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**STATE OF HAWAII**  
**HAWAII LABOR RELATIONS BOARD**  
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January 30, 2013

To: The Honorable Clayton Hee, Chair,  
The Honorable Maile Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary & Labor

Date: February 1, 2013  
Time: 09:00 a.m.  
Place: Conference Room 016, State Capitol

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

**Re: S.B. No. 1248 Relating to Collective Bargaining**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The bill requires that a complaint not resolved within 30 days by the Hawaii Labor Relations Board be deemed resolved in favor of the complainant.

**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**

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). In FY2009-2010, 48 collective bargaining cases and 40 OSHA appeals were filed. In FY2010-2011, 37 collective bargaining cases and 21 OSHA appeals were filed. The average number of collective bargaining cases filed within the past two years is 42 and 30 OSHA appeals.

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

Testimony on S.B. No. 1248  
Senate Judiciary & Labor Committee Hearing:

From: Hawaii Labor Relations Board  
February 1, 2013 at 10:30 a.m.

were critical in resolving cases in a timely manner. As of 6/0/2010, the number of pending cases was 113 compared to 127 as of 6/30/2011. The Board unfortunately cannot support this bill without the reinstatement of the three legal positions and even then the staffing may not be sufficient.

Thank you for this opportunity to testify on this bill.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1248, RELATING TO COLLECTIVE BARGAINING.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, February 1, 2013

**TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Steve K. Miyasaka, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of the Attorney General strongly opposes this bill.

This bill proposes that complaints before the Hawaii Labor Relations Board (“Board”) be resolved in favor of the complainant any time a complaint is not resolved within thirty days.

This bill appears to be subject to a challenge based on an application to a proceeding in violation of article I, section 5, of the Hawaii State Constitution, which provides, “No person shall be deprived of life, liberty or property without due process of law. . . .”

First, the consequence is a possible violation of a respondent’s right to due process of law because a respondent may be found liable without having any meaningful opportunity to present a case. A respondent has no control over being named a party in a complaint. If the respondent is named by the complainant, that named respondent must respond to the complaint or be in default.

Under this bill, the respondent would lose, regardless of the merits of the case, solely because the Board’s schedule did not allow it to resolve the case within thirty days or the complainant delayed the hearing process until thirty days had lapsed from the filing of the complaint. The respondent has no control over either event, yet under the proposed bill, would be required to provide a remedy to the complainant without any ability to have a meaningful hearing, to present a case or to defend itself.

Second, thirty days is an inadequate amount of time for the Board to complete the entire process of hearing a case and deciding it which could result in the violation of a party’s due

process rights. For example, in some cases, the parties may need to present numerous witnesses and/or exhibits over an extended period of time. Further, the unavailability of the witnesses, the parties, counsel for the parties, or the Board itself may lead to a protracted hearing. The prime example of this occurring is Prohibited Practice Complaint No. CE-05-781 (Hawaii State Teachers Union) where the hearing was held over a ten-month period of time. If the provision proposed in this bill were in existence at the time Prohibited Practice Complaint No. CE-05-781 was filed, the Union would have been the prevailing party by merely dragging the hearing process beyond thirty days.

Although the Board has some measure of authority to expedite the hearing, it lacks the ability to restrict a party to present relevant evidence and/or witnesses in order to complete the presentation of its case. To restrict the presentation of relevant evidence would infringe upon a parties right to due process of law. Further to restrict the manner in which a party decides to present its case may also violate the Due Process Clause.

Finally, if the intention of the bill is to expedite the scheduling of hearings by the Board, there is already an administrative rule, Section 12-42-47, Hawaii Administrative Rules, that requires that hearings for prohibited practice complaints be scheduled within ten to forty days after the complaint is filed. By rule the Board is already required to schedule a hearing within a specified period of time. Because the Board hears more than prohibited practice complaints, the bill could specify that the Board schedule a hearing within that period or some other specified period of time. This would not infringe upon any parties right to due process of law.

If the intention of the bill is instead to expedite the decision making process by the Board, this could be accomplished by requiring the Board to issue a decision within a specified number of days after the completion of the hearing. This would not infringe on any parties right to due process of law.

We respectfully ask this Committee to hold this bill.

# LATE TESTIMONY

NEIL ABERCROMBIE  
GOVERNOR



KATHRYN S. MATAYOSHI  
SUPERINTENDENT

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

**Date:** 02/01/2013

**Committee:** Senate Judiciary and Labor

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** SB 1248 RELATING TO COLLECTIVE BARGAINING.

**Purpose of Bill:** Requires that a complaint not resolved within 30 days by the Hawaii labor relations board be deemed resolved in favor of the complainant.

**Department's Position:**

The Department of Education opposes S.B. 1248, which requires that a complaint not resolved within 30 days by the Hawaii labor relations board be deemed resolved in favor of the complainant. 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.