

HB 2114

**RELATING TO
COLLECTIVE
BARGAINING.**

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 except as otherwise provided in this chapter,
15 shall not preclude negotiations over the implementation of
16 management decisions that affect terms and conditions of
17 employment that are subject to collective bargaining. This
18 subsection also shall not preclude negotiations over the
19 procedures and criteria on promotions, transfers, assignments,
20 demotions, layoffs, suspensions, terminations, discharges, or
21 other disciplinary actions [~~as a permissive subject of~~



1 ~~bargaining~~] during collective bargaining negotiations or
 2 negotiations over a memorandum of agreement, memorandum of
 3 understanding, or other supplemental agreement.

4 Violations of the procedures and criteria so negotiated may
 5 be subject to the grievance procedure in the collective
 6 bargaining agreement."

7 SECTION 2. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 3. This Act shall take effect upon its approval.

10

INTRODUCED BY: Jonny John
Jinder dechigama
Sean Wm
Thakshana
Tempy
Chiffa C
Rh W.O.D.
Brid Katgari
A
Rafan
Thaha
Boh
Nicole E. Lowen
Boh
Alle A. Pelotti
Jakali On

H.B. NO. 2114

Report Title:

Employment; Collective Bargaining; Scope of Negotiations

Description:

Provides that negotiations over the implementation of management decisions affecting the terms and conditions of employment that are subject to collective bargaining are not precluded from collective bargaining negotiations.

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



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 except as otherwise provided in this chapter,
15 shall not preclude negotiations over the implementation of
16 management decisions that affect terms and conditions of
17 employment that are subject to collective bargaining. Further,
18 this subsection shall not preclude negotiations over the
19 procedures and criteria on promotions, transfers, assignments,
20 demotions, layoffs, suspensions, terminations, discharges, or
21 other disciplinary actions as [~~a permissive subject~~] subjects of



1 bargaining during collective bargaining negotiations or
2 negotiations over a memorandum of agreement, memorandum of
3 understanding, or other supplemental agreement[~~-~~] but such
4 obligation does not compel either party to agree to a proposal
5 or make a concession.

6 Violations of the procedures and criteria so negotiated may
7 be subject to the grievance procedure in the collective
8 bargaining agreement."

9 SECTION 2. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Employment; Collective Bargaining; Scope of Negotiations

Description:

Provides that negotiations over the implementation of management decisions affecting terms and conditions of employment that are subject to collective bargaining are not precluded from collective bargaining negotiations. Also specifies that negotiations over the procedures and criteria of certain subjects of bargaining does not compel either party to agree to a proposal or make a concession. (HB2114 HD1 PROPOSED)

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



HB 2114

TESTIMONY

THE HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018
February 8, 2018

Committee on Labor and Public Employment

Testimony by
Hawaii Fire Fighters Association

H.B. No.2114 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. 2114, including the proposed H.D. 1** clarifying the allowable scope of collective bargaining negotiations.

The proposed amendment in H.B No. 2114 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 coverages of the Employer Union Trust Fund, remain outside of the collective bargaining process.

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 and thank you for the opportunity to testify.



February 6, 2018

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

PRESIDENT
Tenari R. Ma'afala

VICE PRESIDENT
Malcolm Lutu

TREASURER
James "Kimo" Smith

SECRETARY
Vacant

DIRECTORS AT LARGE
Don Faumuina
John Haina
David "Kawika" Hallums

HONOLULU CHAPTER CHAIR
Robert Cavaco

HAWAI'I CHAPTER CHAIR
Todd Pataray

KAUAI CHAPTER CHAIR
Christopher Calio

MAUI CHAPTER CHAIR
Mark Vickers

Re: HB2114 HD1 [Relating to Collective Bargaining]

Dear Chair Johanson, Vice-Chair Holt and Honorable Committee Members:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in strong support of HB2114 HD1. SHOPO strongly supports HB2114 HD1 which seeks to clarify the scope of collective bargaining.

We believe HB2114 HD1 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. Notably, HB2114 HD1 does not amend in anyway the existing language in HRS §89-9 that currently precludes a public union from "interfering" with the "rights and obligations" of a public employer, as those rights and obligations are articulated under HRS §89-9(d)(1)-(8). In addition, the Bill makes clear that neither a public union nor a public employer can compel the other side to agree to any proposal or make any concessions.

