Further, the amendment does not provide a procedure to follow if the neutral chair is not available to convene a hearing within twenty days. Current provisions of Hawaii Revised Statutes §89 have proven, for the most part, workable for the parties directly involved.

S.B. No. 1375 appears to provide for the arbitrability of the amount the employer shall pay to the Employer Union Trust Fund (EUTF). The Office Of Collective Bargaining opposes this provision. The Office of Collective Bargaining believes that the current provisions of Hawaii Revised Statutes §89 to resolve a dispute between the parties of the employers' share of EUTF payments is the appropriate method of resolution.

Further, as S.B. No. 1375 proposes to amend Hawaii Revised Statutes §89-11(h) by removing "may be modified by mutual agreement" but leaves intact the preceding language "whether an alternate procedure". Clearly this proposed amendment to Hawaii Revised Statutes §89-11 creates confusion by deleting the parties' ability to create and utilize and alternate impasse procedure while leaving in recognition of such an alternate procedure.

In summary, the current provisions of Hawaii Revised Statutes §89 work to provide impasse resolution. S.B. No. 1375 as submitted, may appear to speed that process, but in reality it ties the hands of both the employer and the exclusive representative at the very time the parties may need flexibility to reach an agreement.

The Office of Collective Bargaining urges you to maintain the current impasse resolution process of Hawaii Revised Statutes §89 without the changes proposed by S.B. No. 1375.

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 SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL NO. 1375

February 11, 2013

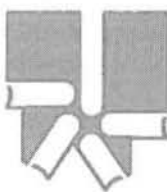
RELATING TO COLLECTIVE BARGAINING

Senate Bill No. 1375 amends Chapter 89, HRS, by: attempting to clarify the definition of "other terms and conditions of employment" to refer to other terms and conditions of employment specifically incorporated into a collective bargaining agreement; requiring arbitration panels to be selected within 25 days after impasse; requiring the Hawaii Labor Relations Board to appoint the neutral arbitrator from a list of qualified persons in the field of labor management relations; requiring arbitration hearings to begin within 20 days after appointment of the panel unless there is an unforeseeable emergency; repealing the ability of the parties to enter into mutual agreement to modify the arbitration time frames; and repealing the prohibition of striking and submission to the Legislature to resolve impasses or disputes relating to State and county Hawaii Employer-Union Health Benefits Trust Fund (EUTF) contributions.

The Department of Budget and Finance (B&F) does not support this bill. While it is recognized there have been difficulties in completing arbitration procedures in a timely manner in recent years, B&F has several concerns with this bill: 1) in general, the short timelines provided in the bill may work against coming to an agreement without going to arbitration; 2) the short period of time given to select a neutral arbitrator and to begin the hearing may not result in selection of the most

qualified arbitrators; and 3) the repeal of alternative timelines may hinder the parties working out as many issues as possible prior to arbitration and providing the panel with a well thought-out case.

Finally, the bill appears to leave no clear resolution mechanism for EUTF contributions for arbitrated units. While the prohibition on arbitration panels deciding EUTF contributions remains in Section 89-9, HRS, the provision to repeal submission of EUTF contributions to the Legislature if the parties are unable to reach agreement after the arbitration decision is issued, is repealed. 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.



Senate Committee on Judiciary and Labor
Monday, February 11, 2013
10:00 a.m.

SB 1375, Relating to Collective Bargaining

Dear Chairman Hee and Committee Members:

The University of Hawaii Professional Assembly has read with concern the proposed changes to Hawaii Revised Statutes Chapter 89. There are major flaws in the proposal that seriously undermines the State purpose in advancing a system of collective bargaining to “promote harmonious and cooperative relations between government and its employees” Limiting the scope of bargaining to those things agreed upon within a collective bargaining agreement, undermines statutory obligations to engage in ongoing negotiations and consultation over the life of the contract. Further, such a provision is designed to undermine the ability of employees to effectively advance and respond to changing conditions in employment, as well as negating the scope of bargaining recognized in Hawaii. It is a harmful proposal that seeks to further limit the rights of employees and their unions in matters of employment. UHPA opposes this approach.

SB 1375 also makes changes in the procedures and timelines for establishing arbitration panels with the employer and union unable to modify timeframes of the impasse procedure. The timelines suggested are unrealistic and fail to acknowledge the efforts necessary to reach mutuality on an arbitration panel and the preparation of a case to the panel. The proposed changes seem to imply that better decisions will be rendered if there is less time allotted for the procedure and there is a limit on items to be negotiated. This is an unrealistic approach to a system of collective bargaining and impasse procedures that encourages public employees to assert their right in “decision making processes affecting wages and working conditions.”

