

HB 232

RELATING TO COLLECTIVE BARGAINING

LAB, FIN

HB232



Submit Testimony

Measure Title: RELATING TO COLLECTIVE BARGAINING.

Report Title: Collective Bargaining; Negotiations; Prohibited Practices

Description: Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. Clarifies prohibited practices for parties to a public employment collective bargaining agreement.

Companion:

Package: None

Current Referral: LAB, FIN

Introducer(s): JOHANSON, LUKE, SAIKI

<u>Sort by Date</u>		Status Text
1/19/2017	H	Pending introduction.
1/20/2017	H	Pass First Reading
1/23/2017	H	Referred to LAB, FIN, referral sheet 1
2/6/2017	H	Bill scheduled to be heard by LAB on Thursday, 02-09-17 8:30AM in House conference room 309.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 89-9, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:
3 "(d) Excluded from the subjects of negotiations are
4 matters of classification, reclassification, benefits of but not
5 contributions to the Hawaii employer-union health benefits trust
6 fund, recruitment, examination, initial pricing, and retirement
7 benefits except as provided in section 88-8(h). The employer
8 and the exclusive representative shall not agree to any proposal
9 which would be inconsistent with the merit principle or the
10 principle of equal pay for equal work pursuant to section 76-1
11 or which would interfere with the rights and obligations of a
12 public employer to:
13 (1) Direct employees;
14 (2) Determine qualifications, standards for work, and the
15 nature and contents of examinations;
16 (3) Hire, promote, transfer, assign, and retain employees
17 in positions;



- 1 (4) Suspend, demote, discharge, or take other disciplinary
2 action against employees for proper cause;
- 3 (5) Relieve an employee from duties because of lack of
4 work or other legitimate reason;
- 5 (6) Maintain efficiency and productivity, including
6 maximizing the use of advanced technology, in
7 government operations;
- 8 (7) Determine methods, means, and personnel by which the
9 employer's operations are to be conducted; and
- 10 (8) Take such actions as may be necessary to carry out the
11 missions of the employer in cases of emergencies.

12 This subsection shall not be used to invalidate provisions
13 of collective bargaining agreements in effect on and after June
14 30, 2007, and shall not preclude negotiations over either the
15 procedures and criteria on promotions, transfers, assignments,
16 demotions, layoffs, suspensions, terminations, discharges, or
17 other disciplinary actions [~~as a permissive subject of~~
18 ~~bargaining~~] or the implementation by the employer of paragraphs
19 (1) through (8), if it affects terms and conditions of
20 employment, during collective bargaining negotiations or



1 negotiations over a memorandum of agreement, memorandum of
2 understanding, or other supplemental agreement.

3 Violations of the procedures [~~and~~], criteria, and
4 implementation so negotiated may be subject to the grievance
5 procedure in the collective bargaining agreement."

6 SECTION 2. Section 89-13, Hawaii Revised Statutes, is
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) It shall be a prohibited practice for a public
9 employer or its designated representative [~~wilfully~~] to:

- 10 (1) Interfere, restrain, or coerce any employee in the
11 exercise of any right guaranteed under this chapter;
- 12 (2) Dominate, interfere, or assist in the formation,
13 existence, or administration of any employee
14 organization;
- 15 (3) Discriminate in regard to hiring, tenure, or any term
16 or condition of employment to encourage or discourage
17 membership in any employee organization;
- 18 (4) Discharge or otherwise discriminate against an
19 employee because the employee has signed or filed an
20 affidavit, petition, or complaint or given any
21 information or testimony under this chapter, or



- 1 because the employee has informed, joined, or chosen
2 to be represented by any employee organization;
- 3 (5) Refuse to bargain collectively in good faith with the
4 exclusive representative as required in section 89-9;
- 5 (6) Refuse to participate in good faith in the mediation
6 and arbitration procedures set forth in section 89-11;
- 7 (7) Refuse or fail to comply with any provision of this
8 chapter;
- 9 (8) Violate the terms of a collective bargaining
10 agreement;
- 11 (9) Replace any nonessential employee for participating in
12 a labor dispute; or
- 13 (10) Give employment preference to an individual employed
14 during a labor dispute and whose employment
15 termination date occurs after the end of the dispute,
16 over an employee who exercised the right to join,
17 assist, or engage in lawful collective bargaining or
18 mutual aid or protection through the labor
19 organization involved in the dispute.



