

IN THE MATTER OF INTEREST ARBITRATION BETWEEN

STATE OF HAWAII, CITY & COUNTY OF  
HONOLULU, HAWAII JUDICIARY AND HAWAII  
HEALTH SYSTEMS CORPORATION

EMPLOYERS

AND

UNITED PUBLIC WORKERS, AFSCME  
LOCAL #646, AFL-CIO

UNION

**INTEREST ARBITRATION AWARD**

AAA CASE NO. 74 390 00111 1

**APPEARANCES**

For The Employers:

James Halvorson, Lead Attorney and Deputy Attorney General  
Maria Cook, Deputy Attorney General  
Duane Pang, Deputy Corporate Counsel, City and County of Honolulu  
Neil Dietz, Chief Negotiator

For AFSCME LOCAL 646:

Herbert Takahashi, Lead Attorney  
Rebecca Covert, Attorney  
Dayton Nakanelua, Chief Negotiator

Panel of Arbitrators:

Ronald Hoh, Neutral Chairperson  
Clifford "Chip" Uwaine, Union Appointed Panel Member  
William Elliott, Management Appointed Panel Member

**INTRODUCTION AND BACKGROUND**

This proceeding arises pursuant to the provisions of Hawaii Revised Statutes (hereinafter HRS) Section 89-11 to resolve a collective bargaining contract interest dispute between the above described employers (hereinafter Employers) and United Public Workers, AFSCME Local

#646, AFL-CIO (hereinafter Union). The parties have been unable to agree upon the terms of a new collective bargaining agreement concerning fiscal biennium 2012-2013 (July 1, 2011 through June 30, 2013) through their negotiations and mediation. In early 2011, the parties selected their partisan members of the arbitration panel as set forth above, and on January 30, 2012 selected the undersigned neutral arbitrator from a list provided by the American Arbitration Association. On February 22, 2012 the Hawaii Labor Relations Board entered a written order appointing the three members of the arbitration panel. On February 24, 2012 the parties agreed to submit their statement of "final positions" to the panel on or before June 15, 2012 pursuant to HRS Section 89-11(e)(2)(B), and to commence the hearing in this matter on July 18. Those final positions were received by the arbitration panel members in mid-June, 2012. A second pre-hearing telephone conference was held between the arbitrators and the parties on July 12, 2012.

The hearing itself was conducted in Honolulu, Hawaii on July 18, 19, 20, 21, 23, 24, 25 and 26, 2012. On the first day of the hearings, the parties agreed that the issues to be presented to the panel were wages, Employers' health benefit contributions and duration, and that the matter involved "conventional interest arbitration" rather than "final offer based interest arbitration."

On the final day of the hearing, the parties stipulated and agreed to waive the 30 day provision of HRS Section 89-11(e)(4) for the rendering of the arbitrator panel's Decision and Award after the presentation of post-hearing briefs. Thereafter, due to the delays in transmission of the transcripts and exhibits encompassing an approximate 10,000 pages of record, a final briefing date of October 30, 2012 was established, and those briefs were received by the panel in early November, 2012. Subsequently, due to the unavailability of the partisan arbitrators until November 30, 2012 the arbitration panel's executive session was not held until December 3, 2012. As a result of the discussions in that executive session concerning the possibility of a voluntary contract agreement in this case, a second such panel executive session was subsequently held via

telephone on December 17, 2012, and a third such session on December 21, In the absence of such voluntary settlement, this Award became effective with at minimum the concurrence of one of the partisan panel arbitrators to the neutral arbitrator's decision set forth below.

## **BACKGROUND**

The Employers consist of the State of Hawaii, the Hawaii Health Systems Corporation (hereinafter HHSC), the Judiciary of the State of Hawaii, and the City and County of Honolulu (hereinafter City and County). The Union represents in Bargaining Unit 10 (hereinafter Unit 10) about 2,661 full-time equivalent institutional, health and correctional employees. That unit includes about 1,106 employees within HHSC, largely in critical medical care support positions such as licensed practical nurses (hereinafter LPNs), certified nurses aides, physical therapy aides and assistants, emergency room assistants, activities coordinators, pharmacy technicians and aides, and respiratory supervisors, technicians and aides in thirteen major facilities throughout the Hawaiian Islands; about 191 City and County employees largely performing emergency medical services functions under a contract with the State Department of Health, about 200 employees working at the Hawaii State Hospital and the State Department of Health, primarily as LPNS, paramedical assistants, psychiatric technicians, and occupational therapy assistants and aides; employees of the Department of Education working as School for the Deaf house parents and attendants, and in physical and occupational therapy positions; employees of the Department of Human Services working as youth correctional employees at the State Youth Correctional Facility; and the largest number of bargaining unit employees – 1,180 employees – in various correctional functions and correctional healthcare positions, including about 1,166 Adult Correctional Officers (hereinafter ACOs) at Hawaii State correctional facilities. HHSC is a State public benefit corporation, which operates the fourth largest public health system in the nation, employing a total of more than 3,700 employees.

