

MARCUS R. OSHIRO  
CHAIRPERSON



SESNITA A.D. MOEPONO  
BOARD MEMBER

J N. MUSTO  
BOARD MEMBER

January 31, 2021

To: The Honorable Richard H.K. Onishi, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Labor & Tourism

Date: Tuesday, February 2, 2021

Time: 9:00 a.m.

Place: Conference Room 312  
State Capitol  
415 South Beretania Street  
*Via Videoconference*

From: Marcus R. Oshiro, Chairperson  
Sesnita A.D. Moepono, Member  
J N. Musto, Member

**Re: H.B. No. 465 RELATING TO COLLECTIVE BARGAINING**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 465 proposes to amend HRS § 89-5 by 1) amending the method of appointment of one Board member, and 2) adding a new section to provide for the removal of that Board member during the term of the appointment. The appointment, confirmation, and term of office for the other two members of the Board would remain the same.

The Hawai'i Labor Relations Board submits the below comments on this measure.

**II. CURRENT LAW**

The Hawai'i Labor Relations Board consists of a Board chairperson, who is representative of the public, and two Board members, one of whom is representative of management and one of whom is representative of labor.

HRS § 89-5 specifies that all three members are appointed to six-year terms by the governor. For the representative of labor, the governor is given a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives.

### **III. COMMENTS ON THE HOUSE BILL**

The Hawai'i Labor Relations Board, as created by HRS § 89-5, is a quasi-judicial Board with original jurisdiction over two chapters of the HRS and *de novo* appellate review of a third. (See HRS §§ 89-5, 377-2, and 396-3). As an administrative agency, the Board is subject to the requirements of HRS Chapter 91, Administrative Procedure, and must make decisions and issue orders that include findings of facts and conclusions of law (HRS § 91-12). These findings of facts are the Board's ruling as to what happened in a case and the conclusions of law are the Board's analysis after applying those facts to the relevant statute(s).

The Board, therefore, must act as a neutral body that does not favor complainant or respondent, Appellant or Appellee.

According to the American Bar Association's Model Code of Judicial Conduct's second canon, "a judge shall perform the duties of judicial office impartially, competently, and diligently." Any judge, including administrative law judges such as HLRB's members, must be able to impartially apply the facts to the relevant law. This ethical code requires that the Board must not favor one party over another and must take actions based on the facts and the law, rather than their personal feelings or desires.

Certainly, this requirement of impartiality can lead to parties being upset with particular Board decisions. However, the Board members take an oath to uphold the Constitution of the State of Hawai'i. Article I, Section 5 of the Constitution requires that parties before the Board receive due process of law and equal protection under the law. Therefore, the Board has an obligation to apply the law equally to parties, regardless of their personal feelings or backgrounds or designated seat.

Similar to judicial appointments, the Board members are currently protected from being removed due to political reasons or because a party dislikes the outcome of a case. Rather, there must be actual cause for their removal. This allows the Board to act independently and maintain its neutrality. This also provides the Board with stability and an opportunity to develop experience and expertise regarding HRS Chapters 89, 377, and 396.

The current language of HRS § 89-5 lays out that "...one member shall be representative of management, one member shall be representative of labor, and the third member, the chairperson, shall be representative of the public." By using "representative of"

rather than “representing,” the Legislature made it clear that the three Board members should have different experiential backgrounds to ensure that the Board can understand the arguments. Accordingly, each member’s prior experience should qualify them for nomination by the Governor and confirmation by the Senate.

What the Legislature did not state is that each Board member must advocate for or represent a particular constituency in cases. Rather, all Board members must faithfully listen to the presentations and consider any written arguments of all advocates, those from labor, management, and the public. After listening to the presentations, and considering the written arguments the Board must then make their decision based on the facts and the law.

The Legislature never presumed that the Board members would decide a case solely based on their background or designated seat. If Board members did so, that would lead to an untenable situation where parties would know how the majority of the Board would rule before the case even began or lead to a deadlock. This would undermine the due process that all parties must be given under the Constitution.

The Board feels a responsibility to bring forth this perspective to the attention of this Committee in its deliberations over HB 465 and is available for any questions.

DAVID Y. IGE  
GOVERNOR



RYKER WADA  
CHIEF NEGOTIATOR

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

January 30, 2021

**TESTIMONY TO THE**  
**HOUSE COMMITTEE ON LABOR AND TOURISM**

For Hearing on Tuesday, February 2, 2021  
9:00 a.m., Conference Room 312 (Via Video Conference)

By

RYKER WADA  
CHIEF NEGOTIATOR

**House Bill No. 465**  
**Relating to Collective Bargaining**

CHAIRPERSON ONISHI, VICE-CHAIR SAYAMA AND MEMBERS OF THE  
COMMITTEE:

The Office of Collective Bargaining (OCB) **OPPOSES** HB465, which establishes that the representative of labor on the Hawaii Labor Relations Board be a person selected by a majority of the exclusive representatives of the collective bargaining units. It also establishes procedures for removal of the representative of labor on the Hawaii Labor Relations Board.

OCB is concerned that this bill diminishes the Governor's authority by compelling him to appoint a single individual identified by the exclusive representatives as a labor representative to the Hawaii Labor Relations Board. Current practice is for the Governor to make an appointment from a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives. We believe there is no compelling reason to limit the pool of nominees from three to one.

Thank you for considering our concerns and for the opportunity to testify on this measure.



## HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Thirty-First Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Tourism

**LATE**

Testimony by  
Hawaii Government Employees Association  
February 2, 2021

### H.B. 567 – RELATING TO EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the concept of telework for willing and able state employees and conceptually supports the intent of H.B. 567 which requires each department to establish a telework and alternative work schedule policy. However, we stress that since telework and alternative schedules significantly impact an employee's condition of employment, the terms must be negotiated and mutually agreed upon.

