Case Study Of The Hawaii Public Employment Relations Act

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Contents

CHAPTER 1

INTRODUCTION

We studied the operation of Hawaii's public employee collective-bargaining law to assess how one public jurisdiction had handled employee-management relations problems. Hawaii's law goes further than do the laws of most public jurisdictions in adopting the customs of private-sector bargaining. It provides for statutory bargaining units; union security; a defined scope of bargaining; third-party administration; and, within the limits of public health and safety, the right to strike.

When we made our study in June 1973, the Hawaii law had been in effect about 3 years. It has been subjected to much analysis and discussion by representatives of management and labor, as well as by the members of the Hawaii Public Employment Relations Board and experts at the University of Hawaii. We discussed the law with most of the principals involved in the bargaining process, examined board records, and studied several analyses of the law by experts at the university.

In general, we found a consensus on the strong and weak points of the law as well as general agreement that the law, overall, was working reasonably well. One official told us that it is generally recognized that there are several technical-wording errors in the law, but no serious problems seem to have resulted from them. Although there were many suggestions for improvements, almost no one we talked with was opposed to the principle of collective bargaining by public employees or the major provisions of the law--despite the seemingly radical nature of some of them.

In formulating the law, and in its first 3 years of operation, the legislature, the board, and the courts have been called upon to deal with issues that will face any jurisdiction that decides to adopt a collective-bargaining law. Experience with the Hawaii law may provide a basis for assessing issues that will be raised in other public jurisdictions in formulating an employee-management relations program.

Hawaii has the most centralized State and local government structure in the United States; its population is relatively small; and its public employees are, by and large,

concentrated in small geographic areas. These factors have influenced how Hawaii has handled issues, and therefore some of its solutions may be inapplicable to other jurisdictions, such as the Federal Government.

We discussed our study with numerous Hawaii officials, including Hawaii Public Employment Relations Board members and staff, the Governor's negotiator, experts and educators from the University of Hawaii, and officials of all the unions which represented State employees.

GENERAL FEATURES OF HAWAII LAW

The Hawaii Public Employment Relations Act (see app. I), enacted in July 1970, grew out of an amendment to the State constitution adopted by the voters in November 1968. The amendment gave public employees the right of collective bargaining "as prescribed by law," a right formerly limited to private-sector employees. Previously Hawaii public employees had been allowed only to organize and join employee organizations and to present grievances to the government; public employee strikes were prohibited.

The law is designed to promote more effective government by granting public employees a voice in deciding questions affecting their wages, hours, and working conditions. The law states that joint decisionmaking is the modern way to manage because employees are more responsive in contributing their ideas and energies to government. At the same time the law is intended to provide positive guidelines for a rational method of dealing with disputes and work stoppages and thereby maintain a favorable political and social environment.

The law deals directly with a number of issues which many other jurisdictions either left for later resolution or specifically excluded from the bargaining process. This approach has proved to be the source of both the strengths and the weaknesses of the program. For example, in providing for predetermined bargaining units and a modified agency shop, the law simplified questions that had proved troublesome in other jurisdictions and thereby expedited bargaining on major issues. On the other hand, because management rights (extensively defined in ch. 89, sec. 9, of the law) were excluded from bargaining and rigid impasse procedures were prescribed, problems have resulted that many authorities think could have been avoided.

CHAPTER 2

PARTIES TO NEGOTIATIONS AND RELATED ISSUES

The first requirement of bilateral negotiations is the existence of two clearly defined parties meeting in good faith as equals. In an institution as impersonal and complex as modern government, care must be taken to define exactly who is the employer and who, for bargaining purposes, is an employee. Related issues, such as the question of the agency shop and employee rights, are also important. The Hawaii law deals with these matters explicitly.

EMPLOYER DEFINED (sec. 89-2)

"Employer" is defined as the Governor, the city and county mayors, the State board of education, or the University of Hawaii's board of regents.

The Governor has appointed a single negotiator to represent him at all negotiations. Although this has led to complaints of delay from some unions, it has provided a uniform approach to all negotiations. It has also assured the Government of a certain degree of expertise in its dealings with the unions and has assured the unions of dealing with the top level of government.

In Hawaii the bargaining units cross agency and jurisdictional lines. For example, all nonsupervisory white-collar workers of the State and counties are covered by a single agreement.

Minor questions have been raised concerning the appropriateness of certain designated officials' being present at particular negotiations. For example, the teachers' union has pointed out that it must deal with three separate "employers" (the Governor's negotiator, the department of education, and the board of education), each having different positions on the issues. However, in general, the definition of employer appears to be reasonably clear and practicable.