Under HRS Section 89–6(e)(10), the State also bargains with ten other statewide bargaining units ranging from non-supervisory blue collar employees represented by the Union in Unit 1, to faculty of the University of Hawaii and community colleges in Unit 7, to registered professional nurses in Unit 9. Police officers and firefighters in Units 12 and 11, respectively, with the exception of about 150 airport firefighters who are State employees in the statewide firefighters unit, are employees of the four Hawaii counties, and all such firefighters and police bargain with those counties rather than the State. Units 1, 5 (Teachers and Department of Education Professionals), and 7 by statute have the right to strike; all others have interest arbitration as the final impasse step. Approximately 46,239 employees are covered within the statutorily-established thirteen bargaining units.

## **THE PARTIES' FINAL POSITIONS**

### **FINAL POSITION OF THE EMPLOYERS**

#### **Section 23.02 – SALARY ADJUSTMENT**

23.02 a. Effective the first pay period after issuance of the arbitration decision, the Institutional Health and Correctional salary schedules in effect on June 30, 2009, shall reflected thirteen and thirty-three one hundredths percent (13.33%) across-the-board decrease and shall be designated as EXHIBIT 1, EXHIBIT 2, and EXHIBIT 3 respectively. Employees shall then be placed on the corresponding pay range and step of the respective salary schedule or exceeds (sic) the maximum step shall have their salaries adjusted by a thirteen and thirty-three one hundredths percent (13.33%) across-the-board decrease.

23.02 b. Effective the first pay period after issuance of the arbitration decision, Employees not administratively assigned to a salary schedule designated as EXHIBIT 1, EXHIBIT 2 or EXHIBIT 3 shall receive a thirteen and thirty-three one hundredths percent (13.33%) across-the-board decrease.

#### **Section 68.01 – EFFECTIVE DATES**

68.01 Effective Dates. The Unit 10 Agreement shall be effective as of the date of the interest arbitration decision is rendered and shall remain in effect to and including June 30, 2013. It shall be renewed thereafter in accordance with statutes unless either party hereto gives written notice to the other party of its desire to modify, amend, or terminate the Unit 10 Agreement.

## FINAL POSITION OF THE UNION

Salaries: The wage provisions of Section 23 should be amended by adding a new subsection which provides for two lump sum payments to all bargaining unit 10 employees to compensate them for the 5.45% temporary pay rate reductions or furloughs authorized for the period from January 1, 2010 to June 30, 2011, by the January 14, 2010 arbitration decision and award.

The total amount to be repaid to each bargaining unit employee shall be calculated based upon 5.45% of each employee's applicable annual salary effective June 30, 2009 as set forth in salary schedule (Section 23).

The lump sum payments shall be made in two equal installments during the remaining term of the July 1, 2011 to June 30, 2013 collective bargaining agreement.

### 2. 68.02 – EFFECTIVE DATES

68.02 Effective Dates. The Unit 10 Agreement shall be effective July 1, 2011 and shall remain in effect to and including June 30, 2013. It shall be renewed thereafter in accordance with statutes unless either party hereto gives written notice to the other party of its desire to modify, amend, or terminate the Unit 10 Agreement.

## STATUTORY CRITERIA

### HRS SECTION 89-11(f)

An arbitration panel in reaching its decision shall give weight to the following factors and shall include in its written report or decision an explanation of how the facts were taken into account:

- (1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public;
- (4) The financial ability of the employer to meet these costs; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues;
- (5) The present and future general economic condition of the counties and the State;

- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wage, hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii;
- (7) The average consumer prices for goods or services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding; and
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public service or in private employment.

