



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 885, S.D. 2, RELATING TO COLLECTIVE BARGAINING.

**BEFORE THE:**

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

**DATE:** Friday, March 15, 2013

**TIME:** 9:10 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Maria C. Cook, Deputy Attorney General

---

Chair Nakashima and Members of the Committee:

The Department of the Attorney General has several serious concerns about this bill, the purpose of which is to amend chapter 89 of the Hawaii Revised Statutes (HRS) to transfer from the Legislature to an arbitration panel the authority to decide amounts of contributions paid by public employers to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) in case of disputes or impasses between the unions and the public employers. This would make the arbitration award as to EUTF contributions final and binding on the parties.

First, amounts of contributions to health benefits comprise such a substantial portion of the State's overall budget that the current wording of section 89-11, HRS, which gives the authority to the Legislature to decide the amounts of contributions if an impasse occurs, is preferable over the provisions in this bill that give such authority to an arbitration panel. We believe that the Legislature should seriously consider whether it wishes to delegate its current authority over these matters to an arbitration panel, subject to legislative approval. Giving the decision-making authority over amounts of contributions to an arbitration panel reduces legislative oversight and involvement. Although the statutes provide legal criteria for the arbitrators to consider in reaching their decisions, there may be significant variances among arbitrators in the weight that they attach to the different criteria. In our experience, the employer's ability to pay and overall economic conditions -- two important legal criteria that the Legislature should be keenly interested in -- seem to play little role in shaping arbitral decisions. Further, the ability to maintain a well-paid workforce must be balanced against other government priorities and public needs. An arbitration panel concerned with one bargaining unit, not the

overall picture is not tasked with keeping all these interests in mind, unlike elected officials accountable to the public as a whole. Allowing an arbitration panel to make these decisions reduces the ability of the government to control its budget, with the net effect being that binding arbitration takes critical decisions out of the hands of elected leaders and puts them in the hands of unelected and unaccountable arbitrators.

Second, one of the practical considerations that the Legislature should be aware of is that under the current statutory scheme, the Legislature has the luxury of having adequate **time** to duly consider all of the pertinent issues in deciding this important issue. Such is not the case in interest arbitration, which typically consists of a panel of arbitrators (one of whom is typically someone who flies in from another state), who hold several days of hearings to hear testimony and take evidence. Once the 3 or 4 days of hearings are concluded, no further submission of evidence is permitted, and the panel simply reviews the post-hearing briefs submitted by the parties, analyzes the evidence adduced at the hearings, and issues a final and binding decision and award, which is exceptionally difficult to modify or amend in any way, even if there are manifest errors or omissions contained in the award. In sharp contrast, the Legislature has a much larger window of opportunity to first adduce and review the facts, ask for clarification or substantiation, correct misapprehensions, make a measured decision and, at its discretion, review or re-approach that decision if need be. Once again, considering the fact that the amounts of contributions to health benefits comprise such a substantial portion of the State's overall budget, retaining this degree of flexibility is highly preferable to taking such critical decisions out of the hands of elected leaders and putting them into the hands of unelected and unaccountable arbitrators.

Third, there is the increased likelihood of variability in the EUTF contribution amounts for all state employees in at least two ways. To begin with, the involvement of multiple arbitration panels from different bargaining units that are subject to interest arbitration will increase the likelihood of variability in the EUTF contribution amounts among those units. Similarly, bargaining units subject to interest arbitrations and those that are *not* subject to interest arbitrations such as bargaining unit 1 (non-supervisory employees in blue collar), bargaining unit 5 (teachers and other personnel of the Department of Education), and bargaining unit 7 (faculty of the University of Hawaii and the community college system) will have variations in the EUTF

contribution amounts as well. Having such variations in the amounts of contributions will make the planning and administration of health premiums more difficult.

Fourth, although section 89-11, HRS, provides that all items requiring any moneys for implementation shall be subject to appropriation, there may be some significant legal issues if the Legislature decides to reject the arbitration award relating to amounts of contributions. Section 89-11, HRS, which governs interest arbitration, is silent on the issue of what happens if the Legislature decides to reject any cost items, such as the amounts of contributions. This is not true of agreements negotiated pursuant to section 89-10, HRS. Section 89-10 provides that in the event the Legislature rejects any cost items negotiated by the parties, *all* cost items submitted would be returned to the parties for further bargaining. It is our opinion that sections 89-10 and 89-11 must be read together so that, if the Legislature rejects any cost items awarded by an arbitration panel, all cost items must be returned to the parties for further bargaining. Thus, under this bill, if the Legislature decides to reject the amounts of contributions awarded by an arbitration panel, the Legislature will have to return to the parties for further bargaining all cost-items awarded in arbitration. Under the current statute, however, impasses on the amounts of contributions are decided by the Legislature through legislative enactment and are, therefore, not tied to other cost items submitted to arbitration.

