

**STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR**
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813-2437

February 21, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Wednesday, February 22, 2017
3:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR, OFFICE OF COLLECTIVE BARGAINING

**House Bill No. 232, H.D. 1
Relating to Collective Bargaining**

CHAIRPERSON LUKE, VICE CHAIR CULLEN AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE:

H.B. No. 232, H.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer and it clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The Office of Collective Bargaining **opposes** this measure and provides the following comments for consideration:

- The removal as proposed of the provision "... as a permissive subject of bargaining" implies by inference that the "permissive subject" would become "mandatory subjects of bargaining".
- The current language balances promotion of joint decision making between the employers and exclusive representative while ensuring balance between the role of the Employer to manage and direct operations and the exclusive representative to advocate and negotiate for its members as it relates to wages, hours and working conditions.

- The addition of language “.... or the implementation by the employer of paragraphs (1) through (8), if it affects terms and conditions of employment,” appears to conflict with existing language in Section 89-9(d) which forbids the parties to agree to any proposal that interferes with management rights listed in paragraphs (1) through (8).
- The proposed insertion of the language to require incorporation of language relating to subparagraphs 1 through 8 could be interpreted as requiring that practically everything management implemented would affect terms and conditions of employment and therefore subject to mutual agreement.
- The proposed amended language goes beyond clarification and appears to be contrary to the original intent of Section 89-9(d), which states, “The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer.” The removal of the clarifying language “as a permissive subject of bargaining” from the existing statute has the potential of curtailing management rights expressly protected by the Hawai‘i Supreme Court in United Public Workers v. Hanneman, 106 Hawai‘i 359, 365, 105 P. 3d 236, 242 (2005) in particular with respect to paragraphs (3) through (5) of 89-9(d) relating to the rights and obligations of a public employer to (3) hire, promote, transfer, assign and retain employees in positions; (4) suspend, demote, discharge, or take other disciplinary action against employees for proper cause; and (5) relieve an employee from duties due to the lack of work or other legitimate reasons.
- Further, the potential impact of the proposed revision would essentially strip management of its current rights by requiring mutual agreement regarding the conduct of business and such actions that may be initiated such as:

- Management's authority to direct its workforce to perform work that they were hired e.g., the amendatory language might be interpreted by employees as empowering them to refuse to perform assigned duties and responsibilities unless such duties have been mutually agreed to as a term and condition of employment;
- Management's authority to determine minimum qualifications, standards for work and nature and contents of examinations (interview questions, panel members selected, scoring method, etc.) unless such have been mutually agreed to between the employer and exclusive representatives;
- Management's ability and authority to take appropriate action when its employees fail to perform satisfactorily or for disciplinary action in the event of employee's misconduct;
- Management's ability to initiate reduction in force or layoffs of employees due to lack of work or other legitimate reasons and otherwise take action necessary to carry out the missions of the employer in cases of emergencies.

Based upon the above, the Office of Collective Bargaining respectfully recommends that further considerations of the above concerns be given before moving this measure forward.

Thank you for the opportunity to testify on this important measure.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 21, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Wednesday, February 22, 2017
3:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO
DIRECTOR, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

House Bill No. 232, H.D. 1
Relating to Collective Bargaining

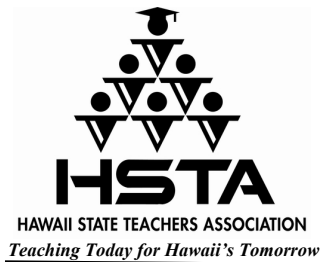
CHAIRPERSON LUKE, VICE CHAIR CULLEN AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE:

H.B. No. 232, H.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer and it clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The Department of Human Resources Development **opposes** this measure as it would interfere with the rights and obligations of a public employer by allowing negotiations on rights reserved to management. This is contrary to Section 89-9(d), which states, "The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer to:"

Based upon the above, the Department of Human Resources Development respectfully requests that this measure **be held**.

Thank you for the opportunity to testify on this important measure.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
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Corey Rosenlee
President
Justin Hughey
Vice President
Amy Perruso
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
FINANCE

RE: HB 232, HD 1 - RELATING TO COLLECTIVE BARGAINING.