EMPLOYEES DEFINED (sec. 89-2)

All employees are included in the bargaining units except those specifically excluded. Those excluded include elected and appointed officials, top administrative and personnel officials, their confidential assistants, part-time and temporary employees, and military members of the National Guard. Supervisors are specifically included in the bargaining units.

The Hawaii Public Employment Relations Board narrowly interpreted the law to exclude management personnel but made it clear that only top management, not middle management was to be excluded. It ruled, for example, that police captains and school principals had the right to be in bargaining units. The board also narrowly interpreted the exclusion of confidential employees, confining it to persons involved in confidential matters relating to employee relations.

Nevertheless unions have made some minor complaints about too many employees' being excluded, particularly those in the confidential employee category. Union officials said this had occurred because whole personnel departments were excluded in some cases when only a few employees were truly involved in confidential matters. A management official also pointed out the need to somehow provide for excluded employees who did not get the benefits negotiated for other employees. The law ignored this question, and the matter has been handled by legislative amendment.

APPROPRIATE BARGAINING UNITS (sec. 89-2)

The question of the appropriate employee group to constitute a bargaining unit is fundamental to the bargaining process. For example, the scope of bargaining depends greatly on the members of the unit in whose behalf the bargaining is conducted.

Hawaii handled the matter by predetermining the bargaining units in the law. It set up eight mandatory and five optional bargaining units encompassing nearly all public employees in the State. Employees in the five optional units were given the opportunity to vote for membership in one of the eight mandatory units or to be members of separate units. Since the employees in all five optional units voted for

separate unit representation, there are 13 State-wide units. By contrast, other jurisdictions have been faced with determining and redetermining appropriate bargaining units, through either negotiation or administrative determinations.

EXCLUSIVE REPRESENTATIVE

After appropriate bargaining units are determined, a labor organization must be certified as the exclusive representative of the unit. Under the Hawaii law (sec. 89-7), any labor organization proving a 30-percent show of interest of all the members of the bargaining unit may petition for recognition and an election will be held among all the members of the unit. Competing labor organizations may appear on the ballot if they have a 10-percent show of interest. The ballot also offers a choice of "no representation." The exclusive representative is decided by a majority of the votes cast and runoff elections are held, if necessary, to reach majority agreement.

The law also provides for decertification under voting procedures similar to the original certification. Decertification petitions can be filed only if 1 year has passed since the last election and, when an employment agreement is in effect, must be filed between 60 and 90 days before the agreement expires. The board supervises all petitions and elections.

There were apparently no major problems with the elections in Hawaii. All 13 units elected representatives with nearly 80 percent of the unit members voting. Less than 5 percent voted for no representation. The white-collar nonsupervisors unit voted for the same union as did the supervisors unit. The employees of six bargaining units selected the same organization, and it now represents about 35 percent of the public employees covered by the Hawaii law. Two bargaining units selected another labor organization.

QUESTION OF UNION SECURITY

It is generally recognized that effective collective bargaining requires an exclusive representative to bargain for all the employees in a given unit. The Hawaii law (sec. 89-8) provides for this by requiring the certified labor organization to represent all employees in the unit without discriminating against nonmembers. This leads to the question of who

pays the expenses of organizing, petitioning, negotiating, and representing the employees in grievances. In Government there has been a reluctance to make union membership a condition of employment. This is the controversial issue of the right to work versus the union (or agency) shop. Here again the question can be left for negotiation or administrative determination or it can be decided by law.

The Hawaii law (sec. 89-4) deals with the issue directly, providing what has been called a modified agency shop. It grants the employee the right to join or not join a union but requires that a nonmember pay a service fee to the exclusive representative. The amount of the fee, which must be certified by the board, is to cover the costs of negotiating and administering the contract for the unit. It cannot exceed a member's union dues. The law thus tries to preserve the right-to-work principle and at the same time prevent "free riders."

Surprisingly there has been little objection to the principle of service fees, but there has been controversy concerning the amount of the fees. In practice, all fees thus far certified have been equal to the employees' union dues. This has been questioned on the ground that a large part of union dues is used to pay for national affiliation and for social activities which are of no benefit to nonmembers. Union dues can also be used to fight decertification. Therefore it is argued that nonmembers are paying more than their fair share of the cost of bargaining.

In a formal ruling on one such question, the board found that the union's bargaining costs actually exceeded the funds it derived from dues and service fees. The board therefore certified the amount of the fee equal to membership dues. In so ruling, however, it reserved the right to review union records annually and to require unions, in the future, to show that amounts paid for national affiliation are to include legitimate bargaining costs.