Main Office & Honolulu Chapter
1717 Hoe Street
Honolulu, Hawaii 96819-3125
Ph: (808) 847-4676 "84 SHOPO"
(800) 590-4676 Toll Free
Fax: (808) 841-4818

Hawaii'i Chapter Office
688 Kino'ole Street, Room 220 B
Hilo, Hawaii'i 96720
Ph: (808) 934-8405
Fax: (808) 934-8210

Maui Chapter Office
1887 Wili Pa Loop, Suite #2
Wailuku, Hawaii'i 96793
Ph: (808) 242-6129
Fax: (808) 242-9519

Kauai'i Chapter Office
4264 Rice Street, Lihue
Mailing Address:
P.O. Box 1708
Lihue, Hawaii'i 96766
Ph: (808) 246-8911

The Honorable Aaron Ling Johanson
Chair, House Committee on Labor and Public Employment
February 6, 2018
SHOPO Testimony, Page 2 of 2
Re: HB2114 HD1 [Relating to Collective Bargaining]

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tenari R. Ma'afala". The signature is written in a cursive style with a large initial 'T' and 'M'.

TENARI MA'AFALA
SHOPO President



The House Committee on Labor & Public Employment
Thursday, February 8, 2018
9:00 AM, Conference Room 309

RE: **HB 2114 Relating to Collective Bargaining**

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

The University of Hawaii Professional Assembly (UHPA) **urges the committee to support HB 2114, with amendments as suggested by HGEA.** This will bring clarity to Chapter 89 by recognizing that negotiations may take place on the effect and consequences of management decisions relating to the terms and conditions of employment.

In the previous legislative session, a similar bill was passed with very strong support of the legislature. Unfortunately, Governor Ige vetoed the measure.

Now comes HB 2114 which reflects collaborative work between the Governor's staff and representatives of the public sector unions to advance a bill that both can abide by and implement in a manner that maintains the balance of interests between labor and management.

UHPA seeks committee support for this measure.

Respectfully submitted,

Kristeen Hanselman
Executive Director



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Telephone: (808) 597-1441

Fax: (808) 593-2149

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO

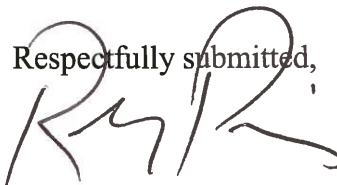
February 8, 2018

H.B. 2114 – RELATING TO
COLLECTIVE BARGAINING

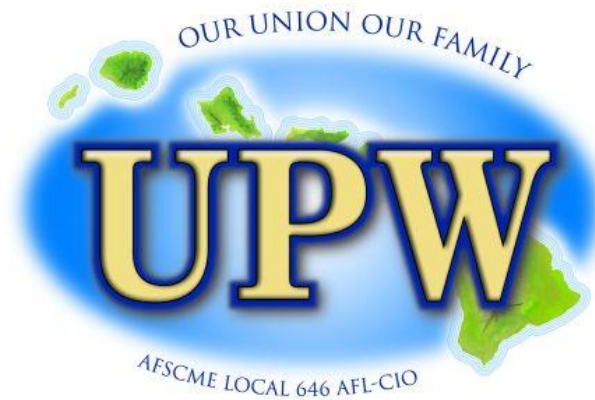
The Hawaii State AFL-CIO strongly supports H.B. 2114 which provides that negotiations over the implementation of management decisions affecting the terms and conditions of employment that are subject to collective bargaining are not precluded from collective bargaining negotiations.

Workers have the right to collectively bargain and should be able to negotiate their wages, benefits, and work conditions. H.B. 2114 simply ensures their voices are heard during collective bargaining negotiations. The Hawaii State AFL-CIO strongly urges the passage of H.B. 2114.

Thank you for the opportunity to testify.

Respectfully submitted,


Randy Perreira
President



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair

DATE OF HEARING: Thursday, February 8, 2018
TIME OF HEARING: 9:00 a.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 309

TESTIMONY IN SUPPORT OF HB2114 RELATING TO COLLECTIVE BARGAINING

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

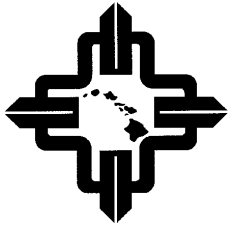
My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and four counties. The UPW also represents about 1,500 members of the private sector.

