TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2259, S.D. 1, H.D. 1

March 27, 2014

RELATING TO COLLECTIVE BARGAINING

This measure amends Section 89-11, HRS, to limit final positions for arbitration to specific proposals that were previously submitted in writing up to the time of impasse. The bill is effective on July 1, 2050.

The Department of Budget and Finance opposes this measure. The Hawaii Labor Relations Board (HLRB) recently ruled in favor of the employer in Case CE-06-831 in which the Hawaii Government Employees Association (HGEA) sought to prohibit certain proposals in the employer's final position which were different from proposals that were previously submitted before impasse. This bill would amend Chapter 89 to be even more restrictive than the rulings that HGEA sought to implement through HLRB.

In their decision, HLRB cited the legislative history of Section 89-11 to allow arbitration panels "greater latitude: in fashioning a final and binding decision that it deems appropriate, and not be limited to selecting one or the other of the final offers of the parties. Furthermore, the arbitration panel has the authority and duty to "reach a decision . . . on all provisions that each party proposed in its respective final position for inclusion in the final agreement." This bill would restrict the flexibility of the arbitration process to deliberate what an arbitration panel would consider reasonable compromises to either party's position.

We believe arbitration panels should be permitted to consider final positions which take into account the most recent circumstances of the parties. Under Section 89-11 a party could declare impasse as early as September at which time, the Executive Budget is still being formulated and it is more than nine months until the contract period begins. Additionally, arbitration hearings have not been held in recent times until well after the expiration of the contracts. During this time between possible impasse dates, or even the statutory impasse date of February 1, and the arbitration hearings, the State has seen significant shifts in its fiscal position due to revisions in Council on Revenues revenue estimates and other budgetary issues that come to fore during the legislative session.

We believe giving the parties' flexibility in determining their final positions allows arbitrators to best consider the timeliest recommendations of the parties and provides an incentive for the parties to continue to negotiate to avoid arbitration. This measure would offer negative consequences for both parties and severely limit flexibility of authority of arbitration panels to render decisions that more closely compromise either position.

I would also like to take this time to specifically address some comments made in House Standing Committee Report 1015-14. The report refers to "the legislative deadline for finalized collective bargaining agreements of February 1 of any odd year." The statutory impasse date of February 1 was established by Act 232, SLH 2002. According to Standing Committee Report 2394, 2002, that date was established "so that the impasse procedure can begin early enough during a legislative session to provide a reasonable likelihood of settling the impasse prior to the end of the legislative session," though Chapter 89, HRS, is not constructed in such a way as to require agreements to be completed even by that time.

While it is true that several bargaining units still remained unresolved at the close of the 2013 Legislative Session, it is not true that “another unit waits for its arbitration process to begin.” Bargaining Unit 6 is the only unit still unresolved (though Units 9 and 11 have a ratified agreement/arbitration award still awaiting legislative appropriation of cost items). Arbitration hearings for Unit 6 began last October, but were delayed pending a ruling on the prohibited practice complaint mentioned earlier in my testimony. The final phase of the three-part arbitration hearing is now complete, but was scheduled the week after the House Committee on Labor and Public Employment hearing on this bill.

We believe it is in the best interest of both the public employers and the exclusive representative to reach a negotiated agreement both parties find acceptable rather than allowing a third-party to impose an arbitration award and note the majority of bargaining units did reach a negotiated settlement for the current contract period. This bill, as it is currently written, does nothing to accelerate the collective bargaining process and we believe it would act as a detriment to reaching a negotiated settlement, thereby increasing the chances the full arbitration process will be required.

NEIL ABERCROMBIE
GOVERNOR

NEIL DIETZ
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
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March 26, 2014

To: Rep. Sylvia Luke, Chair
Committee on Finance

From: Neil Dietz, Chief Negotiator

RE: SB 2259 SD1 HD1

The Office of Collective Bargaining respectfully enters this testimony in opposition to Senate Bill 2259 SD1 HD1 as proposed. The obvious result of this bill will be to require the parties, especially the employer, to draft initial contract proposals not with a goal of negotiations, but with the goal of arbitration. This will be a disincentive for good faith negotiations and an incentive to move into arbitration. ***Any incentive to move into arbitration is an incentive to increase collective bargaining costs to the detriment of the taxpayers of the State of Hawaii.***

The two sentences SB 2259 SD1 HD1 proposes as an addition to Chapter 89 would fundamentally change the process of collective bargaining to the detriment of the Legislature's purpose in establishing public sector collective bargaining. Chapter 89-1, states that "The legislature finds that joint decision-making is the modern way of administering government." Adding the proposed language of SB 2259 SD1 HD1 to Chapter 89 harms this worthy intent of the legislature.

