WRITTEN ONLY

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

February 28, 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, lack of objection, or good cause. 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.

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

February 27, 2014

To: Sen. David Ige, Chair
Committee on Judiciary and Labor

From: Neil Dietz, Chief Negotiator

RE: SB 2259 SD1

The Office of Collective Bargaining respectfully enters this testimony in opposition to Senate Bill 2259 SD1as proposed.

The two sentences SB 2259 SD1 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 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 negates that "risk" factor. SB2259 SD1 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 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 and requests your Committee to not pass SB 2259 SD1.

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR

CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 28, 2014

The Honorable David Y. Ige, Chair
and Members of the
Committee on Ways and Means
State Senate
State Capitol, Room 208
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Ige and Members of the Committee:

SUBJECT: Senate Bill No. 2259, SD1
Relating to Collective Bargaining

The Department of Human Resources, City & County of Honolulu, opposes S.B. 2259, SD1, which seeks to restrict the final position in a collective bargaining arbitration to include only proposals that were submitted before impasse. Since impasse occurs early in the collective bargaining process, as early as 90 days after written notice to initiate negotiations, the passage of this bill will create a rigid system which may preclude necessary changes to a party's contract proposals caused by unforeseen factors, such as a drastic change in our economy. Many times, the parties have not begun to meet at the negotiations table when impasse is declared. Moreover, the parties may proceed to arbitration years after impasse is declared.

Based on the foregoing reasons, the City & County of Honolulu again respectfully opposes S.B. 2259, SD1, and respectfully request that the matter be deferred.

We thank you for giving us the opportunity to testify on this matter.

Sincerely,

for Carolee C. Kubo
Director

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 Ways and Means

Testimony by
Hawaii Government Employees Association
February 28, 2014

S.B. 2259, S.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 an amendment to the bill language, which adds clarification and a dispute resolution mechanism. We request the proposed language, below, replace the current language contained in S.B. 2259, S.D. 1, in a Senate 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. ~~Absent agreement by the parties, lack of objection, or good cause, the parties are prohibited from including in their final positions any proposals that were not previously submitted in writing before impasse and about which an impasse in bargaining has not been reached.~~ 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 submitted prior to impasse. 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.

Respectfully submitted,

Randy Perreira
Executive Director

THE HAWAII SENATE
The Twenty-Seventh Legislature
Regular Session of 2014

COMMITTEE ON WAYS AND MEANS
The Honorable Sen. David Ige, Chair
The Honorable Sen. Michelle N. Kidani, Vice Chair

DATE OF HEARING: Friday, February 28, 2014
TIME OF HEARING: 10:00 a.m.
PLACE OF HEARING: Conference Room 211

TESTIMONY ON SB2259 SD1 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 the intent of 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.