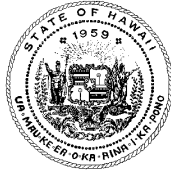


DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
CHIEF NEGOTIATOR

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

April 7, 2015

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on Wednesday, April 8, 2015  
3:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO  
CHIEF NEGOTIATOR, OFFICE OF COLLECTIVE BARGAINING

**Senate Bill No. 1011, S.D. 1, H.D. 2  
Relating to Collective Bargaining**

**(WRITTEN TESTIMONY ONLY)**

CHAIRPERSON LUKE, VICE CHAIR NISHIMOTO AND MEMBERS OF THE HOUSE  
COMMITTEE ON FINANCE:

S.B. No. 1011, S.D. 1, H.D. 2 would amend Chapter 89, HRS to repeal the statutory language providing that arbitration shall not be available to resolve disputes regarding the EUTF contributions to be made by the State and Counties. The measure, as currently drafted, also amends the process for selecting the neutral member of the arbitration panel should the parties fail to timely select the neutral member by requiring that the Hawaii Labor Relations Board maintain a list of arbitrators that includes arbitrators from the State, and from such list provide names of arbitrators for the parties' consideration. The effective date of the bill is 3/15/2038.

The Office of Collective Bargaining (OCB) HAS CONCERNS regarding this bill.

Allowing an arbitration panel to determine the amount of the employers' contribution toward employees' EUTF premiums through binding arbitration would constitute a major change in the negotiations impasse resolution process. Expanding the scope of arbitration to include EUTF contributions may have significant unintended consequences, including the potential for substantially increasing the funding required to implement the panel's arbitration award.

It is believed that the inclusion of arbitrators from the State on the list of potential neutral panelists will offer a more balanced approach to the arbitration decision-making process, which if amended as proposed would include EUTF contributions. The existing statutory language requiring that selection of the third party neutral be made from a list provided by the American Arbitration Association has typically resulted in arbitrators from outside of the State serving as the neutral. The proposed new approach to selection of the neutral panelist to include arbitrators from the State (and which would not preclude arbitrators from the American Arbitration Association) will likely aid in the arbitration process and the arbitration panel's deliberations, particularly with regard to the potential economic impact of the panel's decision. It is therefore urged that if the Legislature is inclined to include EUTF contributions as a subject of arbitration, that the Legislature retain the language contained in the current version of the bill requiring that the HLRB maintain and provide a list of potential neutral arbitrators that includes arbitrators from the State.

Thank you for the opportunity to testify on this important measure.

TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 1011, S.D. 1, H.D. 2

April 8, 2015

RELATING TO COLLECTIVE BARGAINING

Senate Bill No. 1011, S.D. 1, H.D. 2, repeals the prohibition of using arbitration to resolve impasses or disputes relating to State and county Hawaii Employer-Union Health Benefits Trust Fund (EUTF) contributions and authorizes arbitration panels to decide on EUTF contributions. The bill also repeals the prohibition on the right to strike over EUTF contributions.

The Department of Budget and Finance (B&F) strongly opposes this bill. 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. While arbitration panels are tasked to consider the employer's ability to pay and overall economic conditions, panels often fail to grasp the complexities of the State budget.

While recent fiscal conditions have made it challenging to reach resolution in collective bargaining negotiations, altering the current process by allowing binding arbitration would take this critical decision out of the hands of elected leaders and put it in the hands of unelected and unaccountable arbitrators. While the Legislature would still have the authority to reject an arbitration award, it appears all cost items would be rejected, not just EUTF contributions. The end result of this bill could result in giving the Legislature a choice of fully conceding control of this significant portion of the budget to arbitration panels or risk unending collective bargaining negotiations.



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TESTIMONY BEFORE THE HOUSE COMMITTEE  
ON FINANCE

DATE: WEDNESDAY, APRIL 8, 2015

RE: S.B. 1011, S.D. 1, H.D. 2 - RELATING TO COLLECTIVE BARGAINING

PERSON TESTIFYING: WIL OKABE, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

The Honorable Chair Sylvia Luke, Honorable Vice Chair Scott Nishimoto and Members of the Committee:

The Hawaii Teachers Association (HSTA) **strongly supports the intent of SB1011, SD1, HD2**; however **we oppose the amendment** that was put forth in the amendment process.

HSTA prefers the original clarifying language that the negotiations relating to the contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch.89, Hawaii Revised Statutes.

HSTA is opposed to amending Ch. 89-11(e) by deleting the language on page 4 starting at line 11 “[request the American Arbitration Association]”. This removes the provision of selecting a neutral third member of the arbitration panel from a list provided solely from the American Arbitration Association (AAA) and allows for any arbitrator in the state to be selected. Granted, this does not preclude the AAA from submitting a list and there are excellent Hawaii based arbitrators who qualify under the AAA standards. The concern is that all recommended arbitrators by the AAA exceed stringent qualifications, uphold high standards of ethics and have extensive subject-matter expertise in resolving large-scale interest arbitration disputes.

