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TESTIMONY FOR HOUSE BILL 151, RELATING TO COLLECTIVE BARGAINING

**House Committee on Labor
Hon. Mark M. Nakashima, Chair
Hon. Mark J. Hashem, Vice Chair**

**Tuesday, January 29, 2013, 9:00 AM
State Capitol, Conference Room 309**

Honorable Chair Nakashima and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of, with proposed amendments for HB 151, relating to collective bargaining.

Since July 1, 2011, local teachers have been working under an imposed “last, best, final” offer. According to the terms of this “contract” (if one can call it that), teachers, like other bargaining units, have continued to take a 5 percent pay cut, as well as a 50/50 healthcare premium split. Problematically, teachers were notified of LBFO implementation as of June 29, 2011, several days prior to the negotiations deadline a deal covering the school years falling between fall of 2011, to spring of 2013. Not surprisingly, HSTA (bargaining unit 5) filed a complaint with the Hawaii Labor Relations Board, which subsequently vetted the case over a period of ten months. From the outset, the board's prospective decision was viewed as significant in that it will likely determine the legality of LBFO implementation, something that current collective bargaining statutes do not address and, therefore, tacitly permit.

Whether or not one believes the tenets of the state's imposed LBFO to be meritorious, the issue of whether or not unilateral imposition of contractual terms is legal has yet to be resolved. It has been approximately seven months since the final HLRB hearing on HSTA's complaint, yet no resolution appears imminent. Without question, the state's unilateral contractual gesture has clouded ongoing negotiations over BU-5's next contract and contributed to a culture of fear regarding state-sanctioned education initiatives, like the state's forthcoming “educator effectiveness system” (teacher evaluations). Along with teachers and the general public, we feel compelled to ask the HLRB: On an issue as important as this, what is taking so long?

HLRB is plagued by an ongoing case backlog. According to the board's 2012 annual report, 90 cases were pending at the close of FY 2010, 96 cases at the close of FY 2011, and 127 cases at the close of FY 2012. Additionally, reduced operating expenses led the board to eliminate court reporting (transcription of proceedings), increasing members' reliance on audio recordings for the purposes of decision-making. We encourage lawmakers to provide funds to restore staff positions to assist in researching the complex issues presented to HLRB, promulgating administrative rules, and drafting decisions. At the same time, we do not feel that the backlog is entirely the result of administrative budget cuts, but instead stems from chaotic, non-streamlined proceedings. Forcing HLRB to consummate its cases within three months incentivizes efficiency for all parties involved in board-related matters, while providing the necessary deadline to ensure that rulings are issued in time for implementation—if, for example, HSTA and the state reach a contract agreement for FY 2013-2015 (the biennium succeeding the LBFO), HLRB's ruling on the LBFO becomes less exigent, further obfuscating the status of the law and potential retroactive pay restoration for teachers.

That said, we note that the deadline imposed by this bill is vague, mandating that a decision be resolved in ninety days, but failing to state from when the ninety day period begins. Does the clock begin when a complaint is filed or following the last hearing? Accordingly, we humbly request that one of the following two amendments be made to the current proposal. To start the ninety-day period from the time a complaint is filed, please change the proposed language to: “(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it[-]; provided that a decision on any complaint filed with the board shall be resolved within ninety days of the initial filing date of the complaint.” To start the ninety-day period from the time of the last hearing, please employ the following language or some variant thereof: “(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it[-]; provided that a decision on a complaint filed with the board shall be resolved within ninety days of the date on which the board adjourns the final hearing on such complaint.”

Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance



HAWAII STATE TEACHERS ASSOCIATION

Teaching Today for Hawaii's Tomorrow

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Testimony before the house committee on Labor and Public Employment

Re: HB 151- Relating to Collective bargaining

Tuesday, January 29, 2103

Person Testifying: Wil Okabe, President

The Hawaii State Teachers Association (HSTA) **supports with amendments** H.B. 151 which requires the Hawaii Labor Relations Board (HLRB) to resolve complaints.

HSTA is the exclusive representative of more than 13,500+ public and charter school teachers statewide. As the state affiliate, of the 2.2 million member National Education Association, HSTA has been adversely affected by the ineffectiveness of the HLRB.