To illustrate this harm, please remember the process of public sector collective bargaining. Hawaii's public sector collective bargaining agreements routinely require parties to exchange initial proposals for negotiations one year prior to the expiration of a collective bargaining agreement. Typically this would occur in May-June of an even numbered year. Ideally, negotiations would then commence. However, if no agreement is reached between labor and management, the Hawaii Labor Relations Board is required to declare that an impasse exists no later than February 1 of an odd-numbered year. Please note that this declaration of impasse is statutorily required and has no bearing on whether or not the parties

actually are at impasse or whether or not the parties have even met to negotiate. At the time the "statutory" impasse is declared, the process culminating in arbitration begins. The arbitration would begin approximately a year after initial proposals were exchanged between the parties.

When approaching arbitration, each party currently must consider and weigh what they want an arbitrator to consider. And for each party, there may be "risk" in taking a specific position to arbitration. It is this "risk" that creates pressure during negotiations leading to compromise, and optimally, resolution by agreement. SB 2259 SD1 HD1 negates that "risk" factor. SB2259 SD1 HD1 may remove any need to negotiate and compromise. Either or both parties can look at initial proposals and say "This is the worst that can happen. We can do better in arbitration."

And when that happens, there is no "joint decision-making" as expressed by the legislature in Chapter 89-1. What is left is decision making by an arbitrator with no accountability to the citizens of the State of Hawaii or the union members of a collective bargaining unit. Instead of fostering good faith negotiations, SB 2259 SD1 HD1 discourages negotiation and compromise.

In addition, as the Hawaii Labor Relations Board noted in its January 17, 2014 ruling in Case Number CE-06-831: "...interest arbitration is not, itself, negotiations, but rather a process that occurs after the parties fail to negotiate a contract." To tie the parties to ***negotiation proposals*** as ***arbitration positions*** ignores the differences between the very separate and distinct processes.

And finally, arbitrators and arbitration panels currently already have wide discretion in considering positions submitted by the parties and the decisions rendered regarding those positions. In fact, the whole thrust of an arbitration hearing is to determine which party can most successfully prosecute its final position before the arbitration panel.

Therefore, the Office of Collective Bargaining respectfully opposes SB 2259 SD1 HD1 and requests your Committee to not pass SB 2259 SD1 HD1.

THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Seventh Legislature
Regular Session of 2014

COMMITTEE ON FINANCE
The Honorable Rep. Sylvia Luke, Chair
The Honorable Rep. Scott Y. Nishimoto, Vice Chair
The Honorable Rep. Aaron Ling Johanson, Vice Chair

DATE OF HEARING: Thursday, March 27, 2014
TIME OF HEARING: 3:00 PM
PLACE OF HEARING: Conference Room 308

TESTIMONY ON SB2259 SD1 HD1 RELATING TO COLLECTIVE BARGAINING

By DAYTON M. NAKANELUA,
State Director of the United Public Workers, AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports SB2259 SD1, which prohibits parties in arbitration from including in their final positions any proposals that were not previously submitted in writing before impasse and about which an impasse in collective bargaining has not been reached. It also, authorizes the arbitration panel to decide whether final positions comply with all requirements and which proposals may be considered for inclusion in the final agreement.

Thank you for the opportunity to testify on this measure.

LATE

Date: 03/27/2014
Time: 03:00 PM
Location: Conference Room 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2259,SD1,HD1(hscr1015-14) RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Prohibits parties in arbitration from including in their final positions any proposals that were not previously submitted in writing before impasse and about which an impasse in collective bargaining has not been reached. Requires the arbitration panel to decide whether final positions comply with all requirements and which proposals may be considered for inclusion in the final agreement. Effective July 1, 2050. (SB2559 HD1)

Department's Position:
The Department of Education respectfully opposes SB2259, SD1, HD1 (hscr1015-14).