HRS SECTION 89-11(g)

The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii-union health benefits trust by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned.

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 within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

HRS SECTION 89-9 - HAWAII EMPLOYER-UNION BENEFITS TRUST FUND

- (e) Negotiations relating to contributions to the Hawaii employer-union health benefits trust fund or a voluntary employees' beneficiary association trust shall be for the purpose of agreeing upon the amounts that the State and counties shall contribute under Section 87A-32 through 87A-37 toward the payment of the costs of health benefits plan; provided that Section 89-11 for the resolution of disputes by way of arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties contribute to Hawaii employer-union benefits trust fund or a voluntary employees' beneficiary association trust established under Chapter 87(D).

PRELIMINARY MATTERS

Initially in this case, the panel majority believes it necessary to address three issues preliminarily before addressing the major issues of ability to pay and the proper wage level, if any.

First in this preliminary area, the Union alleges in its Brief that the Employers have exceeded their lawful authority by infringing upon the basic rights of Unit 10 employees by attempting to set the terms of the collective bargaining agreement before those terms have been negotiated by the Employers with Unit 10 employees, by mandating labor savings attributable to collective bargaining agreements for all State units engaged in bargaining in the amount of \$88.2 million per year during the fiscal 2012-2013 biennium. It describes such an action as an "unconstitutional usurpation of authority" as well as a contravention of the merit principle set forth in Article XVI of the Hawaii Constitution, under cases cited in that Brief by the Union. It further claims that in enacting the statute concerning the \$88.2 million per year salary savings, the Hawaii Legislature "completely prohibited negotiations" over wages similar to the two year freeze in wages legislated in 1999 which was overturned by the Hawaii Supreme Court.

The panel majority cannot agree. First and most important, this arbitration panel has absolutely no authority to rule on such an allegation. If the Union truly believes that the Employers' actions were either unconstitutional or otherwise a violation of law, its remedy is through the Hawaii Labor Relations Board, state courts or both such bodies, rather than through this arbitration panel. This panel's authority is set forth in HRS Section 89-11 and its subsections, and it simply has no jurisdiction over such a claim.

However, notwithstanding such concerns about jurisdiction, the panel majority does not view the Employers' action in this area as a "complete prohibition of negotiations." Nothing prevented the parties in these circumstances, other than the positions they have taken in this proceeding, from reaching a voluntary collective bargaining agreement, as did these Employers in negotiations involving Unit 1 – represented by the same Union – and Units 2, 3, 4, 6, 8 and 13, which are represented by its brother union Hawaii Government Employees, AFSCME Local 152. It would appear that each of these units reached contract agreement through "completed negotiations," rather than a "complete prohibition of negotiations."

In view of the above, the panel majority finds that this Union claim is both not properly before the panel and does not impact the panel's award here.

Second in this preliminary matters area, the parties appear to agree that, in the event the arbitration panel were to make an award involving decreases in compensation to bargaining unit employees, unpaid furloughs in lieu of wage reductions are not the proper way to accomplish such compensation reductions. Unit 10 employees work in correctional facilities, hospitals, emergency services and related positions which by their very nature require employee availability on a twenty-four hour per day, seven day per week basis. Additionally, a large portion of bargaining unit employees work in facilities requiring certain service levels and the continuation of certain work units under federal and state laws and regulations, and such furloughs would result in the required

absence of a significant number of employees on each shift in numerous positions for which the Employers admit the labor market is "tight." Such furloughs would given the above elements also likely result in substantial overtime payments. In view of these factors, and without yet determining the disputed wage levels here, furloughs will not be a part of the panel's award here.

Finally in this preliminary area, the parties appear to disagree concerning whether they have "...reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision," within the meaning of HRS Section 89-11(g). The Union argues that, under a December 23, 2010 agreement executed by the Employers through the then newly-elected governor and representatives of unions representing State employees including the Union, which had not at that time reached contractual agreements covering in 2012-13 fiscal biennium, the parties have agreed in the area of Employers' contributions to the Employer-Union Trust Fund (hereinafter EUTF) that the Employer would restore the 60%-40% dollar amount equivalent employer-employee split in health insurance premiums previously in effect during the fiscal years 2009 and 2010. It further claims that under Paragraph 6 of that agreement, the parties agreed to extend those contribution levels for State bargaining units not reaching collective bargaining agreements by June 30, 2011, through the end of the 2012-13 fiscal biennium of June 30, 2013 involved here. Finally, the Union claims that the arbitration panel, despite the language of HRS Section 89-9(e), is required to include that agreement and those amounts in this award under the statutory criterion of "Stipulations of the Parties" set forth in HRS Section 89-11(f)(2), and thus make that stipulation a part of the panel's award.