1 (b) It shall be a prohibited practice for a public
2 employee or for an employee organization or its designated agent
3 [~~wilfully~~] to:

- 4 (1) Interfere, restrain, or coerce any employee in the
5 exercise of any right guaranteed under this chapter;
6 (2) Refuse to bargain collectively in good faith with the
7 public employer, if it is an exclusive representative,
8 as required in section 89-9;
9 (3) Refuse to participate in good faith in the mediation
10 and arbitration procedures set forth in section 89-11;
11 (4) Refuse or fail to comply with any provision of this
12 chapter; or
13 (5) Violate the terms of a collective bargaining
14 agreement."

15 SECTION 3. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



H.B. NO. 232

1 SECTION 5. This Act shall take effect on July 1, 2017.

2

INTRODUCED BY:

JAN 19 2017



H.B. NO. 232

Report Title:

Collective Bargaining; Negotiations; Prohibited Practices

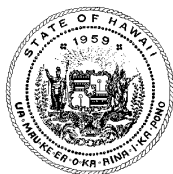
Description:

Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. Clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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

February 7, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Thursday, February 9, 2017
8:30 a.m., Conference Room 309

By

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 232
Relating to Collective Bargaining

CHAIRPERSON JOHANSON, VICE CHAIR HOLT AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT:

H.B. No. 232 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 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:"

In addition, the deletion of the word "wilfully" in Section 89-13(a) and (b) has the potential for significantly expanding the scope of what may be pursued as a prohibited practice.

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



The House Committee on Labor & Public Employment
Thursday, February 9, 2017
8:30 am, Room 309

RE: HB 232, RELATING TO COLLECTIVE BARGAINING

Attention: Chair Aaron Ling Johanson, Vice Chair Daniel Holt and
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support HB 232**, 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.

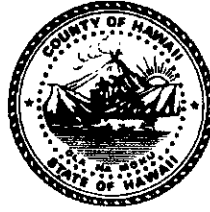
UHPA encourages the Committee to **support HB 232**.

Respectfully Submitted,

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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February 7, 2017

Representative Aaron Ling Johanson
Labor & Public Employment
Hawaii State Capitol
Honolulu, HI 96813

Dear Chair Johanson and Committee Members:

RE: **HB232**

Thank you for this opportunity to comment on HB 232.

The description of HB 232 says its purpose is to "clarify" the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer, and also "clarify" prohibited practices for parties to a public employment collective bargaining agreement. However, as we read the bill, its provisions would take away rights of the employer, and that is not acceptable.

We believe HB 232 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.

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

Respectfully submitted,


Wil Okabe
Managing Director

Bernard P. Carvalho, Jr.
Mayor



Janine M.Z. Rapozo
Director

Wallace G. Rezentes, Jr.
Managing Director

DEPARTMENT OF HUMAN RESOURCES

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite 140, Lihu'e, Hawai'i 96766
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February 7, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Thursday, February 9, 2017
8:30 am, Conference Room 309

By
JANINE M.Z. RAPOZO, DIRECTOR
COUNTY OF KAUA'I
DEPARTMENT OF HUMAN RESOURCES

House Bill No. 232
Relating to Collective Bargaining

CHAIRPERSON JOHANSON, VICE CHAIR HOLT, AND MEMBERS OF THE HOUSE
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT:

The County of Kaua'i, Department of Human Resources **opposes** H.B. No. 232 as this measure would interfere with the rights and obligations of a public employer by allowing negotiations on rights reserved to management.

H.B. No. 232 seeks to clarify the allowable scope of collective bargaining negotiations by requiring bargaining on subjects currently deemed "permissive." H.B. No. 232 compels the public employer to negotiate on permissive subjects which has been recognized in 89-9(d) as rights reserved to management.

Mahalo for your consideration.

Sincerely,

Janine M.Z. Rapozo
Human Resources Director

AN EQUAL OPPORTUNITY EMPLOYER



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
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 9, 2017

H.B. 232 - RELATING TO COLLECTIVE BARGAINING

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

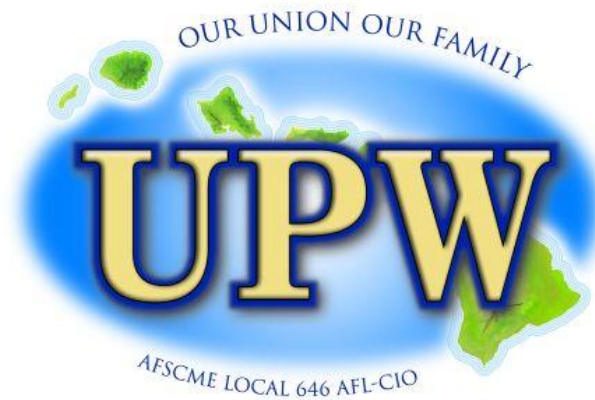
This important measure makes necessary amendments to Ch. 89-9, Hawaii Revised Statutes, to clarify and delineate the scope of bargaining between the public sector employers and the exclusive representatives. Additionally, this measure amends Ch. 89-13, HRS by equally removing the willful intent threshold for prohibited practice complaints for both public sector employers and exclusive representatives. The amendments contained in H.B. 232 are necessary to ensure fairness in the process of negotiations.

