DAVID Y. IGE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAI`I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI`I 96804

Date: 03/01/2017
Time: 09:45 AM
Location: 211
Committee: Senate Ways and Means

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 0410, SD1 RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. Takes effect 1/7/2059. (SD1)

Department's Position:
The Department of Education (Department) respectfully opposes SB 410, S.D. 1.

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 SB 410, S.D. 1 to clarify the scope of collective bargaining negotiations in actuality, causes more confusion.

Therefore, the Department respectfully opposes SB 410, S.D. 1 and requests the measure be held.

DAVID Y. IGE
GOVERNOR

JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

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

February 27, 2017

TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS
For Hearing on Wednesday, March 1, 2017
9:45 a.m., Conference Room 211

By

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 410, S.D. 1
Relating to Collective Bargaining

CHAIRPERSON TOKUDA, VICE CHAIR DELA CRUZ AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS:

S.B. No. 410, S.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

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.

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

February 27, 2017

TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS
For Hearing on Wednesday, March 1, 2017
9:45 a.m., Conference Room 211

By

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR

Senate Bill No. 410, S.D. 1
Relating to Collective Bargaining

CHAIRPERSON TOKUDA, VICE CHAIR DELA CRUZ AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS:

S.B. No. 410, S.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

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.

UNIVERSITY OF HAWAIʻI SYSTEM
Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
March 1, 2017 at 9:45 a.m.
By
Richard H. Thomason
Director of Collective Bargaining and Labor Relations
University of Hawaiʻi

SB 410 SD1 – RELATING TO COLLECTIVE BARGAINING

Chair Tokuda, Vice Chair Dela Cruz, and members of the Committee:

I am respectfully submitting written testimony on behalf of the University of Hawaiʻi **opposing** Senate Bill 410 SD1 Relating to Collective Bargaining. The "description" for this measure states that its purpose is to:

> *Clarify the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.*

Rather than creating clarity, this measure proposes to amend HRS, Section 89-9(d) in **two** distinct ways, both of which directly impinge upon fundamental management rights recognized and protected by the Hawaiʻi Supreme Court in United Public Workers v. Hanneman, 106 Hawaiʻi 359, 365, 105 P. 3d 236, 242 (2005). As a representative employer group, the University opposes any degradation of employer rights and obligations to ensure optimal and efficient working conditions.

In Hanneman, the City made the decision to transfer a number of refuse workers from one baseyard to another due to a workforce deficiency in Honolulu, and a surplus of workers in Pearl City. UPW refused offers by the City to consult and instead demanded negotiations, arguing that transfers were an **obligatory** subject of bargaining because the decision affected "*conditions of work*." In other words, UPW's position was that there could be no such transfers without mutual consent.

The Hawaiʻi Labor Relation's Board ruled that the City's management rights were subject to a "*balancing test*," but our Supreme Court **reversed**, ruling that the duty to negotiate extends only so far as it does not *"infringe upon an employer's management rights under section 89-9(d)."* Specifically, the Court stated as follows:

> *HRS §89-9 does not expressly state or imply that an employer's right to transfer employees is subject to a balancing of interests. Contrary to the HLRB's interpretation, our holding in [University of Hawaiʻi Professional Assembly v. Tomasu, 79 Hawaiʻi 154, 900 P.2d 161 (1995)] does not approve of the HLRB's balancing test. Rather, we believe Tomasu stands for the proposition that, in reading HRS §§89-9(a), (c), and (d) together, parties are permitted and*

> *encouraged to negotiate all matters affecting wages, hours and conditions of employment* ***as long as the negotiations do not infringe upon an employer's management rights under section 89-9(d). In other words, the right to negotiate wages, hours and conditions of employment is subject to, not balanced against, management rights.*** *Accordingly, in light of the plain language of HRS §89-9(d), we hold that the HLRB erred in concluding that the City's proposed transfer was subject to bargaining under HRS §89-9(a).*

Subsequently, HRS §89-9(d) was amended in 2007 to clarify that the public employers were not precluded from agreeing to negotiate procedures and criteria for those specific management actions set forth in paragraphs (3) through (5) of §89-9(d) namely: *promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, and discharges or other disciplinary actions*.

The statute expressly and with probative clarity states that any such negotiations over procedures and criteria are a *"permissive subject of bargaining,"* thereby distinguishing this type of bargaining from that which is **mandated** by HRS §89-9(a) *to wit*:

> *(a) The employer and the exclusive representatives* ***shall*** *meet at reasonable times; including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and* ***shall negotiate*** *in good faith with respect to wages, hours…and other conditions of employment which are subject to collective bargaining* … (Emphasis added.)

In other words, a public employer may not be compelled to negotiate procedures and criteria for promotions, demotions or the like, but it is not precluded from doing so, either because it believes it is good management practice to do so, or because a union offers something of value in exchange.

Further, it has never been disputed that if the parties **do** agree to place procedures and criteria regarding a permissive subject of bargaining into a collective bargaining agreement, then mutual consent would be necessary to later modify same.

As a first order of business, this bill proposes to **remove** the key clarifying language *"as a permissive subject of bargaining,"* from the statute. No explanation for this removal is offered, but it is apparent that the goal is to hamstring the very management rights expressly and unambiguously protected by the Court in Hanneman with regard to the management actions described in paragraphs (3) through (5) of §89-9(d). Accordingly, if passed, this bill would effectively negate that decision and require union consent in the future before a public employer can transfer, assign, demote, or layoff its employees, or do anything else listed in paragraphs (3) through (5) of §89-9(d).