UHPA encourages the committee to oppose SB 1375.

Respectively submitted,

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman
Associate Executive Director

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

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

On SB 1375, Relating to Collective Bargaining

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

Date: Monday 11th February, 2013
Time: 10:00 a.m.
Place: Conference Room 016
State Capitol
415 South Beretania Street

Amendment to Section 1. Section 89-2 Hawaii Revised Statutes to define "other conditions of employment"

Since the passage of the collective bargaining law in 1970 (Hawaii Revised Statutes 89) collective bargaining agreements have been negotiated that include a reference to:

§89-1 Statement of findings and policy.

(b) The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by:

(2) Requiring public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, maintaining the merit principle pursuant to section 76-1; (Emphasis added)

There have been arbitration awards that granted employees terms and conditions of employment that are not incorporated into the collective bargaining agreements because of the interpretation of various recognition sections in collective bargaining agreements. The awards have limited the employers' right to manage and also provided employers with excuses not to manage by claiming that the unions will not allow them to implement changes "to protect the public by assuring effective and orderly operations of government" pursuant to section 89-1(b).

Section 89-2, Case Notes cite the State Supreme Court in 111 H. 168, 140 P.3d 401 where it clearly decided that pay dates were not specifically incorporated into the collective bargaining agreement. The notes state "Where plaintiffs failed to demonstrate that bargaining over pay dates was one of the core subjects of collective bargaining that triggers a violation of

article XIII, §2 of the Hawaii constitution, and failed to provide the supreme court with their collective bargaining agreement to support their contention that pay dates are bargainable, and these pay dates were not specifically incorporated into their contract, the Act 355, L 1997 amendment to §78-13 to unilaterally alter the "traditional practice" of being paid on the fifteenth day and last day of the month did not violate their right to collectively bargain pay periods."

The hearings held by the Senate in 2012 on sick leave overpayments demonstrated management's failure to manage by using excuses not provided by Hawaii Revised Statutes 89.

The amendment to Section 1 of section 89-2 to define "other conditions of employment" clearly requires such conditions to be negotiated by the parties and incorporated into the collective bargaining agreements and places enforcement of section 89-1 (b) "to protect the public by assuring effective and orderly operations of government" on the employers thereby removing excuses for their failure to manage.

Amendment to Section 2. Section 89-11 Hawaii Revised Statutes by amending subsection (e)

§89-11 Resolution of disputes; impasses.

Delays in completion of negotiations have occurred in recent years. Such delays have caused the expiration of agreements to overlap the beginning of negotiations of new agreements. Recent examples are the unit 10 and unit 5 negotiations. There is no legitimate reason for such delays. Hawaii Revised Statutes 89 was intended to expedite the process not delay. Delays prevent the employers and the legislative bodies from completing financial plans and budgets that create unforeseen financial burdens.

Arbitration panels have not complied with the requirements of section **89-11(D)(f)** without consequence which results in cost to employers that cannot be supported by the panels. The legislature needs to hold hearings on each panels' decisions for compliance or it forfeits its authority to the panels. Most if not all the panels do not have the knowledge to comply with the requirements of section 89-11(D)(f). Legislative hearings on each panel's decision would prove the point. Since the first arbitration panel's decision only one has been rejected by the legislature because governor Ariyoshi objected to it. Government negotiators do not demand compliance with the law because they do not know the law or do not care because there are no consequences.

One reason for delays can be attributed to the selection of the third member of the panel by the member selected by the union and the employer. Each member will insist on a third member, the chair of the panel, that will be inclined to rule in their respective favor, thereby violating section 89-11(e)(2)(A) "**the neutral third member of the panel**". Requiring that the third member of the panel has to be a member of the American Arbitration Association does not mean that the person is qualified to understand negotiations that include the impact on finances of government. The HLRB

are the neutral enforcement officers of 89 Hawaii Revised Statutes and therefore must be responsible for appointing the third member of the panel.

Delays in completion of negotiations not only impact government operations but add unnecessary additional cost for implementation of such delayed awards and agreements. Another reason for delays is that the parties use the process to force an agreement by using the third member of the panel as leverage.

After the long process of negotiations that leads to impasse that is required to be substantiated by the HLRB the parties have no basis for not being prepared to submit their proposals and support for such proposals to the panel within the new time frame proposed by the amendment.