

TESTIMONY

SB 642

William P. Kenoi
Mayor



Michael R. Ben, SPHR
Director of Human Resources

Ronald K. Takahashi
Deputy Director of Human Resources

County of Hawai'i Department of Human Resources

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February 10, 2009

The Honorable Dwight Y. Takamine, Chair
And Members of the Senate Committee on Labor
State Capitol
Honolulu, Hawai'i 96813

Dear Chair Takamine and Members of the Committee:

Re: SB 642 Relating to Public Employees

I am Michael R. Ben, the Director of Human Resources of the County of Hawai'i. I am testifying in opposition to SB 642.

Chapter 89C, HRS was first enacted with the express purpose of ensuring that the public employers could make timely adjustments in the wages, hours, benefits, or other terms and conditions of employment of employees who were excluded from Chapter 89, HRS. Chapter 89C was enacted at a time when these adjustments were provided by statutes. Prior to Chapter 89C, adjustments for excluded employees lagged seriously behind adjustments for employees covered by Chapter 89. Excluded employee adjustments could only be effectuated by legislation, and inevitably these adjustments were enacted over a year later for these excluded employees.

Act 253, SLH 2000, removed these adjustments from statutes and required that they be provided through collective bargaining or through the procedures outlined in Chapter 89C for employees excluded from collective bargaining.

SBH 642 proposes to amend the definition of "adjustment," whereby adjustments would be limited to across-the-board wage increases or reductions, or changes in health or retirement benefits, and to not include overtime compensation leaves. This proposed change raises a few questions and concerns as it affects the many public employees excluded from collective bargaining.

First and foremost, how are hours, benefits, or other terms and conditions of employment for employees excluded from collective bargaining to be provided as Chapter 89C will no longer be the vehicle for making adjustments? Or is it the

Hawai'i County is an Equal Opportunity Provider and Employer.

The Honorable Dwight Y. Takamine, Chair
And Members of the Senate Committee on Labor
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intent that all hours, benefits, or other terms and conditions of employment be forever "frozen" for employees excluded from collective bargaining?

Second, if adjustments do not include overtime compensation, does this mean there is no overtime compensation for employees excluded from collective bargaining or that they shall not be required to work in excess of 8 hours a day or 40 hours a week? Or does it mean existing practices for overtime remain frozen too?

Third, the reference to changes in health or retirement benefits is nonsensical in that the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the Hawaii health system corporation board, the auditor, the ombudsman, and the director of the legislative reference bureau have no authority to change health or retirement benefits for any employee. Determinations of these benefits lie with the Employer-Union Health Benefits Trust with respect to health benefits, and with the Employees' Retirement System and the Legislature, with respect to retirement benefits.

Because of what I have just described, and because I unable to fully understand the intent and purpose of the proposed change to Chapter 89C, I ask that SB 642 be tabled.

Sincerely,



Michael R. Ben, SPHR
Director of Human Resources



Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Labor
Hawaii Government Employees Association Managerial and Confidential Employees
Chapter (Contact: Elizabeth Ho at 543-0022 or lho@hgea.org)
Tuesday, February 10, 2009, 2:45 p.m.

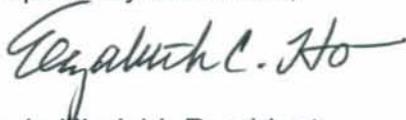
Opposition of S.B. No. 642, Relating to Public Employees

The HGEA Managerial and Confidential Employees Chapter (MCEC) represents approximately 1,350 employees who work for the State of Hawaii, City and County of Honolulu, and Maui, Kauai and Hawaii Counties, who are excluded from collective bargaining but elect to join the HGEA MCEC. Although by law we cannot bargain or negotiate a contract on their behalf, we provide representation to our members in filing internal complaints and appeals relating to matters affecting their terms and conditions of employment. We advocate for the rights and benefits of excluded employees who have no voice regarding these matters. As such, we strongly oppose S.B. No. 642 Relating to Public Employees, which would result in excluded employees being treated less favorably than those employees covered by collective bargaining agreements.

The majority of the employees who are excluded from collective bargaining are civil service employees and have been loyal employees for many years. They have worked a lifetime gaining the valuable knowledge and skills required to perform the complex duties of their specific positions. Some are managers but many are support staff. Many times overtime is unavoidable due to health and safety issues or when employees are tasked to do more due to staff shortages or special projects. These dedicated civil service employees should not be treated less favorably than their counterpart colleagues covered by collective bargaining.

It is important that all employees, whether or not they are covered by collective bargaining agreements, be treated equitably. Therefore, the HGEA MCEC respectfully requests your committee to oppose S.B. No. 642. Thank you for this opportunity to present our testimony.

Respectfully submitted,

for 
Wade Hiraishi, President
HGEA Managerial and Confidential
Employees Chapter

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice-Chair
Committee on Labor
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice-Chair
Committee on Ways and Means
Monday, February 09, 2009

FROM: Lynell Yuu

HEARING: Tuesday, February 10, 2009, 2:45 p.m.