Additionally, if this measure is passed, those Bargaining Units subject to impasse arbitration under HRS, §89-11(e) would be free to draft "final positions" on procedures and criteria for transfers, assignments, promotions, layoffs, demotions, discipline, or the like, and seek to have them **unilaterally** imposed upon the public employers by an arbitration panel even though §89-9(d) specifically **prohibits** public unions and employers from agreeing to any proposal that would "*interfere with the rights and obligations of a public employer*" to do any of the things listed in paragraphs (1) – (8) of the statute.

The ramifications of all the above are profound enough, but that is not all, for as a second order of business, this bill introduces an entirely separate restriction on management rights by also requiring the public employers to bargain over the *"implementation"* of every single management decision described in paragraphs (1) through (8) of §89-9(d).

It is extremely significant that HRS §89-9(d) specifically does not include in its list of "*permissive*" subjects or bargaining those management actions set forth in paragraphs (1),(2)(6),(7),and (8) of the statute. Why? **Because these actions go to the very core of the managerial decision making process.**

An example of how this measure would dramatically affect real-world labor relations is illustrated by a 2016 case before the HLRB (Case CE-11-879, Order 482) where a public union argued that a public employer could not implement a new training program without its approval because it allegedly impacted conditions of work. The Board disagreed, ruling that the employer was obligated to **consult**, not bargain with the union about the plan.

This measure is so broad that if an employer wanted to train its employees, alter the minimum qualifications of a position, change one of its examinations, increase efficiencies, **or even take such actions as may be necessary in emergencies to carry out its functions**, it would not be able to do so without the assent of all relevant unions.

Make no mistake, giving a public union veto power over *"implementation"* of a management decision means just what it implies. It means the decision never sees the light of actual application without that union's consent.

Moreover, it is no answer to argue that implementation would only be subject to mandatory bargaining if it *"affects terms and conditions of employment"* as stated in the measure. The problem with this language is that it is crucially incomplete.

Specifically, if the measure stated that bargaining over implementation of a management decision would only be necessary if it *"affects terms and conditions of employment* ***set forth in a collective bargaining agreement,"*** then at least, we would have clarity (albeit, rather self evident clarity, since it is undisputed that management decisions which materially alter the terms of labor agreements are subject to what has traditionally been referred to as "*effects bargaining*").

Instead, the measure contains an ambiguous, un-tethered phrase that is basically no different than the amorphous "*conditions of work*" argument unsuccessfully employed by UPW in Hanneman.

In sum, this bill does not "*clarify the allowable scope of collective bargaining*;" on the contrary; it seeks to dismantle management rights presently protected by HRS, §89-9(d), and it seeks to expand mandatory bargaining obligations beyond the four corners of public sector collective bargaining agreements.

Thank you for the opportunity to provide testimony on this measure which should be held.

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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LATE

February 28, 2017

Senator Jill Tokuda
Ways and Means
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Tokuda and Members:

RE: **SB 410 SD 1**
Relating to Collective Bargaining

Thank you for this opportunity to comment on SB 410, SD1.

SB 410, SD1 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.

As we read SB 410, SD1 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.

Therefore, the County of Hawaii must oppose passage of SB 410, SD1. It goes beyond mere clarification, and gets into substantive changes in the rights of the parties.

Respectfully submitted,

Wil Okabe
Managing Director

To The Committee on Ways and Means
Wednesday, March 1, 2017
9:45 am, Room 211

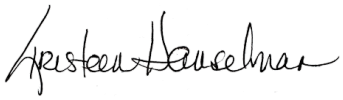
RE: SB 410, SD1, RELATING TO COLLECTIVE BARGAINING

Attention: Chair Jill Tokuda, Vice Chair Donovan Dela Cruz and Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urge the Committee to to **support SB 410**, **SD1** 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 SB 410, SD1**.

Respectfully Submitted,



Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly

1017 Palm Drive ✦ Honolulu, Hawaii 96814-1928
Telephone: (808) 593-2157 ✦ Facsimile: (808) 593-2160
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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 Ways and means

Testimony by
Hawaii Government Employees Association

March 1, 2017

S.B. 410, 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. 410, S.D. 1 which clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

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. We support the Committee on Judiciary and Labor's removal of Part II of the measure.

The amendments to Ch. 89-9, HRS contained in S.B. 410, S.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 S.B. 410, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

888 MILILANI STREET, SUITE 401 HONOLULU, HAWAII 96813-2991

HAWAII STATE TEACHERS ASSOCIATION
Teaching Today for Hawaii's Tomorrow

LATE

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TESTIMONY BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

RE: SB 410, SD 1 - RELATING TO COLLECTIVE BAGAINING.

WEDNESDAY, MARCH 1, 2017

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Tokuda and Members of the Committee:

The Hawaii State Teachers Association **strongly supports SB 410, SD 1**, 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.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 4:29 PM
To: WAM Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB410 on Mar 1, 2017 09:45AM*

SB410
Submitted on: 2/27/2017
Testimony for WAM on Mar 1, 2017 09:45AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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