HB2114 provides that negotiations over the implementation of management decisions affecting the terms and conditions of employment that are subject to collective bargaining are not precluded from collective bargaining negotiations. In other words, the impact (impact bargaining) of management decisions that affect terms and conditions of employment including procedures and criteria for promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions are

no longer permissive subjects of bargaining but mandatory subjects of collective bargaining. This provision will serve to clarify much of the past confusion and delays as to what is bargainable or negotiable. This encourages the Good Faith Bargaining process.

Joint decision-making is a declared legislative public policy (HRS 89-1 Statement of findings and policy.) "...to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government". HB2114 is a re-affirmation of this policy. The UPW strongly supports this bill.

Thank you for the opportunity to submit this proposal.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

February 8, 2018
Conference Room 309
9:00 a.m.
Hawaii State Capitol

**Testimony Opposing House Bill 2114 Relating to Collective Bargaining.
Provides that negotiations over the implementation of management decisions
affecting the terms and conditions of employment that are subject to collective
bargaining are not precluded from collective bargaining negotiation.**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

CHAIR JOHANSON, VICE CHAIR HOLT, AND MEMBERS OF THE
HOUSECOMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

Proposed H.B. 2114, H.D. 1 clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

Hawaii Health Systems Corporation ("HHSC") understands the purpose of this bill but **opposes** the wording of this bill, as more fully set forth below, because it leads to an ambiguity about which subjects are permissive and which are mandatory. HHSC therefore proposes amending the bill as set forth below:

1. In referencing bargaining, this bill deletes the phrase ". . . a permissive subject" and replaces it with the word "subjects", which implies that those management decisions that are acknowledged to be permissive subjects of bargaining would become "mandatory subjects of bargaining".
2. This bill further adds the phrase, ". . . but such obligation does not compel either party to agree to a proposal or make a concession." This new wording expresses the currently existing right of parties engaged in good faith bargaining; it does not, however resolve the ambiguity created regarding permissive and mandatory subjects of negotiation noted in paragraph 1 above.

3. The current wording of the statute promotes joint decision making between the employers and exclusive representatives by balancing the role of the employer to manage and direct operations and the exclusive representative's role to advocate and negotiate for its members as it relates to wages, hours, and working conditions.
4. HHSC is a state agency committed to providing the highest quality health care in an often quickly changing work environment, requiring management's ability to direct its workforce, determine minimum qualifications and work standards, and to take appropriate action to ensure satisfactory performance. This must be done in compliance with federal and state regulations, which directly impact operational decisions.
5. HHSC proposes amending the bill as follows:

Amend section 89-9(d)(8), HRS, as follows:

This subsection shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007, and except as otherwise provided in this chapter, shall not preclude negotiations over the implementation of management decisions that materially affect terms and conditions of employment that are properly subject to collective bargaining. This subsection ~~also~~ shall not preclude, but does not mandate, negotiations over the procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions as a permissive subject of bargaining during collective bargaining negotiations or negotiations over a memorandum of agreement, memorandum of understanding, or other supplemental agreement.

Amend section 89-10(d), HRS, as follows:

Whenever there are provisions in a collective bargaining agreement concerning a matter under chapter 76 or 78 that is negotiable under chapter 89, the terms of the agreement shall prevail; provided that in no instance will the arbitration panel consider for inclusion any final position that is not consistent with section 89-9(d).

6. Finally, in the event that the Committee declines to accept the proposed amendment, HHSC respectfully requests that the Committee consider the addition of a sunset date for this bill. This would allow the employer and the exclusive representative to consider the impact of the bill on operations and afford an opportunity for appropriate further refinement.

Based upon the above, Hawaii Health Systems Corporation respectfully recommends that further consideration of the above concerns be given.

