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March 12, 2019

To: The Honorable Aaron Ling Johanson, Chair,  
The Honorable Stacelynn K.M. Eli, Vice Chair, and  
Members of the House Committee on Labor and Public Employment

Date: Thursday, March 14, 2019  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

From: Hawai'i Labor Relations Board (HLRB or Board)  
Dept. of Labor and Industrial Relations (DLIR)

**Re: SB 1498**

RELATING TO THE HAWAI'I LABOR RELATIONS BOARD.

## **I. OVERVIEW OF PROPOSED LEGISLATION**

This bill amends Hawai'i Revised Statutes (HRS) §§ 89-5(i)(6), (7) and 89-11(e)(2)(A) by the following:

1. § 89-5(i)(6) currently requires the Board to determine qualifications and establish lists *from nominations from the public employers and employee organizations* to serve as mediators or arbitrators.

The bill requires the Board to determine qualifications and establish lists *from nominations from public employers and employee organizations* to serve as grievance arbitrators, interest arbitrators or a combination thereof.

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2. § 89-5(i)(7) is a new section that requires the Board to review and determine qualifications and criteria of the list of five qualified arbitrators provided pursuant to section 89-11(e)(2)(A).
3. § 89-11(e)(2)(A) currently requires the Board to request from the American Arbitration Association (AAA) to furnish a list of five qualified arbitrators for the employer and exclusive representative to strike the names from the list until a single name is left to be appointed to the interest arbitration panel as the neutral Chair.

The Bill proposes to add the words “and experienced interest” to the phrase “five qualified arbitrators” to read “five qualified and experienced interest arbitrators”.

## II. COMMENTS

The HLRB submits these comments focused around four major points.

### Fiscal Concerns

From a fiscal standpoint, the Board is concerned about the additional requirements imposed on the Board to review and determine qualifications to two lists created by (a) HRS § 89-5(i)(6) to review nominations submitted by the public employers and employee organizations, determine qualifications and establish lists of nominees to serve as interest arbitrators; and (b) HRS § 89-5(i)(7) which requires the Board to review and determine qualifications of a list submitted by the American Arbitration Association as required by HRS § 89-11(e)(2)(A). The bill also creates a new type of “interest arbitrator” in HRS § 89-11(e)(2)(A) with the insertion of “experienced interest” arbitrator, which is not required in the other sections. The Board’s concern is the time and expense it will require to examine and determine each nominee’s qualifications as proposed by this bill.

The Board believes that to adequately fulfill these requirements, the Board would require the services of at least one additional researcher position, whose salary range would need to be between \$45,000-60,000 to attract qualified candidates who would have the expertise to determine an arbitrator’s qualifications. Further, the Board would require additional office space and equipment as the Board is currently using all allotted office space and equipment.

However, the Board also believes that spending these funds may be a waste of the State and the Board’s resource by requiring the Board to take steps that are unduly burdensome and unnecessary. If the Legislature were to adopt the Board’s suggested

amendments, the Board believes that it may be able to fulfill the requirements set forth by the bill without additional staffing.

### **Requiring the Board to Second Guess**

The Board is concerned that the bill as currently drafted requires the Board to second-guess a third-party's list of arbitrators. AAA has a process through which they screen arbitrators to determine grievance arbitrators versus interest arbitrators. The Board is not privy to this screening process, nor is the Board privy to the backgrounds of the members of AAA. Therefore, the Board has serious concerns about the appropriateness of HRS § 89-5(i)(7) as drafted.

Essentially, the Board's position is that as long as AAA is involved in the selection process, the Board is unable to "qualify" arbitrators without additional funding because the bill, as drafted, requires the Board to review the qualifications of arbitrators that have been selected by another institution.

The Board understands that individual arbitrators pay to be members of AAA. AAA then selects arbitration panels, when requested, consisting solely of those individuals who have paid to be members of AAA. The Board is not entirely sure as to why AAA has been given this benefit by the State, as other potentially qualified arbitrators who are not AAA members are unable to be selected under the bill as currently written.

If the Board is required to qualify the arbitrators selected by AAA, as it would be under the current draft of the bill, then the Board would require an additional researcher position, as stated above, because the Board would need to do significant independent research to determine AAA's method for screening interest arbitrators as well as the qualifications of each individual arbitrator. However, the Board believes that this may be a waste of government resources. If AAA were removed from the bill, as suggested in the Board's proposed amendments, it is possible that the Board would be able to fulfill these new requirements without additional staffing.

### **Actions Without Purpose**

The Board is concerned that, as the bill is currently drafted, the Board is being tasked to establish a list that serves no purpose. The list of interest arbitrators that the Board would need to compile under the amendments to HRS § 89-5(i)(6) is used nowhere in statute. Therefore, the Board believes that maintaining such a list would be a waste of the Board's and the State's resources. However, if AAA was removed from the statute and the Board were instructed to select arbitrators from the list compiled under HRS § 89-5(i)(6), as suggested in the Board's amendments below, then the maintenance of such a list would not be without purpose.