Fifth, our department is concerned over the proposal to remove wording from section 89-11 (g), HRS, providing: *“It is strictly understood that no member of a bargaining unit subject to this section shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund,”* and suggest that it be revised to remove only the following underlined language: *“It is strictly understood that no member of a bargaining unit subject to this section shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund.”*

The Department of the Attorney General respectfully requests that the Committee consider these comments in determining whether to pass this bill.

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
ON  
SENATE BILL NO. 885, S.D. 2

March 15, 2013

RELATING TO COLLECTIVE BARGAINING

Senate Bill No. 885, S.D. 2, repeals the prohibition of using arbitration to resolve impasses or disputes relating to State and county Hawaii Employer-Union Health Benefits Trust Fund (EUTF) contributions and authorizes arbitration panels to decide on EUTF contributions. The bill also repeals the prohibition on the right to strike over EUTF contributions.

The Department of Budget and Finance (B&F) strongly opposes this bill. B&F believes the best way to maintain control of EUTF costs is to leave the final decision for EUTF contributions in the hands of the Legislature if the parties are unable to reach an agreement. While arbitration panels are tasked to consider the employer's ability to pay and overall economic conditions, panels often fail to grasp the complexities of the State budget.

Recent fiscal conditions have made it difficult to reach resolution in collective bargaining negotiations. However, altering what is done in these situations to allow binding arbitration would take this critical decision out of the hands of elected leaders and put it in the hands of unelected and unaccountable arbitrators. While the Legislature would still have the authority to reject an arbitration award, it appears all cost items would be rejected, not just EUTF contributions. The end result of this bill could result in giving the Legislature a choice of fully conceding control of this significant portion of the budget to arbitration panels or risk unending collective bargaining negotiations.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>th</sup> Floor  
HONOLULU, HAWAII 96813

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR DESIGNATE  
NOEL T. ONO  
ASSISTANT DIRECTOR

March 15, 2013

The Honorable Mark M. Nakashima, Chair  
and Members of the Committee on Labor and Public Employment  
State House  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

Subject: Testimony on S.B. 885, S.D. 2 Relating to Collective Bargaining

The Department of Human Resources of the City & County of Honolulu, submits the following comments on S.B. 885, S.D. 2. If passed, the legislature would relinquish its decision making authority regarding the amount of employer contributions to the Employer-Union Health Benefit Trust Fund (EUTF) in the event the public employers and various public unions are not able to reach an agreement. Moreover, according to S.B. 885, S.D. 2, such decision could be made by a third party arbitrator, who may or may not understand the public employers' ability to pay for such benefits. In addition, having different arbitrators decide the matter could result in inconsistent EUTF contribution amounts between the various bargaining units. Finally, the measure would likely have an unforeseen negative financial impact to public employees as health care and administrative costs will likely increase.

We thank you for giving us the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo".

*for* CAROLEE C. KUBO  
Director Designate



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

---

Testimony Presented Before the  
House Committee on Labor and Public Employment  
Friday, March 15, 2013  
9:10 a.m.

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

### SB 885 SD2 – RELATING TO COLLECTIVE BARGAINING

Chair Nakashima and 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 Senate Bill 885 SD2 – Relating to Collective Bargaining which proposes to amend HRS, Chapter 89, by repealing language that prohibits parties from using arbitration to resolve impasses or disputes relating to the State and counties' contributions to the employer-union health benefits trust fund; repeals the procedures parties are required to follow after an arbitration panel issues a decision and the understanding that members of bargaining units are prohibited from striking on the issue of state and county contributions to the employer-union health benefits trust fund; and making housekeeping amendments regarding the scope of negotiations.

The University of Hawai'i has reservations regarding the impact, intended or otherwise, of the proposed legislation if enacted.

The University of Hawai'i has covered employees in Units 1, 2, 3, 4, 7, 8, 9 and 10. Units 2, 3, 4, 8, 9 and 10 are all subject to interest arbitration while Units 1 and 7 have the right to strike to resolve disputes or impasses over bargaining over successor contracts. Units 7 and 8 consist of employees who only work for the University of Hawai'i system, and thus, we are considered their only employer.

