

ACT 399

S.B. NO. 3164

A Bill for an Act Relating to Collective Bargaining.

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

SECTION 1. Section 89-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the public employer and [each] the exclusive representative for each bargaining unit shall by mutual agreement include provisions in the collective bargaining agreement for that bargaining unit for an expiration date which will [coincide with an expiration date of June 30, 1977, for all public sector collective bargaining agreements. Any subsequent expiration dates shall be on June 30th of odd numbered years, to be determined jointly by all exclusive representatives and public employers.] be on June 30th of an odd-numbered year.

The parties may include provisions for the reopening date during the term of a collective bargaining agreement, provided that such provisions shall not allow for the reopening of cost items as defined in section 89-2.”

SECTION 2. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) [Nonprofessional hospital and institutional workers] Institutional, health and correctional workers;
- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be.

The compensation plans for blue collar positions pursuant to section 77-5 and for white collar positions pursuant to section 77-13, the salary schedules for

teachers pursuant to section 297-33 and for educational officers pursuant to section 297-33.1, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on July 1, 1970, shall be the bases for differentiating blue collar from white collar employees, professional from [nonprofessional employees,] institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered."

SECTION 3. Section 89-7, Hawaii Revised Statutes, is amended to read as follows:

"[[§89-7]] Elections. (a) Whenever, in accordance with regulations as may be prescribed by the board pursuant to chapter 91, a petition is filed by an employee organization [after January 1, 1971, showing written proof of at least thirty per cent representation of the public employees in an appropriate bargaining unit, the board shall hold an election by secret ballot to determine whether and by which employee organization the employees desire to be represented for the purpose of collective bargaining. The ballot shall contain, in addition, both the name of any candidate showing written proof of at least ten per cent representation of the public employees within the unit, and a provision for marking "no representation".] to determine whether or by which organization employees desire to be represented for the purpose of collective bargaining, the board shall conduct an investigation and may conduct an election where appropriate as specified herein. A petition to decertify or to change the exclusive bargaining representative must be supported by fifty percent of employees in an appropriate bargaining unit, through verifiable written proof of the names and signatures of employees. Signatures of employees supporting such a petition must be obtained within two months of the date of the petition to be valid with the Board. In its investigation of the showing of interest, the Board shall afford all interested parties a contested case hearing.

(b) In any election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for a selection between the two choices receiving the largest number of valid votes cast in the election. The board shall certify the results of the election, and where an employee organization receives a majority of the votes cast, the board shall certify the employee organization as the exclusive representative of all employees in the appropriate bargaining unit for the purpose of collective bargaining.

(c) No election shall be directed by the board in any appropriate bargaining unit within which (1) a valid election has been held in the preceding twelve months; or (2) a valid collective bargaining agreement is in force and effect[, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement].

(d) The board shall adopt rules and regulations consistent with this section governing the conduct of elections to determine representation, including the time, place, manner of notification, and reporting the results of elections, and the manner for filing any petition for an election and decertification election or any petition concerning the results of an election. No mail ballots shall be permitted by the board except when for reasonable cause a specific individual would otherwise be unable to cast a ballot. No names, addresses or information regarding the work location of employees eligible to vote shall be provided to employee organizations involved in an election. The board shall have the final determination on any controversy concerning the eligibility of an employee to vote."

SECTION 4. Section 89-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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 now provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable. 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, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualifications, 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[.]; 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.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect and be applicable in any proceeding and to any case which commences on March 15, 1988 and thereafter before the Hawaii Labor Relations Board.

(Approved June 17, 1988.)