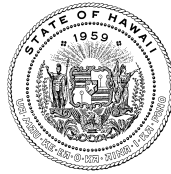


DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN COMMENTS
TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL NO. 232, H.D. 2

March 16, 2017
9:00 a.m.
Room 016

RELATING TO COLLECTIVE BARGAINING

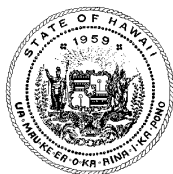
House Bill No. 232, H.D. 2, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer and it clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The Department of Budget and Finance (B&F) opposes this measure based on numerous problems outlined by the Office of Collective Bargaining. Particular concerns for B&F are as follows:

- Reductions in the State's right to manage and direct the workforce may make operations less efficient and thus more expensive.
- In particular, management's inability to initiate reductions in force or layoffs could negatively impact the State's ability to respond to fiscal emergencies.
- Bond rating agencies may respond negatively to reductions in management's diminished ability to respond to fiscal emergencies.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 9, 2017

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Thursday, March 16, 2017
9:00 a.m., Conference Room 016

By

JAMES K. NISHIMOTO
DIRECTOR, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

House Bill No. 232, H.D. 2
Relating to Collective Bargaining

CHAIRPERSON KEITH-AGARAN, VICE CHAIR RHOADS AND MEMBERS OF THE
HOUSE COMMITTEE ON JUDICIARY AND LABOR:

H.B. No. 232, H.D. 2, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. This measure is identical to its companion, S.B. No. 410, S.D. 1, with the exception of the effective date.

The Department of Human Resources Development **opposes** this measure as it would interfere with the rights and obligations of a public employer by allowing negotiations on rights reserved to management. This is contrary to Section 89-9(d), which states, "The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer to:"

Based upon the above, the Department of Human Resources Development respectfully requests that this measure **be held**.

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

Written Only

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/16/2017

Time: 09:00 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0232, HD2 RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. (HB232 HD2)

Department's Position:

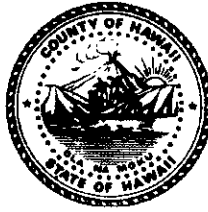
The Department of Education ("Department") respectfully opposes HB 232, H.D. 2.

The proposed deletion of "permissive subject of bargaining" and requiring bargaining over "implementation" interferes with the rights of the employer by compelling negotiations over permissive subjects. Not only would this bill require the employer to bargain "permissive" subjects, it adds "implementation" as another topic beyond procedures and criteria.

The supposed intent of HB 232, H.D. 2 to clarify the scope of collective bargaining negotiations in actuality, causes more confusion.

Therefore, the Department respectfully opposes HB 232, H.D. 2 and requests the measure be held.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA. 74-5044 Ane Keohokalole Hwy, Bldg. C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

March 13, 2017

Senator Gilbert Keith-Agaran
Judiciary and Labor
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Keith-Agaran and Members:

RE: **HB 232, HD2**
Relating to Collective Bargaining

Thank you for this opportunity to testify against HB 232, HD2.

HB 232, HD2 says its purpose is to "clarify" the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. However, as we read the bill, its provisions would take away rights of the employer, and that is not acceptable.

We appreciate that HD1 and HD2 have removed some wording that was contained in the original HB 232. However, collective bargaining language can be extremely technical, and every change can have unforeseen consequences.

As we read HB 232, HD2, it would provide a union another subject area to grieve, by alleging that an action by the employer to implement affects the terms and conditions of employment. So the amendment does not clarify, it muddies the current bright line of understanding between employer rights and employee rights.

It would remove from HRS 89- 9 "permissive subjects of bargaining" which currently (1) are not mandatory, (2) are permissive and (3) are limited to 'procedures and criteria.' HRS 89-9 properly recognizes "permissive subjects of bargaining"; there is no duty to bargain, and a party cannot be compelled to bargain on permissive subjects.

Gilbert Keith-Agaran
Page 2
March 13, 2017

Therefore, the County of Hawaii must oppose passage of HB 232, HD2. It goes beyond mere clarification, and gets into substantive changes in the rights of the parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wil Okabe', with a long horizontal flourish extending to the right.

Wil Okabe
Managing Director



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

March 9, 2017

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Thursday, March 16, 2017
9:00 a.m., Conference Room 016

By

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR, OFFICE OF COLLECTIVE BARGAINING

**House Bill No. 232, H.D. 2
Relating to Collective Bargaining**

CHAIRPERSON KEITH-AGARAN, VICE CHAIR RHOADS AND MEMBERS OF THE
HOUSE COMMITTEE ON JUDICIARY AND LABOR:

H.B. No. 232, H.D. 2, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. This measure is identical to its companion, S.B. No. 410, S.D. 1, with the exception of the effective date.

The Office of Collective Bargaining **opposes** this measure and provides the following comments for consideration:

- The removal as proposed of the provision "... as a permissive subject of bargaining" implies by inference that the "permissive subject" would become "mandatory subjects of bargaining".
- The current language balances promotion of joint decision making between the employers and exclusive representative while ensuring balance between the role of the Employer to manage and direct operations and the exclusive representative to advocate and negotiate for its members as it relates to wages, hours and working conditions.