AGAINST SB 642 RELATING TO PUBLIC EMPLOYEES

My name is Lynell Yuu. I am an active and included member of HGEA B.U. 03. My testimony is to support my EXCLUDED brothers and sisters that are targeted to lose overtime compensation.

I have attached an email between myself and Senator Hee, who introduced this bill. He states that it is because the firefighters rank and file do not want their management to receive benefits that they, the rank and file, bargained. If this is the situation, then the wording of this negative legislation should be directed at EXEMPT members not EXCLUDED members.

Please do not pass this out of your committee. It is unfair to the working rank and file union members. Most of us do GIVE extra time to our agencies, please continue to pay for the time that we do ask for overtime.



RE: SB 642: AGAINST - Overtime compensation to excluded members

Sunday, February 8, 2009 2:06 PM

From:

"Sen. Clayton Hee" <senhee@capitol.hawaii.gov>

To:

"lynell_yuu@yahoo.com" <lynell_yuu@yahoo.com>

Cc:

"mkunitake@hgea.org" <mkunitake@hgea.org>, "Sen. Dwight Takamine" <sentakamine@capitol.hawaii.gov>, "Sen. Brian Taniguchi" <sentaniguchi@capitol.hawaii.gov>, "Sen. Robert Bunda" <senbunda@Capitol.hawaii.gov>, "Sen. Sam Slom" <senslom@Capitol.hawaii.gov>, "Sen. Donna Mercado Kim" <senkim@capitol.hawaii.gov>, "Sen. Shan Tsutsui" <sentsutsui@capitol.hawaii.gov>, "Sen. Suzanne Chun Oakland" <senchunoakland@Capitol.hawaii.gov>, "Sen. J. Kalani English" <senenglish@capitol.hawaii.gov>, "Sen. Carol Fukunaga" <senfukunaga@Capitol.hawaii.gov>, "Sen. Michelle Kidani" <senkidani@capitol.hawaii.gov>, "Sen. Russell Kokubun" <senkokubun@capitol.hawaii.gov>, "Sen. Fred Hemmings" <senhemmings@capitol.hawaii.gov>

Dear Ms. Yuu:

Thank you for your email. This proposal was introduced at the request of the Fire Fighters Union. They have a concern regarding benefits accruing to their management that the rank and file negotiated by themselves. You may be interested to know that HGEA is aware of the concern of the Fire Fighters and intends to work with them to narrow the proposal so that their concerns are addressed.

I have spoken to both the HGEA and the Fire Fighters regarding the proposal being overly broad.

Thank you again for your email.

Clayton Hee

From: Lynell Yuu [lynell_yuu@yahoo.com]

Sent: Sunday, February 08, 2009 7:25 AM

To: Sen. Clayton Hee

Cc: mkunitake@hgea.org; Sen. Dwight Takamine; Sen. Brian Taniguchi; Sen. Robert Bunda; Sen. Sam Slom; Sen. Donna Mercado Kim; Sen. Shan Tsutsui; Sen. Suzanne Chun Oakland; Sen. J. Kalani English; Sen. Carol Fukunaga; Sen. Michelle Kidani; Sen. Russell Kokubun; Sen. Fred Hemmings
Subject: SB 642: AGAINST - Overtime compensation to excluded members

Senator Hee (& colleagues):

SB 642: AGAINST - Overtime compensation to excluded members

I am so shocked that you would introduce a bill of this nature. My position is included. Every civil service position should be included since we do not have the right to strike. My excluded brothers and sisters should not be attacked this way.

Please do NOT pass this bill out. This bill should die and not ever be brought up again.

Balance the budget on the back of overspending and change our government to a unicameral legislature. Not by punishing our rank and file.

Very truly yours,
Lynell Yuu
Honolulu, Hawaii



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.hawaii firefighters.org

The Twenty-Fifth Legislature
The Senate
Committees on Labor
February 10, 2009

Testimony by
Hawaii Fire Fighters Association

S.B. No. 642 Relating to the Public Employees

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO and an active duty fire captain with the Honolulu Fire Department. On behalf of the 1,800 active duty and 1000 retired professional fire fighters throughout the State, the Hawaii Fire Fighters Association supports S.B. No. 642.

We believe the current statute is unclear as to what is considered "wages, hours, benefits, or other term and condition of employment" in the definition of this Chapter. As the proponent of this bill, the intent is to provide a clearer definition of this law.

In a recent appeal before the Civil Service Commission of the City and County of Honolulu, a group of excluded managers argued that they are entitled to all provisions of the collective bargaining agreement negotiated by the exclusive representative of their counterpart bargaining unit. Although the CSC denied their appeal, the decision does not address the broad interpretation of the law and as such, may result in future challenge.

If excluded managers are entitled to every provision of the CBA as their base wage and benefit packages, in effect the union becomes the negotiating body for the excluded managers. Such interpretation would require the Governor and Mayors to factor in costs associated with excluded managers' wage and benefit adjustments during the union's negotiation process for its rank and file members. **The law should require minimal union involvement with regard to adjustments mandated for excluded managers.** Adjustments other than across-the-board wages and health and retirement benefits should be controlled by the process reserved for excluded managers as currently identified by law.