HSTA is **in strong support of SB1011, SD1, HD2** – requesting **deleting the amendments in Section 2** as stated.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

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

Testimony by  
Hawaii Government Employees Association  
April 8, 2015

S.B. 1011, S.D. 1, H.D. 2 – RELATING TO  
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO **strongly supports the purpose and intent of S.B. 1011, S.D. 1, however we oppose to the amendments made to the measure in the H.D. 1 and H.D. 2.** The original intent of S.B. 1011 clarified that negotiations relating to the contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes.

As currently written, Ch. 89, HRS lacks a dispute resolution mechanism to address the Employee and Employer shares of the contributions to medical premiums in the EUTF. If the Employer and the Exclusive Representative cannot agree on the contribution amount, then the pro-rata share shall be determined by the Legislature, while all other negotiable items can proceed to impasse. The amendments contained in S.B. 1101 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either interest arbitration or strike, depending upon the bargaining unit. Adoption of this language increases conformity between public-sector and private-sector employee bargaining, as both parties can fully utilize their dispute resolution mechanisms for all negotiable items, and also allows for consideration of a full benefits and compensation package.

Our opposition to the current H.D. 2 strictly concerns the amendment to Ch. 89-11(e) which deletes the provision of selecting a neutral third member of the arbitration panel from a list provided by the American Arbitration Association (AAA) and allows for any arbitrator in the state to be selected. Existing statute does not preclude both the Employer and the Exclusive Representative from mutually agreeing upon any neutral third member of the panel, AAA-qualified or not. However, in the case that the parties do not agree, a list of five AAA arbitrators is furnished from the Hawaii Labor Relations Board. In order to be certified by the AAA, an arbitrator must exceed stringent qualifications and uphold a high standard of ethics. Additionally, AAA arbitrators must have extensive subject-matter expertise and experience in resolving large-scale interest arbitration disputes – attached for your reference is information on AAA arbitrators. We are pleased that there are Hawaii-based arbitrators who meet the AAA standards.

Thank you for the opportunity to testify in strong support of S.B. 1011, S.D. 1, H.D. 2, with the request to delete the amendments made in Section 2 of the measure.

Respectfully submitted,

Randy Perreira  
Executive Director



## Qualification Criteria for Admittance to the AAA® National Roster of Arbitrators

The American Arbitration Association® (AAA) is the nation's leading provider of alternative dispute resolution services. Openings on our Regional Roster of Neutrals are extremely limited, based primarily on caseload needs and user preferences. Consequently, even candidates with strong credentials may not be added to our roster.

Applicants for membership on the AAA National Roster of Arbitrators must meet or exceed the following requirements:

### 1. Qualifications

- a. Minimum of 10 years of senior-level business or professional experience or legal practice.
- b. Educational degree(s) and/or professional license(s) appropriate to your field of expertise.
- c. Honors, awards and citations indicating leadership in your field.
- d. Training or experience in arbitration and/or other forms of dispute resolution.
- e. Membership in a professional association(s).
- f. Other relevant experience or accomplishments (e.g. published articles).

### 2. Neutrality

- a. Freedom from bias and prejudice.
- b. Ability to evaluate and apply legal, business, or trade principles.

### 3. Judicial Capacity

- a. Ability to manage the hearing process.
- b. Thorough and impartial evaluation of testimony and other evidence.

### 4. Reputation

- a. Held in the highest regard by peers for integrity, fairness and good judgment.
- b. Dedicated to upholding the AAA *Code of Ethics for Arbitrators in Commercial Disputes* and/or *Model Standards of Conduct for Mediators*.



## 5. Commitment to ADR Process

- a. Willingness to devote time and effort when selected to serve.
- b. Willingness to support efforts of the AAA.
- c. Willingness to successfully complete training under the guidelines of the *Commercial Arbitration Development Program*.

## 6. Letters of Recommendation\*

When requested by the AAA to do so, furnish letters from at least three active professionals in your field, but outside of any firms or professional associations in which you are employed or on which you currently serve as an officer, director, or trustee. Each letter must address the following:

- a. Nature and duration of the relationship
- b. Why the applicant would be qualified to serve

Recommended sources for letters:

1. Current AAA Panel member
2. Current or former state or federal judge\*\*
3. An attorney who served as your opposing counsel\*\*
4. Former employer or client

\*Letters of recommendation must be sent directly to the AAA Vice President from the writers, in sealed envelopes.

\*\*Suggested for attorney applicants.

## 7. Personal Letter

Submit a letter to your local AAA office explaining why you feel you would like to be included on AAA's Roster of Arbitrators along with a current copy of your personal resume or CV. Your letter should provide a detailed description of your willingness to commit yourself to serving and representing the Association. Also indicate in the letter whether or not you are currently a neutral with any other ADR agencies. Please feel free to contact your local AAA office should you have any questions.