- The addition of language “.... or the implementation by the employer of paragraphs (1) through (8), if it affects terms and conditions of employment,” appears to conflict with existing language in Section 89-9(d) which forbids the parties to agree to any proposal that interferes with management rights listed in paragraphs (1) through (8).
- The proposed insertion of the language to require incorporation of language relating to subparagraphs 1 through 8 could be interpreted as requiring that practically everything management implemented would affect terms and conditions of employment and therefore subject to mutual agreement.
- The proposed amended language goes beyond clarification and appears to be contrary to the original intent of Section 89-9(d), which states, “The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer.” The removal of the clarifying language “as a permissive subject of bargaining” from the existing statute has the potential of curtailing management rights expressly protected by the Hawai‘i Supreme Court in United Public Workers v. Hanneman, 106 Hawai‘i 359, 365, 105 P. 3d 236, 242 (2005) in particular with respect to paragraphs (3) through (5) of 89-9(d) relating to the rights and obligations of a public employer to (3) hire, promote, transfer, assign and retain employees in positions; (4) suspend, demote, discharge, or take other disciplinary action against employees for proper cause; and (5) relieve an employee from duties due to the lack of work or other legitimate reasons.
- Further, the potential impact of the proposed revision would essentially strip management of its current rights by requiring mutual agreement regarding the conduct of business and such actions that may be initiated such as:

- Management's authority to direct its workforce to perform work that they were hired e.g., the amendatory language might be interpreted by employees as empowering them to refuse to perform assigned duties and responsibilities unless such duties have been mutually agreed to as a term and condition of employment;
- Management's authority to determine minimum qualifications, standards for work and nature and contents of examinations (interview questions, panel members selected, scoring method, etc.) unless such have been mutually agreed to between the employer and exclusive representatives;
- Management's ability and authority to take appropriate action when its employees fail to perform satisfactorily or for disciplinary action in the event of employee's misconduct;
- Management's ability to initiate reduction in force or layoffs of employees due to lack of work or other legitimate reasons and otherwise take action necessary to carry out the missions of the employer in cases of emergencies.

Based upon the above, the Office of Collective Bargaining respectfully recommends that further considerations of the above concerns be given before moving this measure forward.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

March 16, 2017

H.B. 232, H.D. 1 - RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 232, H.D. 1 which clarifies the allowable scope of collective bargaining negotiations and prohibited practices for parties to a collective bargaining agreement.

This important measure makes necessary amendments to Ch. 89-9, Hawaii Revised Statutes, to clarify and delineate the scope of bargaining between the public sector employers and the exclusive representatives. The amendments to Ch. 89-9, HRS contained in H.B. 232, H.D. 1 are necessary to ensure fairness in the process of negotiations. We respectfully request the Committee to support this measure.

Thank you for the opportunity to testify in strong support of the passage of H.B. 232, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



The Senate Committee on Judiciary and Labor
Thursday, March 16, 2017
9:00 AM, Conference Room 016

RE: HB 232, HD1, RELATING TO COLLECTIVE BARGAINING

Attention: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads and
Members of the Committee

As per your request to focus our testimony on the differences if any between the House and Senate measures, the University of Hawaii Professional Assembly (UHPA) finds no differences between **HB 232, HD1** and **SB 410 HD1** which previously passed this committee.

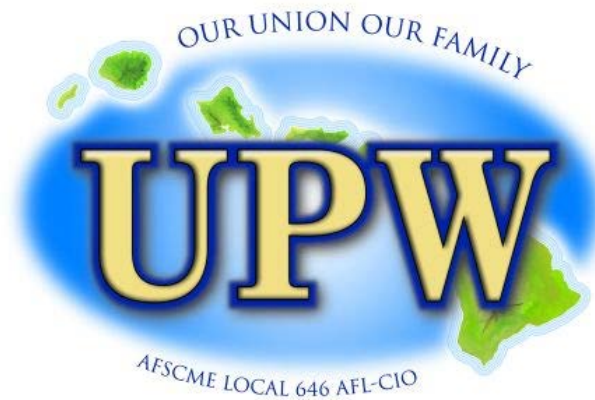
UHPA therefore urges the committee's continued **support and pass HB 232, HD1**, which encourages the parties to a collective bargaining agreement to negotiate in a manner that effectuates the purpose of Chapter 89. Such purpose includes recognizing that public employees have a voice in determining their working conditions. This proposed measure advances the cooperative relations between employers and employees that establishes a healthy collective bargaining environment.

UHPA encourages the Committee to **support HB 232, HD1**.