The arbitration panel majority cannot agree. While a strong argument can be made that such an agreement was entered into by the Union and the Governor and was financed by the Hawaii Legislature through June 30, 2013, no such "stipulation" was ever reached between and

presented to the arbitration panel by the parties involved in this proceeding. In the nearly 100 interest arbitration and factfinding proceedings conducted in the past by the neutral arbitrator, the "Stipulations of the Parties" pertinent to the arbitration award have always consisted only of those stipulation/agreements made on the record in the interest proceeding involved – here, the arbitration hearing – or any earlier or later specific written agreements presented to the panel. No such "stipulation" is contained in the long and involved record transcripts of the proceedings here before the panel.

Secondly in this area, Section 89-11(g) clearly provides that any agreement concerning "amounts of (health insurance) contributions agreed by the parties" is not to be included in the Award of the arbitration panel. That provision states that if such health insurance contributions agreement is reached, the "final and binding agreement of the parties shall consist of the panel's decision and the amounts of contributions agreed by the parties (emphasis added)." There would be no need for that separate "amounts of contributions" language if the panel's decision were to include those amounts under the statutory "stipulations of the parties" criterion.

Finally, the neutral arbitrator is cognizant of the clear requirement contained in HRS Section 89-9(e) that disputes over EUTF contributions and costs are not subject to resolution by this arbitration panel. That Section makes clear that "Section 89-11 for the resolution of disputes by way of arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to Hawaii's employer-union benefits trust fund or a voluntary employees' beneficiary association trust established under Chapter 87(D)," as is the case here. In view of that the panel's adoption of clear language, it is the neutral arbitrator's judgment and the panel majority's agreement that the adoption of such a tenuous assertion creates a definite possibility that the panel's entire decision could be placed at risk before a reviewing court. That element likewise convinces the panel majority that the Union's claim in this area should not be upheld.

In view of the above, the "stipulations of the parties" under HSA Section 89-11(f)(2) shall not include the matter urged here by the Union.

### **THE APPLICATION OF THE STATUTORY CRITERIA**

The panel turns next to the gravamen of the dispute before it: the application of the statutory criteria contained in HRS Section 89-11(f) to the evidence and arguments before it, and the panel's decision concerning the appropriate wage rates and contract duration based upon those criteria. More specifically, HRS Section 89-11(f) requires the panel "... in the reaching its decision (to) give weight to (those) factors and (to) include in its written report or decision an explanation of how the factors were taken into account."

#### **A. THE EMPLOYER'S "ABILITY TO PAY" AND "PRESENT AND FUTURE ECONOMIC CONDITION"**

The panel chooses to address first among the statutory criteria contained in HRS Section 89-11(f)(4) and (5) concerning "the financial ability of the Employers to meet those costs; provided that the Employers' ability to fund cost items shall not be predicated on the premise that the Employers may increase or impose new taxes, fees or charges, or develop other sources of revenue;" and Section 89-11(f)(5) concerning "the present and future general economic condition of the counties and the State. This panel decision to first address these statutory criteria is based largely upon the view that if the Employers do not have the ability to pay anything more than their final position, the remaining statutory criteria will by necessity have little or no impact on the panel's decision.

### **POSITIONS OF THE PARTIES**

#### **THE EMPLOYERS**

The Employers make the following arguments in support of their contention that the Employers do not have the ability to pay either the Union's final offer or anything more costly than

the Employers' final offer.

1. Section 89-11(f)(4) and (5) require the arbitration panel to consider the Employers' financial ability to meet wage cost proposals without regard to the Employers' ability to impose new taxes, fees, or charges; or develop other sources of revenue including the use of special funds. These criteria must be given priority consideration by the arbitration panel, and particularly so in this case, where beginning in late 2008 the United States and especially Hawaii suffered the worst economic crisis since the Great Depression. Hawaii is just now coming out of that financial hole but has not fully recovered. The budget shortfall at the start of the fiscal biennium 2012-13 was over \$1 billion.