It may be desirable for the law to include a bill of rights to insure that nonmembers' rights are preserved. For example, the law requires that an annual audited financial report be given to union members but does not require that it be given to nonmembers.

CHAPTER 3

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD (sec. 89-5)

The Hawaii law, following the practice of a number of other public jurisdictions, set up a public employee relations board to administer the law and to aid in settling disputes. The law provides for the Governor to appoint three members--one representing management; one representing labor; and one, the chairman, representing the public. The Governor, in selecting the management and labor representatives, must give first consideration to names submitted by public employers and employee organizations.

The board's principal duties are establishing procedures for representative elections and resolving disputes concerning bargaining issues, grievances, and prohibited practices. The board also must set requirements to protect public health and safety during public employee strikes. If there is an illegal strike, the board must institute legal proceedings. The board also makes studies and formulates recommendations on public employee bargaining.

Board members, at the time of our study, included labor and management representatives--neither of whom was from the public sector--and the chairman, a former public prosecutor. An executive officer and a hearings officer, both attorneys; a research director; a secretary; and two stenographers assist the board.

As of June 1973, the board had rendered 33 decisions, including the 13 original representation certifications (one for each bargaining unit). Some of the issues that surfaced concerning the board are discussed below.

PROPER MAKEUP OF BOARD

One authority pointed out that the tripartite makeup of the Hawaii board, with labor and management representatives, was not appropriate. He said that all members should be neutral and that there should not be a separate labor or management interpretation of the law.

In our discussions with union and employee representatives, however, no one expressed the feeling that any board member had a management or labor bias.

It appears vital that both labor and management have faith in the impartiality of the board. Therefore it may be preferable that the law not specify that board members "represent" labor or management.

The general consensus was that the three-member board was the optimum size, at least for Hawaii. The board members themselves felt that decisions could be rendered faster and more efficiently with a three-member board than with a larger board. Only one union leader we talked with thought that the board had too few members.

Several persons expressed the opinion that the term of board members should be long enough to make the members independent of the Governor, whose term of office is 4 years. Board terms under the Hawaii law overlap those of the Governor, but only slightly. The Governor can reappoint or replace board members every 6 years.

THIRD-PARTY ASSISTANCE

One duty of the Hawaii board is to keep lists of qualified individuals who can act as mediators, members of fact-finding boards, and arbitrators. The board also establishes daily and hourly rates of pay for these individuals' services. Upon impasse the board appoints mediators and factfinders to assist in settling disputes. When this fails and arbitration is agreed to, each party selects an arbitrator, and these arbitrators in turn, will choose a third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the board choses him.

The board pays the mediators and factfinders, apparently on the grounds that they are mandatory and in the public interest. Factfinding is particularly useful in that it provides an independent public record of the arguments at issue if a strike results.

Under the Hawaii law, arbitration is voluntary but, if agreed to by the parties, is final and binding. The parties share the arbitration costs.

CHAPTER 4

SCOPE OF BARGAINING

Once the parties to the negotiation and the rules concerning it are determined, it is necessary to decide the scope of bargaining. It is generally recognized that some matters are reserved for management to decide unilaterally. The question then is how to protect management rights and still give employees a meaningful voice in determining the terms and conditions of employment..

The Hawaii law specifies that it takes precedence over all conflicting laws or regulations, the only exception being when Federal grants-in-aid or other Federal allotments might be jeopardized. (See sec. 89-20.)

The law, even in its preamble, gives employees the right to bargain on wages, hours, and other terms and conditions of employment. Cost items agreed to, however, are subject to legislative approval, and no agreement can be made that would violate the merit principle or that of equal pay for equal work. The law excludes wage classifications, salary ranges, the number of incremental and longevity steps, and retirement benefits from negotiations. It also excludes certain listed management rights. Most of the officials we talked with in Hawaii were of the opinion that the management-rights provision had been the most troublesome thus far.

Several union officials expressed the desire to negotiate salary ranges, wage classification, and retirement benefits, in addition to the amount of pay. They felt much more strongly, however, about the limits imposed by the management-rights provision on the negotiations of hours and working conditions. All parties concede that, if interpreted narrowly, the management-rights provision could make negotiations meaningless.

The interpretation is crucial, because there seems to be an inherent conflict between what are working conditions and what are management rights. For example, we were told that management had refused to negotiate such issues as crew sizes for firemen, policies on transfers and work shifts for various employees, review of the tenure criteria for the university faculty, the number of nurses on a shift, and the

type and condition of garbage trucks--all on the ground that they involve management prerogatives. Clearly, according to the law, they do. But it is equally clear that they involve working conditions as well; hence the inherent conflict. The management-rights provisions of the law state, in part, that the employer is not to agree to any proposal that would interfere with maintaining efficiency.

