

MARCUS R. OSHIRO
CHAIRPERSON



SESNITA A.D. MOEPONO
BOARD MEMBER

STACY MONIZ
BOARD MEMBER

830 PUNCHBOWL STREET, ROOM 434
HONOLULU, HAWAII 96813

HAWAII LABOR RELATIONS BOARD
KA PAPA LIMAHANA O HAWAII

WWW.LABOR.HAWAII.GOV/HLRB
DLIR.LABORBOARD@HAWAII.GOV

Testimony Presented Before the
Senate Committee on Labor and Technology
The Honorable Henry J.C. Aquino, Chair
The Honorable Sharon Y. Moriwaki, Vice Chair

Friday, February 2, 2024 at 3:10 p.m.
Conference Room 224, State Capitol
and Videoconference

by Marcus R. Oshiro
Chairperson, Hawai'i Labor Relations Board

S.B. No. 2718, Related [sic] to Administrative Procedures

Chair Aquino, Vice Chair Moriwaki, and Members of the Committee:

The Hawai'i Labor Relations Board (HLRB or Board) supports S.B. No. 2718, which would allow the HLRB to admit and consider hearsay evidence.

The HLRB is a quasi-judicial agency that administers collective bargaining and unfair labor practices under Chapters 89 and 377 of the Hawai'i Revised Statutes (HRS) and adjudicates appeals of contests of citations and orders issued by the Hawai'i Occupational Safety and Health Division of the Department of Labor and Industrial Relations under HRS Chapter 396. As an administrative agency, the HLRB is subject to the administrative procedures set forth in HRS Chapter 91.

HRS § 91-10(1) provides that in contested cases:

Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law[.]

(Emphasis added.)

HRS § 377-9(c) provides:

A full and complete record shall be kept of all proceedings had before the board and all testimony and proceedings shall be taken down by a reporter engaged for such purpose or by use of a mechanical recording device. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. In the proceedings the board shall not be bound by technical rules of evidence. No hearsay evidence, however, shall be admitted or considered.

(Emphasis added.)

Currently, HRS § 91-10(1) and HRS § 377-9(c) conflict with each other and HRS § 377-9(c) conflicts with itself.

The Board is conscious of concerns that hearsay evidence, if allowed, could lead to less than reliable evidence being considered. However, the Board considers all evidence presented in its deliberations and assigns each piece of evidence its proper weight, striking that which is “irrelevant, immaterial, or unduly repetitious.”

Under the Hawai‘i Rules of Evidence, HRS Chapter 626, there are a myriad of exceptions (*see* Rules 802.1, 803, and 804) that allow certain types of hearsay evidence into the record. A strict reading of HRS § 377-9(c) could find that the HLRB cannot consider any hearsay evidence which would mean evidence that could be introduced in any other court or administrative proceeding under a hearsay exception, would not be permissible in a hearing before the HLRB. This type of construction conflicts with HRS § 91-10(1) and conflicts with the general principles that proceedings before administrative agencies are less formal and not bound by technical rules of evidence.

Notably, parties who appear before the Board are not required to be represented by legal counsel, and about half of all cases before the HLRB involve *pro se* or self-represented litigants. This measure would allow the HLRB to level the playing field and provide a fair hearing for all parties involved.

Thank you for the opportunity to testify in support of S.B. No. 2718.

January 31, 2024

Testimony for SB 2718 Related to Administrative Procedures

He Mele komo a he mele aloha no na kupuna o ke au i hala Aloha mai kakou.

Aloha,

My name is Cindy Freitas and I'm a Native Hawaiian descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i.

I am also a practitioner who still practice the cultural traditional customary practices that was instill in me by my grandparents at a young age from mauka (MOUNTAIN TO SEA) to makai in many areas.

I'm in OPPOSITION for SB 2718 for the following reasons:

The Hawaii Supreme Court has frequently and routinely affirmed the truism that "HEARSAY" is inadmissible unless it qualifies under a hearsay exception. See State v Bannister, 60 H. 658, 660, 594 P.2d 133, 134(1979)and HRS 802 Hearsay.

If Hearsay is allowed then it will be taken up by the courts who looks at it as inadmissible unless it qualifies under a hearsay exception there for it will be remanded for corrections back to Hawai'i Labor Relations Board to reversed the decision.

Therefore SB 2718 can not be use with the Hawaii Labor Relations Board for many reasons and doubts.

Mahalo,

_____/s/_____
Cindy Freitas



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Thirty-Second Legislature, State of Hawaii
The Senate
Committee on Labor and Technology

Testimony by
Hawaii Government Employees Association

February 2, 2024

S.B. 2718 — RELATING TO ADMINISTRATIVE PROCEDURES.

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2718 which allows the Hawai'i Labor Relations Board to admit and consider hearsay evidence.

Not all litigants are familiar with the appropriate rules of evidence under statute. Therefore, allowing the Hawaii Labor Relations Board to admit and consider hearsay evidence would allow hearings to go smoother, particularly when dealing with self-represented litigants.

Thank you for the opportunity to provide testimony in support of S.B. 2718.

Respectfully submitted,

Randy Perreira
Executive Director