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March 19, 2019

To: The Honorable Brian T. Taniguchi, Chair,
The Honorable Les Ihara, Jr., Vice Chair, and
Members of the Senate Committee on Labor, Culture and the Arts

Date: Tuesday, March 19, 2019
Time: 3:00 p.m.
Place: Conference Room 224, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 34 H. D. 1 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

HB34HD1 amends the Wages and Hours of Employees on Public Works Law, section 104-2, Hawaii Revised Statutes (HRS) by adding a foreperson classification required to be reported on the certified payrolls for public works construction.

DLIR provides comments and suggests an amendment.

II. CURRENT LAW

Currently forepersons working at the construction site are included under the classification of work they are participating in. Supervisory forepersons who are not working as a laborer or mechanic at the public work site are not required to be reported on the certified payrolls. 104-1, HRS states "Basic hourly rate" means the hourly wage paid to a laborer or mechanic..." 104-1, HRS states, in part, that a "Public work..." is "...where the funds or resources required to undertake the project are to any extent derived, whether directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes." The Department suggests a clarification by adding "...or used..." after "...required..." 104-2(b), HRS states that "Every laborer and mechanic performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages..."

III. COMMENTS ON THE HOUSE BILL

DLIR believes that the law currently captures, but does not require coverage of, working forepersons on the job as most prevailing rates in Hawaii are covered under a collective bargaining agreement. Collective bargaining agreements may distinguish between “working foremen” and “foreman”. The Department suggests a modification to the definition of foreperson as follows:

“For the purposes of this subsection, “foreperson” means a laborer or mechanic who works on the project and directs the work of other laborers or mechanics.”

The proposal states, “... follow the requirements stated in the collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement;”. The Department suggests seeking clarification about the collective bargaining requirements, and whether they should be stated in the measure? For example, including collective requirements as to when a foreman must be designated by an employer. DLIR also notes that collective bargaining agreements have varying requirements and any change to such agreements may bind the State and cause conflicts with other provisions of Hawaii’s Prevailing Wage Law.

For example, some collective bargaining agreements require one and a half times the regular pay on a Sunday, while others require double time. Which rate would the Department enforce?

Lastly, due to the lapse of time between the alleged violation and the filing and investigation of the complaint the Department may encounter difficulty ascertaining which laborer or mechanic is directing the other laborers and mechanics on a public works construction project.



LIUNA!

**TESTIMONY OF RYAN K. KOBAYASHI
GOVERNMENT AND COMMUNITY RELATIONS DIRECTOR
HAWAII LABORERS UNION LOCAL 368**

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*Business Manager/
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Auditor

MARK TRAVALINO
Auditor

ALFRED HUFANA JR.
Sergeant-At-Arms

COMMITTEE ON LABOR, CULTURE AND THE ARTS

NOTICE OF HEARING

DATE: TUESDAY, March 19, 2019
TIME: 3:00 P.m.
PLACE: Room 224

COMMENTS REGARDING HB34 HD1 SD1 RELATING TO WAGES

ALOHA COMMITTEE TANIGUCHI, VICE-CHAIR IHARA, AND COMMITTEE MEMBERS,

My name is Ryan K. Kobayashi, Government and Community Relations Director for the Hawaii Laborers Union, Local 368. The Hawaii Laborers Union is made up of over 5000 working and retired members across the State of Hawaii. We oppose **HB34 HD1 Relating to Wages.**

We feel that this law is unnecessary as under the current law as an entity may already submit a "foreman" classification under the prevailing wage law if it so chooses. This law may be overreaching in nature requiring all entities to submit a wage classification for a "foreman", "working foreman", or "foreperson".

In light of this concern, we would like to offer amended language to Subsection (B) which could be reflected as an S.D.1 which states:

(B) The rates of wages which the director shall regard as prevailing in each corresponding classification of laborers and mechanics shall be the rate of wages paid to the greater number of those employed in the State, the modal rate, in corresponding classes of laborers or mechanics on projects that are similar to the contract work;

provided that the ~~foreman~~-foreperson classification shall be recognized as a separate wage classification for public works projects and follow the requirements stated in the collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement, if an organization with a collective bargaining agreement chooses to have the foreperson classification recognized as a separate wage classification for public works projects within its respective trade through the submission of its individual collective bargaining agreement and by a specific request

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from that organization to have the foreperson classification recognized as a separate wage classification for public works projects within its respective trade.¹

We offer this amended language to mitigate any concerns we have stated above.

However as stated above, at this time, we can see no reason that an entity should be compelled to submit a “foreman” or “foreperson” classification if it does not feel the need to do so and the Hawaii Laborers’ Union, Local 368 stand in **opposition to HB 34 HD1 as it presently stands before this committee.**

Thank you for the opportunity to testify and express our concerns with regard to Bill 34 HD1 Relating to Wages.

Respectfully,

Ryan K. Kobayashi

¹ Suggested amended language is indicated above in red font.