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

Respectfully submitted,

Randy Perreira
Executive Director





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

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT(LAB)
The Honorable Representative Aaron Ling Johanson, Chair
The Honorable Representative Daniel K. Holt, Vice Chair

DATE OF HEARING: Thursday, February 9, 2017
TIME OF HEARING: 8:30 am
PLACE OF HEARING: State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL 232: RELATING TO COLLECTIVE BARGAINING.

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

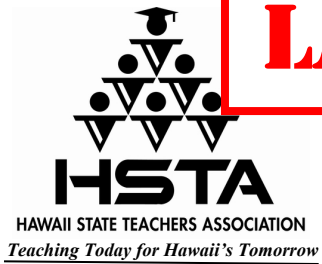
My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health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

HB 232 clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. Clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The UPW supports this measure. Thank you for the opportunity to submit this testimony.

HB 232

Late testimony



LATE

LATE

LATE

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Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Justin Hughey
Vice President

Amy Perruso
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR

RE: HB 232 - RELATING TO COLLECTIVE BARGAINING.

THURSDAY, FEBRUARY 9, 2017

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **strongly supports HB 232**, relating to collective bargaining.

This proposal clarifies the obligation of the state to engage in negotiations in a fair and respectable manner. While HSTA recognizes the right of the state to manage employee work, we strongly affirm the importance of protecting employees' right to negotiate those subjects outlined in HRS 89-9.

Collective bargaining is especially important to public school teachers. It is in the best interest of both the employer and the union to ensure that bargaining occurs in a way that supports an employee's ability to enhance their professionalism, leads to a workplace free from health and safety risks, and is conducted in a fair and equitable manner.

To protect collective bargaining, the Hawaii State Teachers Association asks your committee to **support** this bill.



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.hawaii firefighters.org

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

February 9, 2017

Committee on Labor and Public Employment

Testimony by
Hawaii Fire Fighters Association, Local 1463

LATE

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LATE

H.B. No. 232 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**, clarifying the allowable scope of collective bargaining negotiations.

The proposed amendment in H. B. No. 232 does not expand excluded subjects of permissible bargaining but it does clarify that exclusive representatives can negotiate “the implementation of employer paragraphs (1) through (8), *if it affects the terms and conditions of employment*.” Emphasis added. H. B. No. 232 also removes the willful intent standard for both the employer and employee representatives as applied with prohibited practice actions. These amendments make both parties responsible to fairly and effectively address the rights and benefits for their members under the collective bargaining law.

HFFA appreciates your Committee’s favorable consideration of this measure and thank you for the opportunity to testify.

SHOPO



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Tenari R. Ma'afala

VICE PRESIDENT
Malcolm Lulu

TREASURER
James "Kimo" Smith

SECRETARY
Michael Cusumano

DIRECTORS AT LARGE
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Erik Iinuma

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HAWAII CHAPTER CHAIR
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February 8, 2017

U.S. MAIL/FAX: 808-586-9476

The Honorable Aaron Ling Johanson
Chair
House Committee on Labor and Public Employment
Hawaii State Capitol, Room 426
415 South Beretania Street
Honolulu, HI 96813

Re: **HB232 [Relating to Collective Bargaining]**

Dear Chair Johanson:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in support of HB232. SHOPO strongly supports HB 232 which seeks to clarify the scope of negotiations and prohibited practices.

We believe HB232 will clarify and promote the legislature's "statement of findings and policy" outlined in HRS §89-1, wherein the legislature stated in pertinent part:

The legislature finds that **joint decision-making** is the modern way of administering government. Where public employees have been granted the **right to share in the decision-making process** affecting wages and **working conditions**, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective.

HRS §89-1 (emphasis added).

This bill will promote the joint decision-making process while insuring fairness in the negotiation process between the public employers and respective bargaining units. In addition, the bill will remove the "willful" standard relating to prohibited practices for both the public employers and bargaining units.

We thank you for allowing us to be heard and respectfully hope your committee will support this bill.

RESPECTFULLY SUBMITTED.


TENARI MA'AFALA
SHOPO PRESIDENT

Visit us @ shopohawaii.org

LATE

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