Although the management-rights conflict has been involved in most negotiations thus far, it created the most serious controversy during the teachers' negotiations . The teachers' main demands were for reduced individual class size, a lower average student-teacher ratio, preparation periods, and scheduling of such periods. The board of education refused to negotiate the issues. The Hawaii Public Employment Relations Board eventually ruled that teacher ratios and preparation periods were negotiable, but that class sizes and scheduling preparation periods were not.

Several authorities have pointed out a potential danger in the management-rights provision: even after the parties have agreed to a contract, it will always be subject to a taxpayer's suit on the grounds that one or another of its provisions violates the management-rights section of the law.

Most union officials we talked with, several outside experts, and even the Governor's negotiator agreed that the management-rights provision was not required in the law. Management rights, they maintained, could be protected at the bargaining table. An additional danger, it was pointed out, was that if anything was omitted in listing management rights it opened the door for forced concessions on issues that should not be negotiated.

It is important to note that Hawaii's situation may be somewhat unique. Management rights are probably more easily protected when only 13 bargaining units are involved. In other public jurisdictions where there are many bargaining units and management negotiators, protecting management rights may be more critical.

CHAPTER 5

IMPASSE PROCEDURES

The Hawaii law (sec. 89-11) provides that the parties negotiate and include in their general agreements impasse procedures culminating in mandatory, binding arbitration. In the absence of such a provision, the law gives the parties the option of settling an impasse through voluntary arbitration or, providing certain requirements are met, a strike.

First, an impasse must be recognized or declared by the board and the parties must take certain steps to try to resolve it. These include 15 days for mediation, 3 days for selecting factfinders, and 10 days for factfinding. If the impasse remains unresolved, at this point it may, by mutual consent, be submitted to arbitration, in which case a decision is required within 20 days. If the parties do not agree to arbitration, they are free to take whatever legal action is necessary to resolve their dispute, except that no disruption of public services is allowed until 60 days after the factfinding board has made public its findings.

These procedures have been widely criticized for their inflexibility, because it is generally accepted that impasse procedures should be flexible and tailored to each particular situation. For example, mediation might require more or less than 15 days and it might best take place before or after impasse. Likewise, the duration of factfinding should depend on the number and complexity of the issues involved. The parties and the board should be allowed discretion in answering these questions.

Another problem has involved the need for the board to determine that an impasse exists. In the teachers' negotiations it made such a determination, and the parties went through all the required impasse procedures without settlement. The teachers then waited 60 days and announced their intention to strike. In the meantime, however, the circuit court ruled that the board decision on impasse was invalid because of a conflicting board finding that good-faith bargaining had not occurred in a prior period. The union was therefore prohibited from striking until it had gone through the entire impasse proceedings again. This frustrated the union's desire to strike while the legislature was in session

and before the shcool year was out. So it struck anyway, in the face of an injunction, with the result that Hawaii's only public employee strike in the 3 years of the law's operation was ruled illegal.

RIGHT TO STRIKE (sec. 89-12)

Under the Hawaii law, employees have the right to strike unless the board determines it would endanger public health and safety. The striking employees must be members of a bargaining unit having a certified representative. As previously stated, the employees must have satisfied all the impasse procedures, have observed a 60-day cooling-off period, and have given a 10-day advance notice of intent to strike to their employer and the board.

Surprisingly, no one we talked with in Hawaii objected to this right to strike. The importance of the provision protecting health and safety was emphasized; some jurisdictions include protection of "welfare" in the provision, but the people we talked with felt such protection was too broad to allow meaningful strikes.

An important question not yet faced under the Hawaii law is the status of employees whose work stoppage would probably endanger public health and safety; for example, policemen, firemen, and nurses. It seems unlikely that they would be allowed to strike. Yet the Hawaii law does not require the employer to submit impasses to compulsory arbitration, a provision which does exist for such employees in certain other jurisdictions.

Another unresolved strike question is the honoring of picket lines by the nonstrikers. Since the law has strict prerequisites for a strike, it appears that other public employees who refused to cross the picket lines of a striking union would be striking illegally. The board has recommended that this be made explicit in the law. During the teachers' strike, other school workers and principals did cross the picket lines and police were on duty at schools to maintain order. In our discussions with union officials we found that they were reluctant to cross the picket lines of another union and that the general policy seemed to be to decide the question case by case.

