

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

Committee on Finance

Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

DATE: Monday, March 2, 2009  
TIME: 2:30 p.m.  
PLACE: Conference Room 308  
State Capitol  
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL  
646, AFL-CIO ON H.B. 938 RELATING TO CAFETERIA WORKERS**

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 represents approximately 8,500 blue collar non-supervisory employees in bargaining unit 1 and 2,900 institutional, health and correctional workers in bargaining unit 10. The Department of Education employs more than 2,300 employees in bargaining unit 1. The UPW opposes House Bill No. 938 which creates a two tier wage and compensation system for cafeteria workers on and after July 1, 2009. Under this measure those employed prior to July 1, 2009 will purportedly be hired on a twelve month basis and those employed after July 1, 2009 will be hired on a ten month basis. In addition, vacation and sick leave benefits for cafeteria workers are supposed to be the same as cafeteria managers in another bargaining unit. We oppose

this measure because wages, hours, and other terms and conditions of employment of cafeteria workers are mandatory subjects of collective bargaining, and creating a two tier wage structure is inequitable and unjustified.

As you know, since 1968 public employees in Hawaii have been afforded the constitutional right to engage in collective bargaining under Article XIII, Section 2 of the State constitution. Under chapter 89 employees were granted the statutory right to negotiate over wages, hours of work, and other terms and conditions of employment. See Section 89-3, HRS. As indicated in Section 61 of the current unit 1 agreement the work schedules, hours of work and compensation of DOE employees (including cafeteria workers) have been recognized as mandatory subjects of bargaining. See attachment 1. This measure interferes with the process of collective bargaining, and changes the substantive terms by which bargaining unit 1 employees in the Department of Education (DOE) are scheduled and paid. As our Supreme Court has held when the legislature seeks to impose by statute what wages to pay in a certain timeframe it violates the constitutional right to engage in collective bargaining. See United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai'i 46, 62 P.3d 189 (2002) (A statute which freezes wages for two years is unconstitutional because it affects a "core" subject of collective bargaining). This bill also sets the sick leave and vacation benefits based on employees in another bargaining unit (cafeteria managers are represented by HGEA).

We fundamentally disagree with the proponents of this measure regarding a two tier wage and compensation structure. As indicated in Roberts' Dictionary of Industrial Relations (3rd ed. 1986) at 727, such a plan is not generally favored because it is inequitable:

Two-tier wage structure. A plan allowing reduced pay and benefits for new hires while maintaining or improving the wages, benefits, and job security of current employees. Unions have been reluctant to agree to two-tier wage structures, under which pay for newly-hired employees may be as much as 50 percent lower than the regular pay rate. Such plans, however, are sought by employers, who cite financial problems or the need to improve competition with nonunion companies. According to a 1983 Bureau of National Affairs Survey, about 5 percent of the surveyed contracts contained some form of two-tier wage structure.

Source References: "Analysis of 1983's Most Significant Events," Retail/Services Labor Report, January 9, 1984; "Analysis of What's Ahead in 1984," Retail/Services Labor Report, January 16, 1984. (Emphasis added).

Paying employees on a ten month basis and reducing their pay violates the principle of "equal pay for equal work" which is a vital component of the merit principle recognized in Section 76-1 (5), HRS. That is why when DOE converted teachers from 10 month to 12 month employees for multi-track schools it adjusted their salaries by 20%, and adjusted their fringe benefits including sick leave and vacation benefits. See attachment 2 at p. 79, ¶ V.A.1.

There is also no justification for the proposed changes because DOE is already afforded too much flexibility in the hiring and retaining of cafeteria workers under "executive orders, executive directives, or rule." Numerous cafeteria workers throughout the state are hired on a limited term contract with no civil service protection. These employees are not "regular" employees, and occupy such positions as "substitutes" in cafeteria helper jobs and are paid at the lowest wage levels. These employees are not even assured "full-time" or "part-time employment" as contemplated under the current statutory language of Section 302A-637 (second

paragraph). Those who are hired as "regular" employees under the merit system are needed throughout the calendar year because they are essential for cleaning and maintaining our school cafeterias and facilities when schools are not in session. For all of the foregoing reasons we urge you not to pass House Bill No. 938 (or any version thereof).