Currently, the Legislature has the sole authority to decide upon the amount of employer contributions made to the EUTF if the parties are unable to resolve this issue during interest arbitration. This allows the Legislature to consider and take into account the amount of employer EUTF contributions that are being made or are going to be made to other bargaining units, as well as, its priority in the overall budget. The Legislature's decision is final and binding and these interest arbitration units cannot participate in a strike over the issue of employer EUTF contributions. The proposed legislation, if enacted, will allow an arbitration panel to decide on these amounts during the interest arbitration proceedings as a cost item subject to Legislative funding. With six bargaining units within the University subject to interest arbitration, it could be a possibility that all six will be subject to different arbitration panels. That outcome could

lead to having all six arbitration decisions on employer EUTF contributions differ or vary from one bargaining unit to the next. This would be an administrative nightmare that may also require an increase in administration costs due to its complexity and management. EUTF employer contributions have become a very sensitive issue during negotiations in recent years which have been managed by the parties agreeing to favored nation clauses. In essence, these favored nation clauses have been used to support the concept of equity which is an important factor in maintaining a healthy and productive workforce. As an employer, we are concerned that such possibilities could become reality since an arbitration panel does not have to consider the issue of equity as a primary factor in its decision.

There is also a concern whether further amendments to the chapter would be required to enact this law. EUTF contributions subject to interest arbitration will now be a cost item subject to Legislative funding. For bargaining units not subject to interest arbitration, the Legislature currently has the authority to either fund or reject cost items as a whole that are submitted to the Legislature for consideration. If the Legislature decides to reject the cost items, the cost items as a whole are returned to the parties for further bargaining. However, this caveat only applies to bargaining units not subject to interest arbitration. EUTF contributions will now be considered as part of the cost items for interest arbitration units. There is no statutory mechanism under HRS, §89-11, for interest arbitration units to allow the Legislature to reject cost items with the ability to return cost items as a whole to the parties for further bargaining. The law only provides that the parties may by mutual agreement, modify or amend the arbitration decision. This needs to be taken into consideration if the Legislature intends to relinquish its authority over this matter.

Thank you for the opportunity to testify on this bill.



HAWAII FIRE FIGHTERS ASSOCIATION  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO  
2305 S. BERETANIA ST., RM. 202, HONOLULU, HAWAII 96826-1493  
TEL: (808) 949-1566 FAX: (808) 952-6003  
[www.hawaiifirefighters.org](http://www.hawaiifirefighters.org)

---

HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

[COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)

Testimony by

[S. B. No. 885, S.D. 2](#) RELATING TO COLLECTIVE BARGAINING

My name is Robert H. Lee, President of the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO. On behalf of the more than 3,100 members, both active and retired professional fire fighters throughout the State, HFFA supports S.B. No. 885, S.D. 2, which proposes to allow disputes over contributions to the Hawaii Employer-Union Health Benefit Trust Fund to be settled by way of the arbitration process as provided in Section 89-11, H.R.S.

HFFA believes this bill encourages more meaningful discussion and possible settlement during the negotiation process relating to employer contributions to the EUTF. Furthermore, this bill provides the arbitration panel the ability to decide on the amount of the employer contributions inclusive in the arbitration award.

Thank you for the opportunity to testify.





**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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

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

Testimony by  
Hawaii Government Employees Association  
March 15, 2013

S.B. 885, S.D. 2 – RELATING TO  
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 885, S.D. 2, which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes, and makes other technical, conforming amendments. However, we respectfully request that the current defective date be amended to July 1, 2013 or upon approval.

As currently written, Ch. 89, HRS lacks a dispute resolution mechanism to address the Employee and Employer share of the contributions to medical premiums in the EUTF. As written, if the Employer and the Exclusive Representative cannot agree on the contribution amount, then the pro-rata share shall be determined by the Legislature, while all other negotiable items can proceed to impasse. The amendments contained in S.B. 885, S.D. 2 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either interest arbitration or strike, depending upon the bargaining unit. Adoption of this language increases conformity between public-sector and private-sector employee bargaining, as both parties can fully utilize their dispute resolution mechanisms for all negotiable items, and also allows for consideration of a full benefits and compensation package.

Thank you for the opportunity to testify in strong support of S.B. 885, S.D. 2.

Respectfully submitted,

Randy Perreira  
Executive Director