

## ACT 232

S.B. NO. 2112

A Bill for an Act Relating to Collective Bargaining.

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

SECTION 1. Section 89-5, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (f) to read:

“(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators<sup>[1]</sup>~~members of fact-finding boards]~~ arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section 28-8.3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.”

2. By amending subsection (i) to read:

“(i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

- (1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
- (2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
- (3) Resolve controversies under this chapter;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
- (5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;
- (6) Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators~~[, members of fact-finding panels,]~~ or arbitrators;
- (7) Establish a fair and reasonable range of daily or hourly rates at which mediators~~[, members of fact-finding panels,]~~ and arbitrators on the lists established under paragraph (6) are to be compensated;
- (8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to all concerned parties, including mediators~~[, members of fact-finding panels]~~ and arbitrators, statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations;
- (9) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91; and
- (10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.”

SECTION 2. Section 89-9, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of ~~[fact-finding or]~~ arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.”

SECTION 3. Section 89-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

“(c) An impasse over the terms of an initial or renewed agreement and the date of impasse shall be as follows:

- (1) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists. The date on which the board receives notice shall be the date of impasse; and
- (2) If neither party gives written notice of an impasse and there are unresolved issues on ~~[April 15]~~ January 31 of ~~[an even-numbered year,]~~ a year in which the agreement is due to expire, the board shall declare on ~~[April 15]~~ January 31 that an impasse exists and ~~[April 16]~~ February 1 shall be the date of impasse.

(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (5), teachers and other personnel of the department of education; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (7), faculty of the University of Hawaii and the community college system; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; or bargaining unit (13), professional and scientific employees, the board shall assist in the resolution of the impasse as follows:

- (1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist 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[-];
- ~~[(2) Fact-finding. If the impasse continues twenty days after the date of impasse, the board shall immediately appoint a fact-finding panel of not more than three members, representative of the public from a list of qualified persons maintained by the board. The fact-finding panel shall, in addition to powers delegated to it by the board, make recommendations for the resolution of the impasse pursuant to subsection (f). The fact-finding panel, acting by a majority of its members, shall transmit a report on its findings of fact and recommendations for the resolution of the impasse to both parties within sixty days after its appointment and notify the board of the date when it transmitted the fact-finding report.~~
- ~~[(3) (2) Mediation. If the impasse continues [ten days after the transmittal of the fact-finding report,] more than twenty days, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. [The parties shall make the fact-finding report available to the mediator or mediators.] The board may compel the parties to attend mediation, reasonable in time and frequency, until the fiftieth day of impasse. Thereafter, mediation shall be elective with the parties, subject to the approval of the board;~~
- ~~[(4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report,<sup>1</sup> which shall be released by the board for public information.~~
- ~~(5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit~~

the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the employers' recommendations for the settlement of the impasse on all cost items together with the fact-finding report. The exclusive representative may submit to the appropriate legislative bodies its recommendations for the settlement of the cost items in impasse.]

- (3) Report of the board. The board shall promptly report to the appropriate legislative body or bodies the following circumstances as each occurs:
- (A) The date of a tentative agreement and whether the terms thereof are confidential between the parties;
  - (B) The ratification or failure or ratification of a tentative agreement;
  - (C) The signing of a tentative agreement;
  - (D) The terms of a tentative agreement; or
  - (E) On or about the fiftieth day of impasse, the failure of mediation.
- (4) The parties shall provide the board with the requisite information; and After the fiftieth day of impasse, the parties may resort to such other remedies that are not prohibited by any agreement pending between them, other provisions of this chapter, or any other law."

2. By amending subsection (f) to read:

“(f) [~~A fact-finding panel in making its report and an arbitrator or~~] An arbitration panel in reaching its decision shall give weight to the following factors and shall include in its written report or decision an explanation of how the factors were taken into account:

- (1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be[-];
- (2) Stipulations of the parties[-];
- (3) The interests and welfare of the public[-];
- (4) The financial ability of the employer to meet these costs; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues[-];
- (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 in Hawaii[-];
- (7) The average consumer prices for goods or 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[-]; and
- (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, [~~fact-finding,~~] arbitration, or otherwise between the parties, in the public service or in private employment."

3. By amending subsection (j) to read:

“(j) The costs and expenses for mediation [~~and fact-finding services~~] provided under subsection (d) or (e) shall be borne by the board. The costs and expenses for any other services performed by neutrals pursuant to mutual agreement of the parties and the costs for a neutral arbitrator shall be borne equally by the parties. All other costs incurred by either party in complying with this section, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them.”

SECTION 4. Section 89-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be lawful for an employee, who is not prohibited from striking under subsection (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike under the following conditions:

- (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) The collective bargaining agreement and any extension of the agreement has expired; and
- (4) The exclusive representative has given a ten-day notice of intent to ~~strike [to the board and]~~, together with a statement of its position on all remaining issues in dispute, to the employer[-] and the board.

Within three days of receipt of the notice of intent to strike, the employer shall submit its position on the remaining issues in dispute that are included in the statement transmitted by the exclusive representative with its notice of intent to strike. The board shall immediately release the information on the positions of the parties to the public.”

SECTION 5. Section 89-2, Hawaii Revised Statutes, is amended by deleting the definition of “fact finding”.

[~~““Fact-finding” means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or more neutral fact-finders, and the making of recommendations for settlement of the impasse.”~~]

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

**Note**

1. So in original.