HB1977
HD2
LATE
TESTIMONY

NEIL ABERCROMBIE
GOVERNOR

NEIL DIETZ
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
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March 17, 2014

To: Sen. Clayton Hee, Chair
Committee on Judiciary and Labor

From: Neil Dietz, Chief Negotiator

RE: HB 1977 HD2

The Office of Collective Bargaining respectfully enters this testimony in opposition to House Bill 1977 HD2 as proposed.

The three sentences HB1977 HD2 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 HB1977 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. HB1977 HD2 negates that "risk" factor. There may be no 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, HB1977 HD2 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 separate and distinct processes.

And finally, arbitrators and arbitration panels currently have wide discretion in considering positions submitted by the parties and the decisions rendered regarding those positions.

Therefore, the Office of Collective Bargaining respectfully opposes HB1977 HD2 and requests your Committee to not pass HB1977 HD2.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL NO. 1977, H.D. 2

March 18, 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 before impasse began unless there is agreement by the parties or lack of objection. This bill is effective on July 1, 2030.

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.

Date: 03/18/2014
Time: 10:00 AM
Location: 016
Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1977, HD2(hscr800-14) RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Amends a provision of the final position in a collective bargaining arbitration to include only proposals that were submitted before impasse. Provides the arbitration panel with authority to determine if final positions submitted are compliant with statutory requirements. Effective July 1, 2030. (HB1977 HD2)

Department's Position:
The Department of Education respectfully opposes H.B. No. 1977, HD2.

This bill continues to prohibit proposals not previously submitted in writing before impasse. This prohibition wherein each party is "prohibited from including in their final positions any proposals that were not previously submitted in writing before 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 statute and which proposals may be considered for inclusion in the "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.