In July of 2011, HSTA filed a complaint with the HLRB after the Hawaii State Department of Education (Department) forced its last, best, and final offer (LBFO) on teachers. The LBFO was not negotiated with HSTA. With weeks before the expiration of the teachers' contract, HSTA was informed by the Department that it would implement a combination of salary cuts and Department Leave Without Pay (DWLOP) on non-instructional days to achieve a 5% labor savings.

The imposed contract forced a 5% pay reduction and a 10% increase in health care contributions resulting in a 50/50 split of employer/employee health premiums as well as a loss of essential teacher planning and preparation time for teachers.

We strongly believe that the Department prematurely declared impasse and instead, should have continued bargaining and honoring the contractual status quo, as the State did with other unions.

As such, teachers have been denied a "prompt" decision from the HLRB as lawfully provided under HRS 377-9D.

Over five months after the final hearing date, the HLRB stated it has the discretion to respond when it's good and ready.

Meanwhile, 9 months later, teachers are continuing to be deprived of exercising their constitutional rights to collective bargaining and prohibited from exercising their statutory right to strike.



Our motion for interlocutory relief was filed over a year ago to stop the forced contract take-aways at least until the HLRB rendered a decision to address the Department's legal issues.

Too many teachers sought out relief from the deep cuts to their pay and health care premiums by taking second jobs just to make ends met from the imposed furlough days. The HLRB has failed to respond to HSTA's motion as ordered by the Supreme Court.

As such, the HRLB responded to the Supreme Court it has the discretion to take as long as it wants, possibly years, to render a decision. The labor board has offered no timetable. This position makes the statute virtually meaningless.

Until we exhaust the HLRB process, we cannot even proceed to the court on the constitutional issues.

As such, we ask that H.B. 151 be amended to reflect the language written in H.B. 577. H.B. 577 clarifies a resolution to complaints in 30 days and to enforce a penalty on the HRLB for not ruling within the given timeline.

Teachers as well as the public cannot speculate on how or when the Supreme Court will react to the HLRB's response, but we hope the legislature will consider the harm caused to teachers and potentially all public employees by the HLRB delays.

Thank you for the opportunity to testify in support with amendments on H.B. 151.



House Committee on Labor & Public Employment
Tuesday, January 29, 2013
9:00 a.m.

HB 151, Relating to Collective Bargaining.

Dear Chairman Nakashima and Committee Members:

The University of Hawaii Professional Assembly's Board of Directors recognizes that the Hawaii Labor Relations Board has significant challenges in meeting its responsibilities in the enforcement of Chapter 89 Collective Bargaining in Public Employment. Over the course of time, there has been a diminution in resources provided for the effective functioning of this agency making it difficult to meet its' duties to employees, employers and the public. UHPA believes that HB 151 does not resolve the problems confronting the Hawaii Labor Relations Board. This proposed legislation will not meet the expectations of any party as long as the agency remains deficit in knowledgeable staff and administrative resources that enhance decision making.

UHPA encourages legislators to support increased funding for the Hawaii Labor Relations Board that will rebuild this agency so it can effectively address the needs of public employees and employers. It is clear that the lack of hearing officers and research attorneys impede the progress of complex complaints. Further, they simply do not have the technological resources that make access to hearing transcripts and documents easily obtained by the Board members for their decision making.

UHPA encourages the committee to reject HB 151 as providing the pathway to a more responsive Hawaii Labor Relations Board.

Respectively submitted,

Kristeen Hanselman
Associate Executive Director

**UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY**

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The Twenty-seventh Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
January 29, 2013

H.B. 151 – RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes H.B. 151, which amends Section 89-5 of the Hawaii Revised Statutes by requiring the Hawaii Labor Relations Board (HLRB) to resolve complaints within ninety days.

Although we can understand the intent behind the proposed amendments and the potential frustration caused by delayed decisions, we respectfully question if a statutorily set ninety day deadline would have unintended adverse consequences for both the Employers and the Exclusive Representatives, and the employees for whom they represent. Requiring that decisions be expediently adjudicated lends to decisions made in haste, without the flexibility to conduct additional fact finding or research to supplement positions. Further, we question whether or not HLRB has the staffing capacity and support to issue rulings within the ninety day deadline.