Some of the union officials we talked with in Hawaii said they had no real intention of striking. However, all of

them felt that the right to strike was important, as a last resort, in forcing the other side to bargain seriously and in good faith. Most management officials and neutral observers agreed that the strike remedy was preferable in many ways to compulsory arbitration, which might discourage sincere bargaining and result in a settlement unsatisfactory to both sides.

CHAPTER 6

NEED FOR LEGISLATIVE APPROVAL

After the parties have reached an agreement or have had one arbitrated, legislative approval under the Hawaii law (sec. 89-10) is required for all cost items. Cost items must be submitted to the legislature for approval within 10 days after ratification of an agreement or, if the legislature is not in session, to the Governor for inclusion in the next operating budget.

Several authorities have pointed out that it is often difficult to identify which provisions of a collective-bargaining agreement are cost items. Some of those involving additional costs might be met if the departments rebudgeted funds already appropriated, but others might require additional funding. This was an issue in the teachers' agreement on teacher-student ratios. It appeared that lowering the ratios would require more teachers and hence more money. The department of education felt the agreement could be met without additional funding by reassigning teachers from nonteaching positions.

Another question could concern multiyear agreements which involve no cost increase in the first year but which do involve increases in subsequent years.

Another problem is that, since legislative approval is required for cost items, unions will be anxious to reach agreements in time to get the items approved in the current legislative session. Therefore it is reasonable to tie agreement deadlines to legislative sessions. It has also been suggested that, for administrative convenience, all cost changes to agreements be made effective at the start of a fiscal year.

Another important question is "what is the status of the agreement and the employees if approval is not received?" Presumably the cost items could be renegotiated within the limits imposed by the legislature or the whole agreement could be voided by the parties.

CHAPTER 7

CONCLUSIONS

There are widely differing views on the appropriateness of collective bargaining in the public sector. Some maintain that there are fundamental differences between public and private enterprise which make collective bargaining by Government employees essentially unworkable. Others say the differences are few and widely exaggerated.

The differing opinions are reflected in the various laws on the subject. Some laws, such as Hawaii's, allow collective bargaining by public employees that is similar to that practiced by employees in private industry. In other jurisdictions such bargaining is strictly outlawed. Some jurisdictions, such as the Federal Government, allow a limited form of public employee bargaining.

The Hawaii Public Employment Relations Act deals explicitly with most of the major issues likely to arise in public employee collective bargaining, and it has worked reasonably well thus far. Although it has some recognized defects, it should serve as a good starting point for other jurisdictions considering such legislation. At a minimum, it outlines the main issues. Also, except for a perhaps undue stress on management rights, the law is reasonably neutral in tone, and we found that, in practice, both unions and employers considered it impartial.

Regardless of the pros and cons involved, it seems certain that the ramifications of collective bargaining by Government workers will be many and widely felt. In Hawaii, the unions are still in their formative stages so their influence is bound to increase still further.

The main lesson to be learned from Hawaii's experience, therefore, is the need to carefully consider each of the issues, as Hawaii, for the most part, has done, in developing and legislating a collective-bargaining system.

[CHAPTER 89]
COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT

SECTION

[§89-1] Statement of findings and policy. The legislature finds that joint-decision making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees

and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by (1) recognizing the right of public employees to organize for the purpose of collective bargaining, (2) requiring the public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other terms and conditions of employment, while, at the same time, (3) maintaining merit principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33, and (4) creating a public employment relations board to administer the provisions of this chapter. [L 1970, c 171, pt of §2]

[§89-2] **Definitions.** As used in this chapter:

(1) "Arbitration" means the procedure whereby parties involved in an impasse mutually agree to submit their differences to a third party for a final and binding decision.

(2) "Appropriate bargaining unit" means the unit designated to be appropriate for the purpose of collective bargaining pursuant to section 89-6.

(3) "Board" means the Hawaii public employment relations board created pursuant to section 89-5.

(4) "Certification" means official recognition by the Hawaii public employment relations board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or dissolves.

(5) "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.

(6) "Cost items" includes wages, hours, and other terms and conditions of employment, the implementation of which requires an appropriation by a legislative body.

(7) "Employee" or "public employee" means any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c).

(8) "Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of public employees.

(9) "Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and the board of regents in the case of the university of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

(10) "Exclusive representative" means the employee organization, which as a result of certification by the board, has the right to be the collective

bargaining agent of all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

(11) "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 impartial fact-finders, and the making of recommendations for settlement of the impasse.

(12) "Impasse" means failure of a public employer and an exclusive representative to achieve agreement in the course of negotiations.

(13) "Legislative body" means the legislature in the case of the State, the city council in the case of the city and county of Honolulu, and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.

(14) "Mediation" means assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse.