2. With a substantial portion of the State's operating budget appropriated to the cost of labor, the 2011 Hawaii Legislature was compelled to reduce labor costs by \$88.2 million for each year of fiscal biennium 2012-13, an amount equal to approximately a temporary five percent wage reduction for employees of all State bargaining units for the fiscal 2012-13 biennium. Instead of laying off employees to achieve labor savings imposed by the 2012-13 Legislature, the Employers attempted to negotiate a temporary five percent wage reduction across the board for all bargaining units with contract agreements for fiscal biennium 2012-13. The Employers believe that the uniform wage reduction is a fair method of shared sacrifice among employees of all bargaining units, and is necessary to turn the State around and get the economy moving again. Any wage increase granted to the Union here will be at the expense of almost all other State employees whose salaries were reduced starting July 1, 2011, enabling the State to end fiscal year 2012 in the black.

3. Prior to the current fiscal 2012-13 biennium, the State lost billions of dollars in anticipated General Fund tax revenues. The State closed fiscal year 2009 with a General Fund balance of negative \$36.8 million, and the revenue growth rate at that point was minus 9.5%. All

told, projected tax revenues for fiscal years 2009 through 2011 had decreased by \$3.1 billion since January 2008, and the State's forecasted tax revenues were reduced by over \$1 billion from fiscal years 2009-11 while government expenses continued to grow. This was the dire economic situation that confronted the State as it approached negotiations with the Union for fiscal biennium 2012-13.

4. Going into fiscal year 2012, the 2011 Legislature addressed the \$1.2 billion dollar budget gap through a mix of spending reductions, savings resulting from labor concessions, and temporary revenue measures. Those cost cutting numbers to be achieved through collective bargaining included \$88.2 million in each of fiscal years 2012 and 2013 to reflect labor savings attributable to all bargaining units negotiating contracts during that period; and \$38.2 million in fiscal year 2012 and \$19.5 million in fiscal year 2013 to reflect a 50% Employer EUTF contribution attributable to collective bargaining agreements for all bargaining units. The \$88.2 million is approximately equal to a five percent wage reduction for each year of the biennium for all bargaining units with collective bargaining agreements. To achieve those savings, the State's Budget and Finance Department restricted or recaptured from all State departments an amount equal to \$88.2 million per fiscal year to satisfy the funding needs of the employee retirement system appropriation as provided in that legislative act. The 2011 Legislature also passed temporary revenue enhancing measures to address that shortfall, including the transfer of funds from the Hawaii Hurricane Relief Fund to the General Fund.

5. Although as a result of the State's fiscally balanced approach to the budget shortfall the State was able to end fiscal year 2012 with a positive fund balance of \$275 million, and although revenues have begun to grow again, they do not comprise what the State needs to restore programs and services that were cut in fiscal year 2009 through 2011. The State is also vulnerable to global uncertainties at the national and worldwide level. Consequently, even though

the revenue outlook is trending upward, the State will continue to address large budget shortfalls as it considers its budget for the next fiscal years.

6. Hawaii compares unfavorably with other states on measures such as debt ratios that are among the highest in the nation, pension funding levels that are below average, and carry health benefits liabilities that are nearly twice the size of the State's annual operating budget. Unfunded Actuarial Accrued Liabilities (hereinafter UAAL) are \$8.2 billion, up from \$7.1 billion in fiscal year 2010 and at the fifth worst level in the country for state pension systems; and debt per capita plus UAAL is the third highest among states. In addition, UAAL plus retiree health benefit costs rank second highest among forty-eight reporting states, and the combined unfunded liabilities for post-retirement benefits and pensions amount to \$22.5 billion. Even the Union's expert financial witness indicated that some adjustment in this area is necessary by the State, and there is no dispute that a growing percentage of the operating budget will have to be devoted to satisfying the State's unfunded liabilities, with dire consequences to the General Fund.

7. Reports issued by the non-partisan Council On Revenues (hereinafter COR) show a General Fund deficit of \$105.2 million for fiscal year 2014 and \$159.6 million for fiscal year 2015, without consideration of even minor OPEB payments or unfunded pension liability. Additionally, Hawaii has a high per capita debt exceeding \$5.2 billion, among the highest of all U.S. states. Furthermore, emergency reserves contained in other funds are nearly depleted as monies from those funds were used to help meet the fiscal year 2011 shortfalls and shortfalls from prior years. At the close of fiscal year 2011, only \$30 million remained in such emergency reserve funds.

