

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

Committee on Health

Rep. Ryan I. Yamane, Chair  
Rep. Scott Y. Nishimoto, Vice Chair

DATE: Tuesday, March 24, 2009  
TIME: 10:00 a.m.  
PLACE: Conference Room 329  
State Capitol  
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO ON S.B. 1673, S.D. 2  
RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION**

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 has previously submitted testimony in opposition to Senate Bill No. 1673, S.D. 2 which was scheduled for hearing on March 20, 2009 (and rescheduled for hearing on March 24, 2009). We wish to supplemental our previous written testimony to address Part V of the measure on criminal history records and the use of criminal records against employees of the Hawaii Health Systems Corporation (HHSC). We are opposed to Part V because it seeks to totally exempt HHSC from the protections afforded to employees under Section 831-3.1 Hawaii Revised Statutes (HRS) (See page 14 subsection (d)), and violates the constitutional rights of employees.

As you know, in recent years the legislature has significantly amended the fair employment practices act (chapter 378) and the public employment statute (chapter 78) to permit employers to inquire into the conviction records of job applicants and employees in various occupations. See Sections 378.2.5 and 78-2.7, HRS. Records of criminal convictions may only be considered where it "bears a rational relationship to the duties and responsibilities of the position" under Section 378.2.5, HRS, or for employees who work "in close proximity with children, dependent adults, or persons" committed to correctional facility under Section 78-2.7 (b), HRS. A prior criminal conviction does not disqualify an employee of the State or its political subdivisions or agency unless the crime in question "bears a rational relationship to the duties and responsibilities of the job" under Section 831-3.1 (b) and (c), HRS. These statutory provisions already apply to HHSC because it is "an instrumentality and agency of the State" under Section 323F-2 (a), HRS.

The proponents of this measure seek a total exemption from existing statutory requirements at page 14 of this measure. No agency or subdivision of the State has been afforded such an exemption, and none is warranted here. If enacted such an exemption would eliminate basic due process rights for existing employees of HHSC, and violate the right of public employees to engage in collective bargaining under Article XIII of the State constitution. The discipline or discharge of an employee is a mandatory subject of collective bargaining. For years public employers and the UPW have negotiated over this subject matter and the current agreement in Section 11 provides that employees may be subject to discipline "for just and proper cause," and Section 14 prohibits an abridgement and amendment of prior rights of employees under the constitution, statutes, and rules

and regulations. See attachment. Where the legislature seeks to change by statute a mandatory subject of bargaining it violates Article XIII, Section 2 of the State constitution. See United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai`i 46, 62 P.3d 189 (2002) (statute which imposed a wage freeze for 2 years was unconstitutional). In addition, this law would impair the contractual rights of existing employees of HHSC and violate Article I, Section 10 of the U.S. Constitution. See University of Hawai`i Professional Assembly v. Cayetano, 183 F.3d 1096 (9th Cir. 1999) (where a statute substantially impairs a contractual relationship it is unconstitutional). For the foregoing reasons we urge you not to change the existing statute regarding use of criminal history records of employees of HHSC.