## **Legislative History of HRS § 89-11(e)**

Finally, the legislative history of interest arbitration in Hawai'i began in 1978 with the creation of HRS §89-11(e). Attached please find a copy of the final Standing Committee Report 632-78 cited on pp. 1032-1033 of the Journal of the Senate of the Ninth Legislature of the State of Hawai'i: Regular Session of 1978, which gives a more concise legislative intent of § 89-11(e)(2)(A).

### **Proposed Amendments**

If the Legislature intends to pass this bill as drafted, then the Board makes the following suggestions to clarify and synchronize the proposed language so there will be only one list of interest arbitrators which will be created under HRS § 89-5(i)(6) which will be used in HRS § 89-11(e)(2)(A).

§ 89-5(i)(6) to read as follows:

Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, grievance arbitrators, or interest arbitrators pursuant to § 89-11(e)(2)(A);

1. § 89-5(i)(7) – DELETE
2. § 89-11(e)(2)(A) to read as follows:

(A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall [~~request the American Arbitration Association, or its successor in function, to~~] furnish a list of five [~~qualified~~] interest arbitrators from a list established pursuant to section 89-5(i)(6) from which the neutral arbitrator shall be selected. Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, who shall be

immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

Finally, the Board requests additional money for the above described additional researcher position and expenses required to carry out the additional duties should its proposed amendments be rejected. Thank you for the opportunity to testify today. We are available to answer any questions.

Attachment



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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

The Thirtieth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment

**LATE**

Testimony by  
Hawaii Government Employees Association

March 14, 2019

S.B. 1498, S.D. 1 – RELATING TO THE  
HAWAII LABOR RELATIONS BOARD

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 1498, S.D. 1 which requires the Hawaii Labor Relations Board (“HLRB” or “Board”) to determine the qualifications of grievance arbitrators and interest arbitrators. **We respectfully request the Committee’s consideration in supporting the attached amendments which clarify the intent of the measure.**

There is a clear delineation between grievance arbitrators – who resolve disputes by applying the terms of an existing collective bargaining agreement, and interest arbitrators – who determine what terms shall be included in the bargaining agreement and by law must weigh the financial ability of the Employer to meet costs, the comparison of wages and conditions of employment with others performing similar services, and the current and future economic condition of the counties and the State. Due to the fundamental difference between resolving contractual disputes and determining the provisions of the contract, it is not only appropriate to statutorily segregate the functions of a grievance arbitrator and an interest arbitrator, but also necessary to empower the Board to determine the qualifications of each. As such, the amendments proposed in S.B. 1498, S.D. 1 broaden the Board’s adjudicatory authority to include reviewing and determining the qualifications and criteria of interest arbitrators, and specifically, the list of five arbitrators provided pursuant to Section 89-11(e)(2)(A), Hawaii Revised Statutes, which is used to select the neutral arbitrator, and clarify that the list of five arbitrators from which the neutral arbitrator is selected must be qualified and experienced interest arbitrators.

Thank you for the opportunity to testify in strong support of S.B. 1498, S.D. 1.

Respectfully submitted,  
  
Randy Perreira  
Executive Director

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# A BILL FOR AN ACT

RELATING TO THE HAWAII LABOR RELATIONS BOARD.

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

SECTION 1. Section 89-5, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

- (1) Establish procedures for, investigate, and resolve [7] any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
- (2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of [7] elections for the determination of employee representation;
- (3) Resolve controversies under this chapter;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee

organizations and take such actions with respect thereto as it deems necessary and proper;

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;

(6) Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, grievance arbitrators, [7], or a combination thereof;

(7) Resolve disputes over the qualifications and criteria of the list of five qualified interest arbitrators provided pursuant to section 89-11(e)(2)(A);



~~[(7)]~~ (8) Establish a fair and reasonable range of daily or hourly rates at which mediators and arbitrators on the lists established under paragraph (6) are to be compensated;

~~[(8)]~~ (9) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to all concerned parties, including mediators and arbitrators, statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations;

~~[(9)]~~ (10) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91; and

~~[(10)]~~ (11) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it."

SECTION 2. Section 89-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific employees; or bargaining unit (14), state law enforcement officers and state and county ocean safety and water safety officers, the board shall assist in the resolution of the impasse as follows:

- (1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public

from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.

- (2) Arbitration. If the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

- (A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of

five qualified and experienced interest arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

- (B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position that shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions [~~which~~] that each party is proposing for inclusion in the final agreement; provided that such further provisions shall be limited to those specific proposals that were submitted in writing to the other party and were the subject of collective bargaining between the

parties up to the time of the impasse, including those specific proposals that the parties have decided to include through a written mutual agreement. The arbitration panel shall decide whether final positions are compliant with this provision and which proposals may be considered for inclusion in the final agreement.

- (C) Arbitration hearing. Within one hundred twenty days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit, either in writing or through oral testimony, all information or data supporting their respective final positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.

(D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2051.

INTRODUCED BY: \_\_\_\_\_