This limitation wherein each party shall be "limited to those specific proposals that were submitted in writing to the other party and were the subject of collective bargaining between the parties up to the time of the impasse" will cause confusion and unintended limitations. Often times during the bargaining process many different proposals are exchanged between the parties including variations on a single article, provision, or topic. The parties may verbalize ideas, suggestions, and/or modifications with respect to proposals from either side or both. The manner in which proposals are transmitted and/or discussed prior to impasse also varies with the type of bargaining agreed upon. Whereas in the traditional form of bargaining, all proposals are transmitted in writing and very little discussion occurs at the bargaining table with respect to modifications or amendments, in other less formal models of negotiations, e.g., interest based bargaining, the parties are encouraged to have open and frank discussions at the bargaining table concerning interests and options. The proposed language would limit and restrict the final positions to only those proposals that had been reduced to writing, whereas without such restriction the parties would be permitted to submit to the arbitration panel final positions that encompass subjects opened and/or discussed during bargaining.

Further, requiring the arbitration panel to decide whether final positions comply with the provision and which proposals may be considered for inclusion in the final "agreement" [sic] has the potential to unnecessarily burden the panel and present issues before it that may not be appropriate. For example, if the panel were tasked with this role of compliance, it would be required to review all of the proposals exchanged by the parties during bargaining even if only certain issues were intended for consideration in a final arbitration decision.

Lastly, the recent Hawaii Labor Relations Board decision (January 17, 2014, Case Number

CE-06-831) is contrary to this proposed legislation. Thus, currently parties are encouraged to continue to bargain in good faith with the goal of reaching a negotiated agreement, knowing that if the matter proceeds to arbitration there is an unknown risk factor based upon proposals that have been "opened" by the parties during the negotiations process, yet without knowing the exact terms of the final positions. This risk factor is of benefit to all parties in that it encourages the parties to reach a negotiated agreement. With the proposed amendment, it may encourage parties to forego continued negotiations following submission of initial proposals knowing that such proposals would be submitted to the arbitration panel.

Thank you for the consideration and the opportunity to testify on this measure.

AFSCME
LOCAL 152, AFL-CIO

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

LATE

Testimony by
Hawaii Government Employees Association

March 27, 2014

S.B. 2259, S.D. 1, H.D. 1 – RELATING TO COLLECTIVE BARGAINING

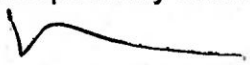
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2259, S.D. 1 which amends a provision of the final positions in a collective bargaining arbitration, but respectfully requests two amendments to the bill language. We request the Committee to change the effective date to "upon approval" or July 1, 2014, and that the proposed language, below, replace the current language contained in S.B. 2259, S.D. 1, in a House Draft 2:

> (B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position ~~which~~ that shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions which each party is proposing for inclusion in the final agreement. ~~The final positions submitted by each party to the arbitration panel shall be limited to those specific proposals that were submitted in writing to the other party and were the subject of a collective bargaining between the parties up to the time of the impasse, including those specific proposals that the parties have agreed to include through written mutual agreement.~~ It is provided that such further provisions shall be limited to those specific proposals which were submitted in writing to the other party and were the subject of collective bargaining between the parties up to the time of the impasse, including those specific proposals which the parties have decided to include through a written mutual agreement. The arbitration panel shall decide whether final positions are compliant with this provision and which proposals may be considered for inclusion in the final agreement.

As currently written, Ch. 89-11(e), Hawaii Revised Statues, regarding the Employer and the Exclusive Representative's final positions in an arbitration proceeding, is vague and unclear. The purpose of S.B. 2259 and the intent behind our suggested amendment is to clarify that the final positions submitted by both the Employer and the Exclusive Representative shall include only proposals that were previously exchanged in writing. This amendment creates a cost-effective dispute resolution mechanism to determine whether final positions can be included in the final agreement by determination of the arbitration panel, versus awaiting a decision from a potentially lengthy Hawaii Labor Relations hearing. Adoption of this proposed amendment to Ch. 89, HRS is a cost containment measure since arbitration hearings will not be unduly and unexpectedly lengthened, mutually beneficial to both the Employer and the Exclusive Representative and ensures collective bargaining is conducted in good faith.

Thank you for the opportunity to testify in support of S.B. 2259, S.D. 1 with the requested amended language and effective date.

Respectfully submitted,



Wilbert Holck
Deputy Executive Director