WEDNESDAY, FEBRUARY 22, 2017

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Luke and Members of the Committee:

The Hawaii State Teachers Association **strongly supports HB 232, HD1**, relating to collective bargaining.

This proposal clarifies the obligation of the state to engage in negotiations in a fair and respectable manner. While HSTA recognizes the right of the state to manage employee work, we strongly affirm the importance of protecting employees' right to negotiate those subjects outlined in HRS 89-9.

Collective bargaining is especially important to public school teachers. It is in the best interest of both the employer and the union to ensure that bargaining occurs in a way that supports an employee's ability to enhance their professionalism, leads to a workplace free from health and safety risks, and is conducted in a fair and equitable manner.

To protect collective bargaining, the Hawaii State Teachers Association asks your committee to **support** this bill.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

February 22, 2017

H.B. 232, H.D. 1 – RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 232, H.D. 1 which clarifies the allowable scope of collective bargaining negotiations and prohibited practices for parties to a collective bargaining agreement.

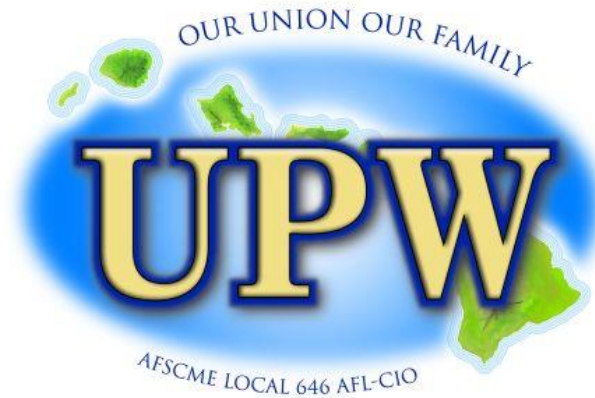
This important measure makes necessary amendments (Part I) to Ch. 89-9, Hawaii Revised Statutes, to clarify and delineate the scope of bargaining between the public sector employers and the exclusive representatives. We support the Committee on Labor & Public Employment's removal of Part II of the measure.

The amendments to Ch. 89-9, HRS contained in H.B. 232, H.D. 1 are necessary to ensure fairness in the process of negotiations. We respectfully request the Committee to support this measure.

Thank you for the opportunity to testify in strong support of the passage of H.B. 232, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2017

HOUSE COMMITTEE ON FINANCE

The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J.K. Cullen, Vice Chair

DATE OF HEARING: Wednesday, February 22, 2017
TIME OF HEARING: 3:00pm
PLACE OF HEARING: Conference Room 308
State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL 232 HD1: RELATING TO COLLECTIVE BARGAINING.

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB 232 HD1 clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer and clarifies prohibited practices for parties to a public employment collective bargaining agreement.

The UPW supports this measure. Thank you for the opportunity to submit this testimony.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
February 22, 2017 at 3:00 p.m.

By

Richard H. Thomason
Director of Collective Bargaining and Labor Relations
University of Hawai'i

HB 232 HD1 – RELATING TO COLLECTIVE BARGAINING

Chair Luke, Vice Chair Cullen, and members of the Committee:

I am respectfully submitting written testimony on behalf of the University of Hawai'i **opposing** House Bill 232 House Draft 1 Relating to Collective Bargaining. The “description” for this measure states that its purpose is to:

Clarify the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

Rather than creating clarity, this measure proposes to amend HRS § 89-9(d) in two distinct ways, both of which directly impinge upon fundamental management rights recognized and protected by the Hawai'i Supreme Court in United Public Workers v. Hanneman, 106 Hawai'i 359, 365, 105 P. 3d 236, 242 (2005). As a representative employer group, the University opposes any degradation of employer rights and obligations to ensure optimal and efficient working conditions.

In Hanneman, the City made the decision to transfer a number of refuse workers from one baseyard to another due to a workforce deficiency in Honolulu, and a surplus of workers in Pearl City. UPW refused offers by the City to consult and instead demanded negotiations, arguing that transfers were an **obligatory** subject of bargaining because the decision affected “*conditions of work*.” In other words, UPW's position was that there could be no such transfers without mutual consent.