8. Hawaii's dependence upon the tourism industry is one of the factors impacting the strengths in Hawaii's economy. Service spending and tourism are highly dependent on U.S. and worldwide politics and economies. Although tourism has been the number one industry driving that economy in Hawaii, the evidence shows that it is at its peak with limited available visitor plant

increase. Moreover, although tourism has been leading the way to economic recovery, there is no spillover effect to other sectors such as construction, which continues to be a drag on the Hawaii economy.

9. Although the Legislature enacted a budget with an approximately five percent labor cost savings for each year of fiscal biennium 2012-13, it left to the employers and unions exactly how those labor savings were to be achieved. Instead of laying off employees, the Employers decided to negotiate with all the public unions; most other State bargaining units agreed to contracts for fiscal biennium 2012-13 calling for a five percent wage reduction across the board. A uniform reduction is the most even-handed or fair means of complying with the Legislature's labor savings appropriations. It would be unfair to the majority of Hawaii public employees whose salaries have been reduced by five percent since July 1, 2011 if Unit 10 employees continue to receive salaries at their current level without a five percent reduction for fiscal biennium 2012-13.

10. The Legislatively-required five percent labor savings attributable to bargaining units has been hard lined into the budgets of departments of the State since 2011. Unless those salary savings are implemented via this Award, the departments with employees in Unit 10 will continue to experience salary shortfalls in their budgets, which will have to be made by taking from other areas of their budgets. If the arbitration panel accepts the Employers' wage reduction proposal, the departments encompassing employees in Unit 10 will not experience salary shortfalls in their budgets and will not have to take monies earmarked for other operational needs to inappropriately subsidize the salaries of Unit 10 employees who continue to receive higher salaries than their coworkers.

11. The arbitration panel must reject the wage increase proposed by the Union for several reasons: 1) the General Fund balance carryover claimed by the Union is incorrect because it is based on May 2012 Council On Revenues data rather than September 2012 data

from after the arbitration hearing that lowered the revenue forecast for fiscal years 2013 and 2014; 2) prudent financial planning requires consideration of the long-term impacts of today's financial decisions, and looking at the General Fund based on one year's ending balance is shortsighted; 3) the use of ending fund balance to fund wages is not an acceptable means of determining ability to pay; and 4) the Union's reliance upon the increased ending fund balance is superficial, in that such a balance is largely attributable to the sacrifices made by employees whose salaries have been reduced by five percent since July 2011 in order to help close the \$1.2 billion dollar budget shortfall at the ending of fiscal year 2012. Finally, the arbitration panel must consider the effect of its award on other bargaining units, especially in awarding any wage increases, in that while employers are not required to extend the terms of an arbitration award to other bargaining units, the reality is that economic awards to one bargaining unit influence subsequent negotiations involving other bargaining units. Even without an increase in pay to Unit 10 employees alone, the State is projecting a budget shortfall of minus \$199 million for fiscal year 2014 and minus \$54.4 million for fiscal year 2015. Awarding pay increases to Unit 10 employees will result in larger budget deficits, and the deficit will grow exponentially when those increases in salaries are applied to other bargaining units for the next contract period. This impact on the State's overall financial condition cannot and should not be ignored.

12. Section 89-11(f)(5) requires the arbitration panel to give weight to the "present and future economic condition of the counties and the State." The COR's economic activity and General Fund revenue forecast is the only forecast that is constitutionally required to be considered by the Legislature and State government as a basis for the State budget. Consequently, it is COR's economic forecast that the arbitration panel must give weight to, not the economic forecast prepared by an economist hired by the Union. Unlike the Union's economic expert, the COR is an independent non-political body comprised of respected economic and financial experts

in Hawaii. The COR has projected continued reductions in revenues starting in fiscal year 2013 through fiscal year 2019. Those reductions in revenue will therefore increase the State's projected deficits in those fiscal years.