(15) "Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

(16) "Service fee" means an assessment of all employees in an appropriate bargaining unit to defray the cost for services rendered by the exclusive representative in negotiations and contract administration.

(17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

(18) "Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely

routine or clerical nature, but requires the use of independent judgment. [L 1970, c 171, pt of §2]

Attorney General Opinions

Cost items are those that require new or additional appropriation for implementation. Att. Gen. Op. 72-10.

[§89-3] Rights of employees. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section 89-4. [L 1970, c 171, pt of §2]

[§89-4] Payroll deductions. (a) The employer shall, upon receiving from an exclusive representative a written statement which specifies an amount of reasonable service fees necessary to defray the costs for its services rendered in negotiating and administering an agreement and computed on a pro rata basis among all employees within its appropriate bargaining unit, deduct from the payroll of every employee in the appropriate bargaining unit the amount of service fees and remit the amount to the exclusive representative. A deduction permitted by this section, as determined by the board to be reasonable, shall extend to any employee organization chosen as the exclusive representative of an appropriate bargaining unit. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate.

(b) In addition to any deduction made to the exclusive representative under subsection (a), the employer shall, upon written authorization by an employee, deduct from the payroll of the employee the amount of membership dues, initiation fees, group insurance premiums, and other association benefits and shall remit the amount to the employee organization designated by the employee.

(c) The employer shall continue all payroll assignments authorized by an employee prior to the effective date of this chapter and all assignments authorized under subsection (b) until notification is submitted by an employee to discontinue his assignments. [L 1970, c 171, pt of §2]

[§89-5] Hawaii public employment relations board. (a) There is created a Hawaii public employment relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairman, shall be representative of the public. All members shall be appointed by the governor for terms of six years each, except that the terms of members first appointed shall be for four, five, and six years respectively as designated by the governor at the time of appointments. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as

efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

The members shall devote full time to their duties as members of the board. The chairman of the board shall be paid a salary at the rate of ninety-five per cent of the salary of a circuit court judge. Each of the other members shall be paid a salary at a rate of ninety per cent of the chairman's salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during his term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Three members of the board, consisting of the chairman, at least one member representative of management, and at least one member representative of labor, shall constitute a quorum. Any vacancy in the board, shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during his term of service, shall have the same powers and duties as the regular member.

The chairman of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearings 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.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and the employees of the board shall be exempt from chapters 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the legislative bodies and to the public management committee.

(b) 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) Resolve any dispute concerning cost items;
(3) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
(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) 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 boards, or arbitrators;

(7) Establish daily or hourly rates at which mediators, members of fact-finding boards, and arbitrators are to be compensated and apportion the costs of arbitration to the parties involved;

(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 the public management committee, employee organizations, as may exist, mediators, members of fact-finding boards, arbitrators, and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations;

(9) Promulgate rules and regulations relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91. [L 1970, c 171, pt of §2; am L 1971, c 49, §1]

[§89-6] Appropriate bargaining units. (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

(1) Nonsupervisory employees in blue collar positions;
(2) Supervisory employees in blue collar positions;
(3) Nonsupervisory employees in white collar positions;
(4) Supervisory employees in white collar positions;
(5) Teachers and other personnel of the department of education under the same salary schedule;
(6) Educational officers and other personnel of the department of education under the same salary schedule;
(7) Faculty of the University of Hawaii and the community college system;
(8) Personnel of the University of Hawaii and the community college system, other than faculty;
(9) Registered professional nurses;
(10) Nonprofessional hospital and institutional workers;
(11) Firemen;
(12) Policemen; and
(13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory

employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be.

The compensation plans for blue collar positions pursuant to section 77-5 and for white collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section 297-33 and for educational officers pursuant to section 297-33.1, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on[July 1, 1970], shall be the bases for differentiating blue collar from white collar employees, professional from nonprofessional employees, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered.

(b) For the purpose of negotiations, the public employer of an appropriate bargaining unit shall mean the governor or his designated representatives of not less than three together with not more than two members of the board of education in the case of units (5) and (6), the governor or his designated representatives of not less than three together with not more than two members of the board of regents of the university of Hawaii in the case of units (7) and (8), and the governor or his designated representatives together with the mayors of all the counties or their designated representatives in the case of the remaining units.

(c) No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less, or any commissioned and enlisted personnel of the Hawaii national guard, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

(d) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees. [L 1970, c 171, pt of §2]

[§89-7] Elections. Whenever, in accordance with regulations as may be prescribed by the board pursuant to chapter 91, a petition is filed by an employee organization after January 1, 1971, showing written proof of at least thirty per cent representation of the public employees in an appropriate bargaining unit, the board shall hold an election by secret ballot to determine whether and by which employee organization the employees desire to be represented for the purpose of collective bargaining. The ballot shall contain, in addition, both the name of any candidate showing written proof of at least ten per cent representation of the public employees within the unit, and a provision for marking "no representation".