The Hawai'i Labor Relation's Board ruled that the City's management rights were subject to a “*balancing test*,” but our Supreme Court **reversed**, ruling that the duty to negotiate extends only so far as it does not “*infringe upon an employer's management rights under section 89-9(d)*.” Specifically, the Court stated as follows:

HRS §89-9 does not expressly state or imply that an employer's right to transfer employees is subject to a balancing of interests. Contrary to the HLRB's interpretation, our holding in [University of Hawai'i Professional Assembly v. Tomasu, 79 Hawai'i 154, 900 P.2d 161 (1995)] does not approve of the HLRB's balancing test. Rather, we believe Tomasu stands for the proposition that, in reading HRS §§89-9(a), (c), and (d) together, parties are permitted and

*encouraged to negotiate all matters affecting wages, hours and conditions of employment **as long as the negotiations do not infringe upon an employer's management rights under section 89-9(d). In other words, the right to negotiate wages, hours and conditions of employment is subject to, not balanced against, management rights.** Accordingly, in light of the plain language of HRS §89-9(d), we hold that the HLRB erred in concluding that the City's proposed transfer was subject to bargaining under HRS §89-9(a).*

Subsequently, HRS §89-9(d) was amended in 2007 to clarify that the public employers were not precluded from agreeing to negotiate procedures and criteria for those specific management actions set forth in paragraphs (3) through (5) of §89-9(d) namely: *promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, and discharges or other disciplinary actions.*

The statute expressly and with probative clarity states that any such negotiations over procedures and criteria are a *“permissive subject of bargaining,”* thereby distinguishing this type of bargaining from that which is **mandated** by HRS §89-9(a) *to wit:*

*(a) The employer and the exclusive representatives **shall** meet at reasonable times; including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and **shall negotiate** in good faith with respect to wages, hours...and other conditions of employment which are subject to collective bargaining ... (Emphasis added.)*

In other words, a public employer may not be compelled to negotiate procedures and criteria for promotions, demotions or the like, but it is not precluded from doing so, either because it believes it is good management practice to do so, or because a union offers something of value in exchange.

As a first order of business, this bill proposes to **remove** the key clarifying language *“as a permissive subject of bargaining,”* from the statute. No explanation for this removal is offered, but it is apparent that the goal is to hamstring the very management rights expressly and unambiguously protected by the Court in Hanneman with regard to the management actions described in paragraphs (3) through (5) of §89-9(d).

Indeed, the impetus for this measure appears to be a 2016 case before the HLRB (Case CE-11-879, Order 482) where a public union argued that a public employer could not implement a new training program without its approval because it allegedly impacted conditions of work. The Board disagreed, ruling that the employer was obligated to consult, not bargain with the union about the plan. It is apparent that this bill is intended to effectively negate that decision and require union consent in the future before a public employer can train its employees.

But that is not all, for as a second order of business, this bill introduces an entirely separate restriction on management rights by also requiring the public employers to bargain over the “*implementation*” of every single management decision described in paragraphs **(1) through (8)** of §89-9(d).

It is extremely significant that HRS §89-9(d) specifically does not include in its list of “*permissive*” subjects or bargaining those management actions set forth in paragraphs (1),(2)(6),(7),and (8) of the statute. Why? **Because these actions go to the very core of the managerial decision making process.**

Thus, under this measure, if a public employer wants to alter the minimum qualifications of a position, or change one of its examinations, or direct its employees, or commence a training program, or increase efficiencies, or, as in Hanneman, transfer employees, it would not be able to do so without the assent of all relevant unions. Make no mistake, giving a public union veto power over “*implementation*” of a management decision means just what it implies. It means the decision never sees the light of actual **application** without that union’s consent.

Moreover, it is no answer to argue that implementation would only be subject to mandatory bargaining if it “*affects terms and conditions of employment*” as stated in the measure. The problem with this language is that it is crucially incomplete.

