

ACT 254

S.B. NO. 878

A Bill for an Act Relating to Hawaii Public Employees Health Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 89-9, Hawaii Revised Statutes, is amended to read as follows:

“§89-9 Scope of negotiations. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer’s budget-making process, and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits, and the salary ranges and the number of incremental and longevity steps now provided by law; provided that the number of steps in accordance with section 77-13.5, the amount of wages to be paid in each range and step, and the length of service necessary for the incremental and longevity steps shall be negotiable. Effective July 1, 1976, an employee shall not be entitled to his normal annual increment or longevity increase, as the case may be, in any fiscal year that a negotiated pay increase is effected, whether by statute or agreement, and no part of such a fiscal year shall be counted as service creditable for any future increment or longevity pay increase. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, which would be inconsistent with section 77-13.5, relating to the conversion to appropriate salary ranges, or 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.

(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for hospital, medical, surgical, and dental benefits of a health benefits plan, and group life insurance benefits, and the parties shall not be bound by the

amounts contributed under any prior agreements; provided that the provisions of section 89-11 for the resolution of disputes by way of fact-finding or arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.”

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

“(d) [Notwithstanding any other law to the contrary, if] If a dispute between a public employer and the exclusive representative of optional appropriate bargaining unit (11), firefighters, exists over the terms of an initial or renewed agreement, the board shall assist in the voluntary resolution of the impasse by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.

If, after eighteen working days from the date of impasse, the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel, the board shall immediately notify the employer and the exclusive representative that the issues in dispute shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

Within twenty-one working days from the date of impasse, 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 impartial third member of the arbitration panel shall be selected by the two previously selected panel members and shall chair the arbitration panel.

In the event that the two previously selected arbitration panel members fail to select an impartial third arbitrator within twenty-four working 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 arbitrators from which the impartial arbitrator shall be selected. Within five calendar days after receipt of such list, the parties shall alternately strike names

therefrom until a single name is left, who shall be immediately appointed by the board as the impartial arbitrator and chairman of the arbitration panel.

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 [complete] final offer which [shall constitute a complete agreement and] shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions [it] other than those relating to contributions by the State and respective counties to the Hawaii public employees health fund which each party is proposing for inclusion in the final agreement.

Within twenty calendar 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 offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.

Within thirty calendar days after the conclusion of the hearing, a majority of the arbitration panel shall select the most reasonable of the [complete] final offers submitted by the parties and shall issue a final and binding decision incorporating that offer without modification.

In reaching a decision, the arbitration panel shall give weight to the factors listed below and shall include in a written opinion an explanation of how the factors were taken into account in reaching the decision:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public.
- (4) The financial ability of the employer to meet these costs.
- (5) The present and future general economic condition of the counties and the State.
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other State and county employees generally.
- (7) The average consumer prices for goods [for] or services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, [factfinding,] fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

The decision of the arbitration panel shall be final and binding upon the parties[.] on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii public employees health fund. The parties shall [enter into an agreement or] take whatever action is necessary to carry out and effectuate the [decision.] final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii public employees health fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

The costs for mediation shall be borne by the board. All other costs incurred by either party in complying with these provisions, including the costs

of its selected member on the arbitration panel, shall be borne by the party incurring them, except that all costs and expenses of the impartial arbitrator shall be borne equally by the parties.”

SECTION 3. Section 89-2, Hawaii Revised Statutes, is amended as follows:

1. The definition of “collective bargaining” is amended to read:

“(5) “Collective bargaining” means the performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession.”

2. The definition of “cost items” is amended to read:

“(6) “Cost items” includes wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, the implementation of which requires an appropriation by a legislative body.”

3. The definition of “employee organization” is amended to read:

“(8) “Employee organization” means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment of public employees.”

4. The definition of “mediation” is amended to read:

“[[](16)[]] “Mediation” means assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse.”

SECTION 4. Section 87-4, Hawaii Revised Statutes, is amended as follows:

1. Subsection (a) is amended to read:

“(a) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the

fund a monthly contribution [of \$15.98 for each of their respective employee-beneficiaries and \$49.14 for each respective employee-beneficiary with a dependent-beneficiary,] equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent beneficiaries, such contributions to be used towards the payment of costs of hospital, medical, and surgical benefits of a health benefits plan; provided that the monthly contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall not exceed the monthly contribution of a family plan for both of them. The monthly contribution shall be based upon the HMSA regular plan rates which are approved by the board.”

2. Subsection (b) is amended to read:

“(b) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution [of \$5.28] equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is appropriate, for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled for dental benefits. The contributions shall be used towards the payment of costs of dental benefits of a health benefits plan. Notwithstanding any provisions to the contrary, no part of the fund shall be used to finance the contributions except a rate credit or reimbursement or earnings or interest therefrom received by the fund or general revenues appropriated for that purpose.”

3. Subsection (c) is amended to read:

“(c) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution [of \$2.25] equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used towards the payment of group life insurance benefits for each employee.”

SECTION 5. Section 89C-1, Hawaii Revised Statutes, is amended to read as follows:

“**§89C-1 Purpose.** The legislature finds that existing statutes do not permit the chief executives of the State and counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice of the supreme court sufficient flexibility to make appropriate and timely adjustments in the compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other

benefits for public officers and employees who are excluded from collective bargaining coverage under chapter 89. To this end, the legislature grants to the respective chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, the authority to make such adjustments for officers and employees excluded from collective bargaining in conformance with this chapter.

Nothing in this chapter shall be construed to interfere with or diminish any authority already provided by statutes to the chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice.”

SECTION 6. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

“§89C-2 Adjustments authorized; limitations, restrictions. Any provision of law to the contrary notwithstanding, the compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining shall be adjusted by the chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice, as applicable. The chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, or their designated representatives, shall determine the adjustments to be made and which excluded officers or employees are to be granted adjustments under this chapter, in accordance with the following guidelines and limitations:

- (1) For excluded officers and employees under the same compensation plans as officers and employees within collective bargaining units, such adjustments shall be not less than those provided under collective bargaining agreements for officers and employees hired on a comparable basis.
- (2) No adjustment in compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, or other benefits shall be established which is in conflict with the system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment conduct, movement, and separation of public officers and employees.

[[](3)[]] The compensation of officers or employees whose salaries presently are limited or fixed by legislative enactment shall not be adjusted under this chapter, but shall continue to be adjusted by the

appointing authority within limits established by law or by legislative enactment.

[[](4)[]] The compensation of officers or employees, who are not covered under the same compensation plans as officers and employees within collective bargaining units and whose salaries presently are authorized to be fixed by the appointing authority, need not be adjusted under this chapter. The appointing authority may continue to make specific adjustments in the salaries of individual officers or employees from available funds appropriated.

(5) Adjustments to the amounts of contributions by the State and respective counties to the Hawaii public employees health fund on behalf of officers or employees who are not covered by adjustments made under this chapter shall be made by legislative enactment."

SECTION 7. If S.B. No. 1115¹ is passed by the legislature during this Regular Session of 1984, whether before or after the effective date of this Act, section 89-11(d), Hawaii Revised Statutes, as amended by S.B. No. 1115,¹ shall be further amended to reflect the changes effected by section 2 of this Act. In the event that any provision of this Act shall conflict with a provision in another Act passed by the legislature during this Regular Session of 1984, whether before or after the effective date of this Act, the provisions in this Act shall supersede.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 9. This Act shall take effect upon its approval, except that section 4 of this Act shall take effect on July 1, 1985.

(Approved June 4, 1984.)

Note

1. Enacted as Act 219.