Thank you for the opportunity to testify in opposition of H.B. 151.

Respectfully submitted,

Randy Perreira
Executive Director

NEIL ABERCROMBIE
GOVERNOR

DWIGHT TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR



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January 25, 2013

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Mark J. Hashem Vice Chair,
Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 29, 2013
Time: 09:00 a.m.
Place: Conference Room 309, State Capitol

From: Sesnita Moepono, Board Member
Hawaii Labor Relations Board (HLRB)

Re: H.B. No. 151 Relating to Collective Bargaining

I. OVERVIEW OF PROPOSED LEGISLATION

The bill requires the HLRB to resolve all Hawaii Revised Statutes (HRS) Chapter 89 complaints within 90 days of the filing date.

II. CURRENT LAW

Current law HRS §89-5 requires the Board to execute its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.

III. COMMENTS

Unfortunately, there will be no one from the HLRB testifying in person on this bill because of a hearing on the merits that is scheduled for 9:00 a.m. – 5:00 p.m. The Board has concerns regarding its current staff's ability to meet this requirement as the Board has only one attorney to draft its decisions for HRS Chapters 89 and 396 (OSHA appeals). Since last year, the Board's caseload has risen by 30 cases to 127 cases.

The Board's backlog of cases began in 1997 when the Board's legal staff was cut by three positions (two staff attorneys and one paralegal). Since 1997, the backlog of cases has steadily increased which has proven that these three staff members were critical in resolving cases in a timely manner. The Board unfortunately cannot support this bill without the reinstatement of the three legal positions.

Thank you for this opportunity to testify on this bill. Please free to contact me if you have any questions.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Labor & Public Employment
Tuesday, January 29, 2013
9:00 a.m.

By
Dr. Linda K. Johnsrud
Executive Vice President for Academic Affairs/Provost
University of Hawai'i

HB 151 RELATING TO COLLECTIVE BARGAINING

Chair Nakashima, Vice Chair Hashem and Members of House Committee on Labor and Public Employment, I am submitting written testimony on behalf of the University of Hawai'i regarding House Bill 151 – Relating to Collective Bargaining which proposes to amend HRS, §89-5, subsection (i), to place a statutory requirement that the Hawai'i Labor Relations Board (HLRB) provide a decision or resolve a complaint within 90 days.

The University of Hawai'i **supports** the intent of the proposed legislation.

The University of Hawai'i, as well as other State departments, have a number of pending complaints and cases before the HLRB. Many of these complaints and cases have already been heard by the HLRB and are pending a decision by the Board, in some cases, over a year or more. Since these pending decisions have not been issued, we have not been able to obtain clarification or resolution to these complaints and cases and are unable to resolve the dispute with all parties involved. In some cases, the University has not been able to proceed with operational movements, changes, program implementation, and other types of administrative decisions since the matter is in dispute before the HLRB. Having decisions rendered by the HLRB in a more timely fashion after the complaint or case is filed and heard will provide our University and campuses with the direction and clarification required to properly move forward with these complaints and cases.

We believe that it is in the best interests of all parties to seek a resolution or decision to any dispute in a timely fashion. Placing a new statutory provision under HRS, §89-5, subsection (i), is a way to accomplish this endeavor.

Thank you for the opportunity to testify on this bill.

NEIL ABERCROMBIE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

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

Date: 01/29/2013

Committee: House Labor & Public
Employment

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0151 RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Requires the Hawaii labor relations board to resolve complaints within 90 days.

Department's Position:

The Department of Education opposes H.B. 0151, which seeks to require the Hawaii labor relations board to resolve complaints within 90 days. Often, the parties are unable to present their cases in one session, and other mutually convenient hearing dates must be arranged amongst the parties, their attorneys, witnesses, and the labor board. In some cases, conscientious efforts are made by the parties to resolve the matter without the need for adjudication by the labor board. This may involve collecting data or researching information. Moreover, some hearings may be very lengthy, consuming many days of testimony plus various motions and extensive legal briefs. To place a deadline for resolving all complaints may not be in the best interests of the parties in all cases.