Specifically, if the measure stated that bargaining over implementation of a management decision would only be necessary if it “*affects terms and conditions of employment set forth in a collective bargaining agreement,*” that would be one thing. Then at least, we would have clarity (albeit, rather self evident clarity). Instead, the measure contains an ambiguous, un-tethered phrase that is basically no different than the “*conditions of work*” argument unsuccessfully employed by UPW in Hanneman.

In sum, this bill does not “*clarify the allowable scope of collective bargaining;*” on the contrary, it seeks to dismantle management rights presently protected by HRS §89-9(d).

Thank you for the opportunity to provide testimony on this measure.

Written Only

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/22/2017
Time: 03:00 PM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0232, HD1 RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. (HB232 HD1)

Department's Position:

The Department of Education ("Department") respectfully opposes HB 232, H.D. 1.

The proposed deletion of "permissive subject of bargaining" and requiring bargaining over "implementation" interferes with the rights of the employer by compelling negotiations over permissive subjects. Not only would this bill require the employer to bargain "permissive" subjects, it adds "implementation" as another topic beyond procedures and criteria. The supposed intent of HB 232, H.D. 1 to clarify the scope of collective bargaining negotiations in actuality, causes more confusion.

Therefore, the Department respectfully opposes HB 232, H.D. 1 and requests the measure be held.



LATE

The House Committee on Finance
Wednesday, February 22, 2017
3:00 pm, Room 308

RE: HB 232, HD1, RELATING TO COLLECTIVE BARGAINING

Attention: Chair Sylvia Luke, Vice Chair Ty Cullen and
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support HB 232, HD1**, which encourages the parties to a collective bargaining agreement to negotiate in a manner that effectuates the purpose of Chapter 89. Such purpose includes recognizing that public employees have a voice in determining their working conditions. This proposed measure advances the cooperative relations between employers and employees that establishes a healthy collective bargaining environment.

UHPA encourages the Committee to **support HB 232, HD1**.

Respectfully Submitted,

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly

LATE



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
WEBSITE: www.hawaii firefighters.org

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

**LATE
TESTIMONY**

February 22, 2017

Committee on Finance

Testimony by
Hawaii Fire Fighters Association, Local 1463

H.B. No. 232, H.D. 1 RELATING TO COLLECTIVE BARGAINING

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO, represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. The HFFA, on behalf of our members, **strongly supports H.B. No. 232, H.D. 1**, clarifying the allowable scope of collective bargaining negotiations.

The proposed amendment in H. B. No. 232, H.D. 1, clarifies that the subjects of bargaining between the employers and the exclusive representatives are negotiable when the implementation of HRS Section 89-9, paragraphs (1) through (8), *affects the terms and conditions of employment.*" (Emphasis added.) The employers are not prohibited from establishing new policies under this proposed amendment. However, this proposed legislation requires that the *impact of those policies* on public employment are subject to bargaining.

Specifically excluded topics, such as all aspects of the Hawaii Retirement System and the health insurance coverages of the Employer Union Trust Fund, remain outside of the collective bargaining process.

On September 23, 2016, the "Employer Group" filed a Petition for Declaratory Ruling questioning the meaning of the word "permissive" with the Hawaii Labor Relations Board, but subsequently withdrew the petition. The Petitioners questioned whether a number of HFFA's Final Positions that were submitted for Interest Arbitration were prohibited since the State and Counties were asserting that the proposals were permissible subject to the criteria articulated in Section 89-9(d), H.R.S. While HFFA contended the proposals identified by the petitioners have gone through a number of revisions throughout previous negotiations and interest arbitration without any question but as if it was an epiphany, the Petitioners, State and Counties, decided

that the sections were questionable as to whether they were permissible subjects of bargaining and subject to arbitration. The petition implied that "permissive" gave the employer the unilateral right to decide not to include in collective bargaining agreements topics that had been **part of public sector contracts for over forty years**, since the original passage of the Chapter 89. This legislative proposal places the responsibility of good faith bargaining on both parties and effectively addresses the rights and benefits for public employees under the collective bargaining law.

HFFA appreciates your Committee's favorable consideration of this measure and thank you for the opportunity to testify.