

The House of Representatives  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Labor & Public Employment  
Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair

DATE: Tuesday, February 17, 2009  
TIME: 8:30 a.m.  
PLACE: House Conference Room 309  
State Capitol  
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL  
646, AFL-CIO ON H.B. 1723 RELATING TO PUBLIC EMPLOYEES**

My name is Dayton M. Nakanelua, and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW currently represents approximately 8,700 blue collar, non-supervisory employees and 2,800 institutional, health, and correctional workers in the State of Hawaii and the various counties. We also represent approximately 3,000 retired members who currently receive health benefits. We oppose House Bill 1723 which eliminates as a negotiable matter contributions to health benefit plans for all public sector employees and retirees and reduces employer contributions to 55% of the monthly cost for a family plan.

When chapter 89 was adopted in 1970 the legislature defined the scope of collective bargaining as follows:

"Collective bargaining" means the performance of the mutual obligations of the public employer and the

exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession. (Emphasis added).

1970 Haw. Sess. L. Act 171, "Sec.-2" at 308. In section 3 of the Act, lawmakers included as part of the rights of employees the right to organize for the purpose of engaging in bargaining over "wages, hours, and other terms and conditions of employment."

1970 Haw. Sess. L. Act 171, "Sec.-3" at 310.

Group health insurance has long been recognized to be a mandatory subject of collective bargaining because it pertains to "wages, hours, and other terms and conditions of employment." As explained in W.W. Cross & Co. v. N.L.R.B. 174 F.2d 875, 878 (1<sup>st</sup> Cir. 1949):

[T]he word "wages" in . . . the Act embraces within its meaning direct and immediate economic benefits flowing from the employment relationship. And this is as far as we need to go, for so construed the word covers a group insurance program for the reason that such a program provides a financial cushion in the event of illness or injury arising outside the scope of employment at less cost than such a cushion could be obtained through contracts of insurance negotiated individually. (Emphasis added).

See N.L.R.B. v. Transport Service Company, 973 F.2d 562 (7<sup>th</sup> Cir. 1992) (Employer has duty to continue health and pension payment where there was a failure to bargain in good faith over the subject). Since at least 1985 collective bargaining agreements negotiated under chapter 89 have uniformly contained provisions specifying the amount of employer and employee contributions for health benefit plans and other employee benefit programs.

The elimination of this right which public employees have enjoyed for many decades would violate Article XIII,

Section 2 of the State Constitution. In United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai`i 46, 62 P.3d 189 (2002), the Supreme Court held that a statute which precludes bargaining over the subjects covered within the meaning of "collective bargaining" constitutes an infringement of the right of public employees to organize for the purposes of collective bargaining. As the court explained the framers of our constitution (which included such distinguished lawmakers like former Senator Nadao Yoshinaga) did not intend to grant to legislators absolute discretion to determine the scope of what is negotiable.

Based upon our careful review of the proceedings of the constitutional convention, we find that the framers of article XII, section 2 did not intend to grant our legislators complete and absolute discretion to determine the scope of "collective bargaining." There are evidence in the 1968 proceedings indicating that the framers were not in favor of granting the legislature the ultimate power to deny the right to organize for the purpose of collectively bargaining. For instance, the framers defeated an amendment in the committee of the whole to limit public employee rights to "procedures as established by law in the areas therein prescribed" by a vote of 62 to 13. 1 Proceedings 1968 at 495.

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1 Proceedings 1968 at 497 (emphasis added). Based upon Delegate Yoshinaga's remarks, it is clear that the intent and object of the framers was to extend to public employees similar rights to collective bargaining previously adopted in 1950 for "persons in private employment" under article XII, section 1 of the Constitution. 1 Proceedings 1968 at 497. A construction of article XII, section 2 that would allow the legislature to have absolute power to deny public employees the right to negotiate on core issues of collective bargaining is simply inconsistent with the framers' objectives in adopting this provision. (Emphasis added).

101 Hawai`i at 52, 53, 62 P.3d at 195, 196. Health benefit plans are a core subject of collective bargaining. Accordingly, we request that you respect the constitutional right of public employees, and not pass a measure which will inevitably trigger another court challenge to legislative action.