In any election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for a selection between the two choices receiving the largest number of valid

votes cast in the election. The board shall certify the results of the election, and where an employee organization receives a majority of the votes cast, the board shall certify the employee organization as the exclusive representative of all employees in the appropriate bargaining unit for the purpose of collective bargaining.

No election shall be directed by the board in any appropriate bargaining unit within which (1) a valid election has been held in the preceding twelve months; or (2) a valid collective bargaining agreement is in force and effect, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement.

The board shall adopt rules and regulations governing the conduct of elections to determine representation, including the time, place, manner of notification, and reporting the results of elections, and the manner for filing any petition for an election or any petition concerning the results of an election. No mail ballots shall be permitted by the board except when for reasonable cause a specific individual would otherwise be unable to cast a ballot. The board shall have the final determination on any controversy concerning the eligibility of an employee to vote. [L 1970, c 171, pt of §2]

Attorney General Opinions

Illegal and blank ballots are not counted in determining total number of votes cast. Att. Gen. Op. 71-8.

§89-8 Recognition and representation; employee participation. (a) The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(b) An individual employee may present a grievance at any time to his employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

(c) Employee participation in the collective bargaining process conducted by the exclusive representative of the appropriate bargaining unit shall be permitted during regular working hours without loss of regular salary or wages. The number of participants from each bargaining unit with over 2,500 members shall be limited to one member for each five hundred members of the bargaining unit. For bargaining units with less than 2,500 members, there shall be at least five participants, one of whom shall reside in each county; provided that there need not be a participant residing in each county for the bargaining unit established by section 89-6(a)(8). The bargaining unit shall select the participants from representative departments, divisions or sections to minimize interference with the normal operations and service of the departments, divisions or sections. [L 1970, c 171, pt of §2; am L 1971, c 212, §2]

[§89-9] Scope of negotiations. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with re-

spect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31 and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies. [L 1970, c 171, pt of §2]

[§89-10] Written agreements; appropriations for implementation; enforcement. (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned. The agreement shall be reduced to writing and executed by both parties. The agreement may contain a grievance procedure and an impasse procedure culminating in final and binding arbitration, and shall be valid and enforceable when entered into in accordance with provisions of this chapter.

(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the State legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget within ten days after the date on which the agreement is ratified. The State legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the State legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining.

(c) Because effective and orderly operations of government is essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the public employer and the exclusive representative shall make every reasonable effort to conclude negotiations, and include provisions for an effective date, a reopening date, and an expiration date, at a time to coincide, as nearly as possible, with the period during which the appropriate legislative bodies may act on the operating budget of the employers.

(d) All existing rules and regulations adopted by the employer, including civil service or other personnel regulations, which are not contrary to this chapter, shall remain applicable. If there is a conflict between the collective bargaining agreement and any of the rules and regulations, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d). [L 1970, c 171, pt of §2]

Attorney General Opinions

Subsection (b).

Cost items that require new or additional appropriation and positions that exceed the maximum position count must be submitted to Legislature. Att. Gen. Op. 72-10.

Legislature may reject cost items by failure to appropriate funds or by concurrent resolution or other means indicating views of both houses. Att. Gen. Op. 72-10.

[§89-11] Resolution of disputes; grievances; impasses. (a) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewed agreement. In the absence of such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

The board shall render assistance to resolve the impasse according to the following schedule:

(1) Mediation. Assist the parties 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, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists.

(2) Fact-finding. If the dispute continues fifteen days after the date of the impasse, the board shall appoint, within three days, a fact-finding board of not more than three members, representative of the public, from a list of qualified persons maintained by the board. The fact-finding board, shall, in addition to powers delegated to it by the public

employment relations board, have the power to make recommendations for the resolution of the dispute. The fact-finding board, acting by a majority of its members, shall transmit its findings of fact and any recommendations for the resolution of the dispute to both parties within ten days after its appointment. If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.

(3) Arbitration. If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any monies for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

(4) The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer shall submit to the appropriate legislative bodies his recommendations for the settlement of the dispute on all cost items together with the findings of fact and any recommendations made by the fact-finding board. The exclusive representative may submit to the appropriate legislative body its recommendations for the settlement of the dispute on all cost items. [L 1970, c 171, pt of §2]

[§89-12] Strikes, rights and prohibitions. (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board, or

(2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration.