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
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

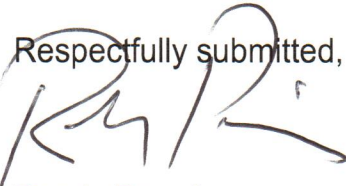
February 8, 2018

H.B. 2114, Proposed H.D. 1 –
RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of the proposed H.D. 1 to H.B. 2114 which provides that negotiations over the implementation of management decisions affecting the terms and conditions of employment are not precluded from bargaining, with proposed amended language. We appreciate the Chair and Committee's willingness to schedule the proposed H.D. 1 which includes additional language that was inadvertently excluded from the original bill.

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 proposed draft of H.B. 2114 correctly recognizes that the impact of management decisions should be negotiated as they relate to the terms and conditions of employment.

The amendments contained in the proposed draft of H.B. 2114 are necessary to ensure fairness in the process of negotiations. Thank you for the opportunity to testify in strong support of the passage of this measure.

Respectfully submitted,

Randy Perreira
Executive Director

HB 2114

**LATE
TESTIMONY**

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY



LATE

**THE HONORABLE AARON LING JOHANSON, CHAIR
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i**

February 8, 2018

RE: H.B. 2114; RELATING TO COLLECTIVE BARGAINING.

Chair Johanson, Vice Chair Holt, and members of the House Committee on Labor & Public Employment, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to H.B. 2114.

If enacted, this bill would require collective bargaining on the very subjects that HRS §89-9(d) was specifically designed to exclude from collective bargaining, and would require collective bargaining on matters long-established as permissive subjects. Essentially, this would nullify a public employer’s rights and obligations to manage its workforce, and--as a result--impede the public employer’s ability to effectively carry out day-to-day operations and services.

As currently written, HRS §89-9(d) simultaneously lays out the rights and obligations of a public employer, and mandates that no collective bargaining agreement shall be permitted to interfere with these rights and obligations. Specifically, there can be no collective bargaining agreement on “any proposal...which would interfere with the rights and obligations of a public employer to” carry out eight enumerated areas, which range from “[determining] methods, means, and personnel by which the employer's operations are to be conducted,” to “[taking] such actions as may be necessary to carry out the missions of the employer in cases of emergencies.”

While the statute does not specify to whom the public employers’ obligations are owed, legislative records indicate a clear sense of obligation to the public and providing uninterrupted services to the public. Indeed, the Conference Committee Report from the creation of HRS Chapter 89 states:

...[A]ny collective bargaining law enacted should clearly specify the areas and manner in which public employees shall bargain collectively **if we are to avoid, or at least to minimize, the controversies which have arisen in**

other jurisdictions where collective bargaining is permitted and which have often resulted in the disruption of public services.¹

(Emphasis added.) Consistent with this, the policy clause of HRS Chapter 89, HRS §89-1, states:

“[I]t is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.”

(Emphasis added.) Thus, the exclusions contained in HRS §89-9(d)(1) through (8) collectively allow a public employer to manage the day-to-day (or emergency) operations of its workforce, helping to maintain efficient and effective public services. Notably, these exclusions have withstood the test of time and have remained relatively unchanged since HRS Chapter 89 and HRS §89-9(d) were first enacted in 1970, despite numerous amendments to HRS §89-9 since that time.²

“Implementation by the employer”

Contrary to the need for uninterrupted public services, the amendments proposed in H.B. 2114 would undoubtedly result in increased delays, disputes and disruptions in operations and services. While the matters listed under HRS §89-9(d)(1) through (8) have always been excluded from collective bargaining (to the extent they interfere with the rights and obligations of public employers), the proposed amendments on **page 2, lines 15-17**, would force the “implementation” of these matters into collective bargaining, if it “affects terms and conditions of employment that are subject to [mandatory or permissive] collective bargaining.”

Without further limitations on this provision, it may be argued that practically **any** employer action taken under HRS §89-9(d)(1) through (8)—directing employees, determining standards and qualifications for work, and so forth—“affects” the terms and conditions of employment. Thus, more and more of these matters would be forced into negotiations, and any resulting controversies could impede public employers from providing effective and orderly public services. Ultimately, it serves little or no purpose to exclude certain rights and obligations of public employers from collective bargaining, if “implementation” of these things is still subject to collective bargaining.

“Permissive subject of bargaining”

Equally disruptive would be the proposed language in H.B. 2114 **page 2, line 21**, which would make certain, long-standing, “permissive subjects of bargaining” mandatory, with a clear inference that the newly proposed changes (regarding implementation) would also be a mandatory subject for negotiations.

