

ACT 252

H.B. NO. 2168-80

A Bill for an Act Relating to Collective Bargaining.

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

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

1. By amending the definition of "strike" to read as follows:

"(17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and except in the case of absences authorized by public employers, includes such refusal, absence, stoppage, or abstinence by any public employee out of sympathy or support for any other public employee who is on strike or because of the presence of any picket line maintained by any other public employee; provided, that

nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.”

2. By adding two new definitions to be appropriately designated and to read as follows:

- “( ) “Essential employee” means an employee designated by the public employer to fill an essential position.
- “( ) “Essential position” means any position designated by the board as necessary to be worked in order to avoid or remove any imminent or present danger to the public health or safety, which position shall be filled by the public employer.”

SECTION 2. Section 89-12, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 89-12 Strikes, rights and prohibitions.** (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board, or (2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration, or (3) is an essential employee.

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

(c)(1) If a strike, which may endanger the health or safety of the public, is about to occur or is in progress, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to:

- (i) Designation of essential positions; and
  - (ii) Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.
- (2) The public employer shall give notice to an essential employee:
- (i) By serving or delivering a copy thereof to the essential employee being notified; or
  - (ii) By mailing a copy thereof by certified or registered mail, return receipt requested, deliverable to the addressee only, addressed to the essential employee being notified at his place of residence; or
  - (iii) If service cannot be effected as set forth in (2)(i) or (2)(ii) above, or if the strike is in progress, by publishing at least once a day for three consecutive days, a copy thereof in both of the newspapers having the largest general circulation in the State. After the final publication, it shall be conclusively presumed that the essential employee has re-

ceived such notice.

After receipt of notice, it shall be the duty of the essential employee to contact the public employer for his work assignment.

(d) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the public employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the public employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.

(e) If any employee organization or any employee is violating or failing to comply with the requirements of this section, or if there is reasonable cause to believe that an employee organization or an employee will violate or fail to comply with such requirements, the public employer affected shall, forthwith, institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section is conferred upon each circuit court, and each court may issue in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. The right to a jury trial shall not apply to any proceeding brought under this section.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 13, 1980.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.