We are cognizant of the concerns of excluded non-managerial employees and as such, we are offering this amendment to clarify the bill even further to assuage their concerns.

Thank you for the opportunity to testify in support of S.B. No. 642.

A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

"§89C-2 Adjustments authorized; limitations, restrictions. Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, or prescribed by a salary commission, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body or salary commission;
- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
- (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;
- (5) For excluded employees in the excluded managerial compensation plan, adjustments shall be at least equal to the across-the-board wage increases or reductions and changes in health and retirement benefits provided under collective bargaining to employees in the bargaining unit from which the employees are excluded;
- (6) [(5)] For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and
- (7) [(6)] No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law."

SECTION 2. Section 89C-3, Hawaii Revised Statutes, is amended to read as follows:

“§89C-3 Adjustments for excluded civil service employees. (a) Each jurisdiction shall provide adjustments for its respective excluded civil service employees based on recommendations from its respective personnel director.

(b) In formulating recommendations to the appropriate authority, the respective director shall:

- (1) Establish procedures that allow excluded civil service employees and employee organizations representing them to provide input on adjustments that are relevant and important to them for the director’s approval;
- (2) Ensure that adjustments for excluded civil service employees under the same classification systems as employees within collective bargaining units result in compensation and benefit packages that are at least equal to the compensation and benefit packages provided under collective bargaining agreements for counterparts [and subordinates] within the employer’s jurisdiction;
- (3) Ensure that adjustments for excluded employees in the excluded managerial compensation plan result in compensation and benefit packages that are at least equal to the across-the-board wage increases or reductions and changes in health and retirement benefits provided under collective bargaining agreements for employees in the bargaining unit from which the employees are excluded; and
- (4) [(3)] Ensure that proposed adjustments are consistent with chapter 76 [and equivalent or not less than adjustments provided within the employer’s jurisdiction].”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

INTRODUCED BY: _____



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

Senate Committee on Labor

The Honorable Dwight Y. Takamine, Chair

The Honorable Brian T. Taniguchi, Vice Chair

Tuesday, February 10, 2009, 2:45 p.m.

State Capitol, Conference Room 224

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 642, Relating to Public Employees.

Purpose: Limits the definition of “adjustments” under Section 89C-1.5 for excluded civil service employees to across-the-board wage increases or reductions and changes in health or retirement benefits, and excludes overtime compensation.

Judiciary's Position:

The Judiciary opposes Senate Bill No. 642, Relating to Public Employees.

Senate Bill No. 642 appears to create a disparity between employees included in bargaining units and those statutorily excluded from bargaining units. In the interest of a harmonious workplace in which employees work productively side by side, irrespective of inclusion in a bargaining unit, the Judiciary cannot support divisive legislation such as this bill. The disparate treatment of employees based on statutory inclusion or exclusion from collective bargaining is inconsistent with the merit principle of equal pay for equal work. When we promote included position incumbents to excluded positions, we would subject them to a lesser “benefit package” than their included counterparts. This would be a disincentive for promotion and career growth.

The Judiciary is perplexed by the intent of this bill as it is difficult to understand why excluded employees cannot be assured of an equitable benefit package. Does the bill intend to



Senate Bill No. 642, Relating to Public Employees
Senate Committee on Labor
February 17, 2009
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deny the observation of a holiday, for example, should an additional day of observance be negotiated for included employees? Are excluded employees expected to work alone without their included colleagues on such days? Similarly, are excluded employees to be denied equal treatment in computing overtime pay? Should an excluded secretary, for example, be treated any less than an included secretary?

As a responsible employer supportive of all its employees, the Judiciary is not able to appreciate the disparate treatment and impact of this bill. Employees should be treated equitably with regard to wages, hours, benefits, and other terms and conditions of employment.

We understand from other testimony that the impetus for this bill may relate to issues unique to a specific bargaining unit. The bill will, however, impact a far larger employee population than the one interest group.

The Judiciary is compelled to oppose Senate Bill No. 642.

February 13, 2009

TO: ALL CONCERNED

FROM: Dallen Paleka.

SUBJECT: SB 642.

Please do not amend SB 642 to not include Overtime for excluded civil service employees. I am currently A Captain at the Halawa correctional facility. I have been a good and loyal worker for 21 years. The bill should not penalize those of us who work in jobs that affect public safety and occasionally must work 16-hour shifts. I have had to stay on duty when other staff did not come to work. This was not by choice but is required. I understand the need to control the budget but this bill would cause the moral for all to suffer. The number of excluded civil service employees is low and the ability of each director to control any type of overtime could be done. We currently are not hiring any supervisor's (Capt, Sgt, Lt) for OT if we have staff that can be assigned. But it does happen and I don't feel it would be fair that I work a 16-hour shift and not be compensated fairly.