¹ Conference Comm. Rep. No 24, on S.B. 1696-70, in 1970 House Journal. (Emphasis added.)

² Act 171, Section 2, Session Laws 1970. States in relevant part: “The employer and the exclusive representative shall not agree to any proposal...which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer’s operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.”

Following the eight rights and obligations excluded from collective bargaining, HRS §89-8(d) provides that the procedures and criteria used by a public employer, to carry out specific matters under—essentially—HRS §89-9(d)(3), (4) and (5) are permitted in collective bargaining at the discretion of the public employer and the exclusive representative. If such procedures and/or criteria are agreed upon, an employee can seek recourse via the grievance procedure, if any of the procedures or criteria are violated.

By way of background, the first iteration of this language was passed by the legislature in 1988,³ to “clarif[y] the scope of management rights under Section 89-9(d),” clearly making these matters optional (i.e. permissive) subjects of negotiation.⁴ The current iteration was enacted in 2007, in response to a Hawaii Supreme Court decision in *United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman*, 106 Haw 359, 105 P.3d 236 (2005) (aka “*UPW v. Hanneman*”), expounding that these are not only permissive subjects of bargaining for collective bargaining agreements, but also for supplemental agreements reached by the parties.⁵

Despite the change in wording, this portion of HRS §89-9(d) has always been very clear that these “permissive subjects of bargaining” are just that; they are permissive, not required. However, if this language is removed, our courts “must give effect to every word of a statute wherever possible,” including the omission of words,⁶ and the inference would be that these subjects of bargaining are no longer permissive; they are required. **Making these subjects mandatory would not only present a complete change from the original intent of this provision—and from 35 years of case law and collective bargaining negotiations that have relied upon it—but it would likely attach to the new language discussed above, making “implementation” of the eight permissive subjects into required subjects of collective bargaining as well.**

If passed, the amendments proposed in H.B. 2114 would inevitably and unnecessarily impede the ability for public employers to effectively manage their workforce and maintain uninterrupted public services. While the Department recognizes that collective bargaining is generally an important means of ensuring employees’ rights, we also believe that certain matters—namely, those listed in HRS §89-9(d)(1) through (8)—must be retained as the employer’s right and obligation, and we further believe that the permissive subjects of negotiation, listed under HRS §89-9(d), must continue to be permissive. Making all of these into mandatory subjects of negotiation would inevitably result in increased delays, controversy and disruption to public services, and would run contrary to the very purpose of HRS §89-9(d).

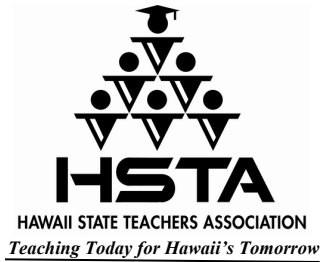
For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 2114. Thank you for the opportunity to testify on this matter.

³ Act 399, Section 4, Session Laws 1988. States in relevant part: “...provided that the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees, and procedures governing the lay-off of employees; provided further that violations of the procedures so negotiated may be the subject of a grievance process agreed to by the employer and the exclusive representative.” (Emphasis added.)

⁴ House Stand. Comm. Rep. No. 986-88, on S.B. 3164, 1988 House Journal.

⁵ Senate Stand. Comm. Rep. No 889, on S.B. 1642, 2007 Senate Journal.

⁶ *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 70, 131 S.Ct. 716, 724 (2011), citing *Leocal v. Ashcroft*, 543 U.S. 1, 12, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004).



LATE

1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
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 2114 - RELATING TO COLLECTIVE BARGAINING

THURSDAY, FEBRUARY 8, 2018

WILBERT HOLCK, EXECUTIVE DIRECTOR
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **strongly supports HB 2114**, 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. Our state's commitment to collective bargaining is even more urgent under the pending threat of the Supreme Court's ruling in *Janus v. AFSCME*, which could fundamentally undermine Hawaii's dedication to labor management peace by constraining collective bargaining representatives' ability to collect resources from their members and, in turn, diminishing public employees' ability to negotiate with management and represent their members' interests.

To preserve the islands' longstanding devotion to the protection of workers' rights, the Hawaii State Teachers Association asks your committee to **support** this bill.