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (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) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

(c) Where the strike occurring, or is about to occur, endangers the public health or safety, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health and safety of the public, the board shall set requirements that must be complied with to avoid or remove any such imminent or present danger.

(d) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.

(e) If any employee organization or any employee is found to be violating or failing to comply with the requirements of this section or if there is reasonable cause to believe that an employee organization or an employee is violating or failing to comply with such requirements, the board shall institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section is conferred upon each circuit court, and each court may issue, in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. [L 1970, c 171, pt of §2]

[§89-13] Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.

(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by any employee organization;

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in section 89-11;
(7) Refuse or fail to comply with any provision of this chapter; or
(8) Violate the terms of a collective bargaining agreement.

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
(3) Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in section 89-11;
(4) Refuse or fail to comply with any provision of this chapter; or
(5) Violate the terms of a collective bargaining agreement. [L 1970, c 171, pt of §2]

[§89-14] **Prevention of prohibited practices.** Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9. All references in section 377-9 "board" shall include the Hawaii public employment relations board and "labor organization" shall include employee organization. [L 1970, c 171, pt of §2]

[§89-15] **Financial reports to employees.** Every employee organization shall keep an adequate record of his financial transactions and shall make available annually, to the employees who are members of the organization, within sixty days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant. In the event of failure of compliance with this section, any employee within the organization may petition the public employment relations board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter. [L 1970, c 171, pt of §2]

[§89-16] **Public records and proceedings.** The complaints, orders, and testimony relating to a proceeding instituted by the public employment relations board under section 377-9 shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public. [L 1970, c 171, pt of §2]

[§89-17] **List of employee organizations and exclusive representatives.** The public employment relations board shall maintain a list of employee organizations. To be recognized as such and to be included in the list, an organization shall file with the board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every employee organization shall notify the board promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The board shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of the list shall be made available to interested parties upon request. [L 1970, c 171, pt of §2]

[§89-18] Penalty. Any person who wilfully assaults, resists, prevents, impedes, or interferes with a mediator, member of the fact-finding board, or arbitrator, or any member of the public employment relations board or any of the agents or employees of the board in the performance of duties pursuant to this chapter shall be fined not more than $500 or imprisoned not more than one year, or both. [L 1970, c 171, pt of §2]

[§89-19] Chapter takes precedence, when. This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, rules, or regulations adopted by the State, a county, or any department or agency thereof, including the departments of personnel services or the civil service commission. [L 1970, c 171, pt of §2]

[§89-20] Chapter inoperative, when. If any provision of this chapter jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative. [L 1970, c 171, pt of §2]

Severability provision, L 1970, c 171, pt of §2, omitted.

PROPOSED LEGISLATION CONCERNING

PUBLIC SECTOR LABOR-MANAGEMENT RELATIONS

(93d Cong.)

Committee	Purpose	Number		Date introduced
Federal employees:				
Post Office and Civil Service (Senate)	To provide for improved labor-management relations in the Federal service	S.	351	1-12-73
Post Office and Civil Service (House)	To provide for improved labor-management relations in the Federal service	H.R.	13	1- 3-73
		"	3341	1-31-73
		"	3411	1-31-73
		"	3644	2- 5-73
		"	4619	2-22-73
		"	6158	3-27-73
		"	6287	3-28-73
		"	6615	4- 4-73
		"	7181	4-18-73
		"	8243	5-30-73
		"	8309	5-31-73
		"	8397	6- 5-73
		"	9282	7-16-73
		"	9784	8- 1-73
		"	9797	8- 2-73
		"	10700	10- 3-73
	To protect the freedom of choice of Federal employees in employee-management relations	"	3060	1-29-73
		"	4458	2-21-73
		"	5826	3-20-73
		"	6159	3-27-73
		"	6820	4-10-73
		"	7619	5- 9-73
	To guarantee that every employee of the Federal Government has the right to refrain from union activity	"	283	1- 3-73
Non-Federal public employees:				
Post Office and Civil Service (Senate)	To establish a nationwide public employee merit system	S.	647	1-31-73
Post Office and Civil Service (House)	To guarantee the right of employees to organize and bargain collectively, which safeguards the public interest and promotes the free flow of commerce	H.R.	579	1- 3-73
		"	1091	1- 3-73
		"	8677	6-14-73
	To establish a nationwide public employee merit system and representation act	"	4293	2- 8-73
Education and Labor (House)	To provide that public employees be subject to the provisions of the National Labor Relations Act	"	9730	7-31-73

Note: Bills introduced in 93d Congress through October 3, 1973. None of these bills had cleared their respective committees as of October 1973.