

ACT 108

H.B. NO. 1815-78

A Bill for an Act Relating to Collective Bargaining.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 89-11, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 89-11 Resolution of disputes; grievances; impasses.** (a) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewed agreement. In

the absence of such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

The board shall render assistance to resolve the impasse according to the following schedule:

- (1) **Mediation.** Assist the parties in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists.
- (2) **Fact-finding.** If the dispute continues fifteen days after the date of the impasse, the board shall appoint, within three days, a fact-finding board of not more than three members, representative of the public, from a list of qualified persons maintained by the board. The fact-finding board, shall, in addition to powers delegated to it by the public employment relations board, have the power to make recommendations for the resolution of the dispute. The fact-finding board, acting by a majority of its members, shall transmit its findings of fact and any recommendations for the resolution of the dispute to both parties within ten days after its appointment. If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.
- (3) **Arbitration.** If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision

on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

- (4) The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer shall submit to the appropriate legislative bodies his recommendations for the settlement of the dispute on all cost items together with the findings of fact and any recommendations made by the fact-finding board. The exclusive representative may submit to the appropriate legislative body its recommendations for the settlement of the dispute on all cost items.

(d) Notwithstanding any other law to the contrary, if a dispute between a public employer and the exclusive representative of optional appropriate bargaining unit (11), firefighters, exists over the terms of an initial or renewed agreement, the board shall assist in the voluntary resolution of the impasse by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.

If, after eighteen working days from the date of impasse the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel, the board shall immediately notify the employer and the exclusive representative that the issues in dispute shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

Within twenty-one working days from the date of impasse, two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The impartial third member of the arbitration panel shall be selected by the two previously selected panel members and shall chair the arbitration panel.

In the event that the two previously selected arbitration panel members fail

to select an impartial third arbitrator within twenty-four working days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the impartial arbitrator shall be selected. Within five calendar days after receipt of such list, the parties shall alternately strike names therefrom until a single name is left, who shall be immediately appointed by the board as the impartial arbitrator and chairman of the arbitration panel.

Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a complete final offer which shall constitute a complete agreement and shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions it is proposing for inclusion in the final agreement.

Within twenty calendar days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.

Within thirty calendar days after the conclusion of the hearing, a majority of the arbitration panel shall select the most reasonable of the complete final offers submitted by the parties and shall issue a final and binding decision incorporating that offer without modification.

In reaching a decision, the arbitration panel shall give weight to the factors listed below and shall include in a written opinion an explanation of how the factors were taken into account in reaching the decision:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public.
- (4) The financial ability of the employer to meet these costs.
- (5) The present and future general economic condition of the counties and the State.
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other State and county employees generally.
- (7) The average consumer prices for goods for services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (10) Such other factors, not confined to the foregoing, which are normally

or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration, or otherwise between the parties, in the public service or in private employment.

The decision of the arbitration panel shall be final and binding upon the parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. The parties may, at any time and by mutual agreement, amend or modify the decision.

Agreements reached pursuant to the decision of an arbitration panel as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

The costs for mediation shall be borne by the board. All other costs incurred by either party in complying with these provisions, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them, except that all costs and expenses of the impartial arbitrator shall be borne equally by the parties."

**SECTION 2.** New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.\*

**SECTION 3.** This Act shall take effect on July 1, 1978.

(Approved May 23, 1978.)

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\*Edited accordingly.