

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

DATE: Friday, February 27, 2009
TIME: 9:00 a.m.
PLACE: Conference Room 211
State Capitol
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO ON S.B. 165, S.D. 1
RELATING TO PUBLIC SCHOOL 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 Senate Bill No. 165, S.D. 1 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 "calendar year" basis and those employed after July 1, 2009 will be hired on a "school year" basis. In addition, those in the second category will have their wages and compensation reduced and spread over a calendar year.

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 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).

We fundamentally disagree with the proponents of this measure regarding a two tier wage 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 "school year" basis and reducing their pay to a "calendar year" period 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 Senate Bill No. 165, S.D. 1 (or any version thereof).