Telework and alternative work schedules are innovative solutions that ensure workplace flexibility and we fully recognize the many benefits they can have on employees, the employer, and the public, including a better work-life balance, increased productivity, and possible cost-savings from reduced energy and office space use. Workplace flexibility can also be utilized as a tool to help the employer recruit and retain the best and brightest employees, where government salary and benefits alone may not compete with what's offered in the private sector.

Passage of this measure will statutorily enshrine the Legislature's support of telework policies, however we must insist that any changes to an included employee's wages, hours, and terms and conditions of work are constitutionally protected and must be negotiated and mutually agreed upon prior to implementation. Specifically, since employee participation in any alternative work schedule shall be voluntary, we respectfully request that the language on page 5, line 7 that mandates each department have no less than 30% of eligible positions participating by July 1, 2025 be deleted. Lastly, during the COVID-19 worldwide pandemic, there was little guidance provided on how to transition the workforce to telework which caused chaos and confusion for our members. Therefore, we find it appropriate for the employer to uniformly identify and justify broad categories of positions determined to be ineligible for telework or alternative work schedules.

Thank you for the opportunity to testify on H.B. 567.

Respectfully submitted,

Randy Perreira  
Executive Director



LATE

The House Committee on Labor & Tourism  
February 2, 2021  
Videoconference, 9:00 am

RE: **HB 465 Relating to Collective Bargaining**

Attention: Chair Richard Onishi, Vice Chair Jackson Sayama and members of the Committee

Chair Onishi, Vice Chair Sayama and members of the Committee on Labor and Tourism, thank you for the opportunity to testify in **support of HB 465** Relating to Collective Bargaining.

HB 465 Relating to Collective Bargaining seeks to amend §89-6, HRS, to ensure that the exclusive representatives as defined in §89-2, HRS, clearly have a voice in determining the representative of labor to sit on the Hawai'i Labor Relations Board (HLRB) and to provide a process for the removal of the representative of labor when the member does not demonstrate the necessary ability to serve effectively.

Historically, the exclusive representatives have been offered input on the representative of labor, but the ultimate decision was always made by the Governor. This legislation would help ensure that the representative of labor on the HLRB is chosen by the exclusive representatives to represent labor's interests.

We appreciate the opportunity to submit testimony in **support of HB 465** Relating to Collective Bargaining.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Fern'.

Christian L. Fern  
Executive Director  
University of Hawaii  
Professional Assembly

February 1, 2021



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The Honorable Richard H.K. Onishi, Chair  
The Honorable Jackson D. Sayama, Vice-Chair  
Committee on Labor & Tourism  
Hawaii State Capitol, Room 438  
415 South Beretania Street  
Honolulu, HI 96813

Re: **HB465 HD1-Relating to Collective Bargaining**

Dear Chair Onishi, Vice-Chair Sayama and Committee members:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in strong support of HB465. This bill amends HRS §89-5 to ensure that the public employee unions are at all times being adequately represented on the Hawaii Labor Relations Board ("HLRB").

The HLRB is composed of three (3) members who by statute represent three distinct interests on the board, i.e., labor, management and the public. One board member serves as the "representative of labor", the other as the "representative of management", and the third member is the board's chairperson who serves as the "representative of the public." The HLRB is the venue where many different types of labor disputes are submitted for resolution. Thus, it is critical that the "representative of labor" on the majority rules board is a person who is effectively representing labor while discharging his/her duties in a competent manner.

HB465 seeks to ensure and maintain that the public employee's labor representative on the HLRB is indeed serving as the "representative of labor". If a board member is not fulfilling his/her duties in their role as the "representative of labor", HB465 provides a simple mechanism by which the public employee unions can remove and replace their representative subject to the senate's advice and consent.

We thank you for allowing us to be heard on this very important issue and hope your committee will unanimously support this bill.

Respectfully submitted,

  
MALCOLM LUTU  
SHOPO President

LATE

**HB-465**

Submitted on: 2/2/2021 8:21:04 AM

Testimony for LAT on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tenari Ma'afala	State of Hawaii Organization of Police Officers	Support	No

Comments:

Good Morning and Aloha,

The Honorable Chair Richard H.K. Onishi; The Honorable Vice Chair Jackson D. Sayama; and esteemed Members of the House Committee of Labor and Tourism. My name is Tenari Ma'afala, Executive Director of the State of Hawaii Organization of Police Officers ("SHOPO").

On behalf of SHOPO and its entire Membership-Bargaining Unit 12, I write in strong support of HB465. This bill amends HRS §89-5 to ensure that "all" of the public employees from the respective Labor Organizations are at "all times" being represented "Fairly and Justly as provided for by the fullest extent of the Law" on the Hawaii Labor Relations Board ("HRLB").

The HLRB is the venue and process where many different types of labor disputes are submitted for resolution. Thus, it is critical that the "Representative of Labor" on the majority rules board is a person who is effectively representing Labor while discharging his/her duties in a competent manner.

HB465 seeks to ensure and maintain that the Public Employee's Labor Representative on the HLRB is indeed serving as the "Representative of Labor". If a board member is not fulfilling his/her duties in their role as the "Representative of Labor", HB465 provides a simple mechanism by which the public employee unions can remove and replace their representative subject to the senate's advice and consent.

We thank you for allowing us to be heard on this very important issue. We humbly ask for your favorable consideration and unanimous support of this bill.

With Much Respect and Aloha, Tenari Ma'afala