Respectfully Submitted,

Kristeen Hanselman
Executive Director

**University of Hawaii
Professional Assembly**



THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

DATE OF HEARING: Thursday, March 16, 2017
TIME OF HEARING: 9:00 a.m.
PLACE OF HEARING: State Capitol, Rm. 016
415 South Beretania Street

TESTIMONY ON HB232 HD2: RELATING TO COLLECTIVE BARGAINING

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

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining 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 represent about 1,500 members of the private sector.

Collective bargaining in public employment has had a rich history for several decades in Hawaii. The collective negotiations between the public employers and the exclusive representatives has brought relative labor peace which is vital for the reliable provision of core services like public safety, health, environmental protection, infrastructure and education to our communities throughout the state. This is the basic reason HRS 89-1 expressed the Legislature's intent and wise policy in the joint-decision making process for administering government.

HB232 HD2 amends the collective bargaining law HRS 89-9, to put emphasis on the importance of the joint-decision process to wit,"...and shall not preclude negotiations over either the procedures and criteria on promotions, transfers, assignments, demotions,

layoffs, suspensions, terminations, discharges, or other disciplinary actions [as a permissive subject of bargaining] or the implementation by the employer of paragraph (1) through (8), if it affects terms and conditions of employment,...”

The term “permissive” is proposed to be deleted in the amendment. This should help to level the playing field and support the Legislative policy of joint-decision making. According to Matt Austin Labor Law, there are basically three types of bargaining; Illegal subjects of bargaining, Permissive subjects of bargaining, and Mandatory subjects of bargaining. Illegal subjects of bargaining are obvious i.e., they are unenforceable subjects that violate state or federal law.

Mandatory subjects of bargaining are subjects related to the terms and conditions of employment and include wages, grievances, arbitration procedures, contract length, union security clauses, and other terms and conditions of employment. Neither the employer nor the union can refuse to bargain over mandatory subjects of bargaining. Permissive subjects of bargaining are those that either party can propose to discuss and the other side may voluntarily bargain on those subjects. Neither side may insist on bargaining that subject to the point of impasse. Once bargaining begins on a permissive subject, either side can end the bargaining on that subject without penalty.

A word about Impact and Implementation bargaining. In general terms, when an employer wants to exercise its “management rights” the union may not be able to bargain over the substance of an issue. But the union may be able to bargain over how the issue would “impact” employees or be “implemented.” The union could propose solutions to improve the implementation and thereby lessen the negative impact of the change on affected employees.

HB 232 HD2 does not preclude negotiations over the implementation by the employer of paragraphs (1) through (8) HRS 89-9 (d) if it affects the terms and conditions of employment. The bill also provides a grievance process in case of any violations of the procedures, criteria, and implementation so negotiated. HB232 HD2 increases the opportunity for improved communications and understanding between the employer and exclusive representative and that government will continue to provide reliable public services. This is a goal of HRS 89-1.

The UPW supports this measure and requests the indulgence of the committee to pass it out.

Thank you for the opportunity to submit this testimony.



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
WEBSITE: www.hawaiiirefighters.org

**THE SENATE
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017**

March 16, 2017

Committee on Judiciary and Labor

Testimony by

Hawaii Fire Fighters Association, Local 1463

H.B. No. 232 H.D. 2 RELATING TO COLLECTIVE BARGAINING

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO, represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. The HFFA, on behalf of our members, **strongly supports H.B. No. 232 H.D. 2**, clarifying the allowable scope of collective bargaining negotiations.

The proposed amendment in H. B. No. 232, H.D. 2, clarifies that the subjects of bargaining between the employers and the exclusive representatives are negotiable when the implementation of HRS Section 89-9, paragraphs (1) through (8), *affects the terms and conditions of employment.*” (Emphasis added.) The employers are not prohibited from establishing new policies under this proposed amendment. However, this proposed legislation requires that the *impact of those policies* on public employment are subject to bargaining. Specifically excluded topics, such as all aspects of the Hawaii Retirement System and the health insurance coverage of the Employer Union Trust Fund, remain outside of the collective bargaining process.

On September 23, 2016, the “Employer Group” filed a Petition for Declaratory Ruling questioning the meaning of the word “permissive” with the Hawaii Labor Relations Board, but subsequently withdrew the petition. The Petitioners questioned whether a number of HFFA’s Final Positions that were submitted for Interest Arbitration were prohibited since the State and Counties were asserting that the proposals were permissible subject to the criteria articulated in Section 89-9(d), H.R.S. While HFFA contended the proposals identified by the petitioners have gone through a number of revisions throughout previous negotiations and interest arbitration without any question but as if it was an epiphany, the Petitioners, State and Counties, decided that the sections were questionable as to whether they were permissible subjects of bargaining and subject to arbitration. The petition implied that “permissive” gave the employer the unilateral right to decide not to include in collective bargaining agreements topics that had been **part of public sector contracts for over forty years**, since the original passage of the Chapter 89. This legislative proposal places the responsibility of good faith bargaining on both parties and effectively addresses the rights and benefits for public employees under the collective bargaining law.

HFFA appreciates your Committee’s favorable consideration of this measure.

Thank you for the opportunity to testify.