13. Even the forecast of Union economic expert LaCroix shows that Hawaii's economy has not fully recovered from the recession and continues to face many challenges that effect its budget, including: 1) a deep recession that began in 2008 and did not end until 2010; 2) the possibility that major economies buying tourism services from Hawaii will suffer declines in their overall growth rate over the next few years; 3) the already heightened tensions in the Middle East that could lead to substantially higher oil and gasoline prices in the United States and Hawaii which, according to LaCroix, "would tend to push the Hawaii economy toward recession;" 4) the economic crisis in Europe that has the potential to effect the U.S. and Hawaii economies both because failure of European banks that could lead to instability in the U.S. banking system and because European economies experiencing recessions due to the crisis will purchase fewer products from U.S. firms and from Hawaii; 5) the construction industry in Hawaii continues to be a drag on the Hawaiian economy; 6) there is considerable concern over the possible impact of the 2012 Budget Control Act relating to potential cuts in Department of Defense spending if Congress does not pass additional measures to reign in the federal government's budget deficits – an element that impacts Hawaii because military spending constitutes 18% of the Hawaiian economy; and 7) LaCroix's acknowledgment that the State's large unfunded liabilities must be acted upon and taken into account in its financial planning concerning pension benefits and retiree health insurance costs.

#### THE UNION

The Union makes the following arguments concerning the Employers' ability to pay and the present and future general economic condition of the counties and the State.

1. The Employers have failed to meet their burden of proving that they have a “inability to pay.” It is undisputed that the Employers have such a burden; prior interest arbitration awards have held that the alleged inability to pay must be more than “speculative” and that failure to produce sufficient evidence will result in the rejection of that plea. An inability to pay requires sufficient evidence to support and demonstrate that the movement of revenues to wages would so seriously hamper other governmental operations that the public’s interest would be substantially and adversely affected. The Employers must show that under the ability to pay criterion, that there would be a resulting inability to meet fundamental needs of the public.

2. It is clear that the Employers have not met that burden in this situation. The State’s tax collection in 2012 was the largest ever, \$127 million more than the COR projections, and a sizeable increase of 14.9% from fiscal year 2011 to fiscal year 2012; the State successfully refinanced its debt, achieving a \$59 million interest savings over an eight time year period, and even more impressively executed a bond sale of historic proportions to the tune of \$800 million issued in fixed rate bonds, and realized an unanticipated revenue enhancement of \$107 million in that sale over a twenty year duration.

3. With respect to revenues, the data shows that General Fund revenues have not only remained steady but have seen increasing growth since 2010; the State’s major industry of tourism is robust and people who provide services to visitors in turn pay income taxes; and the growth trend is evident not just with respect to General Fund revenues but also in non-tax revenues from 2003 to 2011. In addition, the State’s own Department of Business, Economic Development and Tourism (hereafter DBEDT) second quarter 2012 report shows that the total General Fund revenues increased in fiscal year 2012 by 14.9%, general excise tax increased by 8.1% over fiscal year 2011, and personal income taxes increased by 23.6% compared to that fiscal year. In the area of revenue projections, State Budget Director Young’s calculations showed a

\$242 million as the projected ending balance for fiscal year 2013, and the COR made a 2012 forecast of between 4% and 6.2% growth in the State's General Fund tax revenues each year from fiscal 2013 to fiscal 2019. Indicators such as COR projections and growing fund balances are further examples of the Employers' ability to pay.

4. In the area of expenditures, conservative management by the State of expenditures made from fiscal 2007 to fiscal 2011 has kept expenditures well under control, and has produced revenues in excess of expenditures of \$583 million – approximately 10% of the amount budgeted. The Union's expert witnesses in this area testified that this is not an isolated occurrence, and characterized Hawaii's budget process as being "transitory" and conservative.

5. With regard to financial position, the evidence showed that the State's reserves are adequate and the State has a current surplus well above the 5% benchmark comparing the ratio of unreserved fund balance to expenditures. Additionally, the asset to liability ratio for fiscal 2010 and 2011 for both the General Fund and HHSC were well above the necessary one to one ratio – both of which show a favorable financial position cited as a basis for a finding of an ability to pay in prior Hawaii interest arbitration awards.

6. As to debt structure, the evidence showed that all statutory requirements and constitutional limits with respect to government debt are being met, that debt service is healthy in light of the healthy economy, that the State's outstanding bonds are well within constitutional debt limits, that State refinancing of its general obligation bonds in December 2011 proved to be very successful, and that bond rating agencies uniformly give Hawaii a credit rating of "Double A" even after full disclosure of the unfunded accrued liability for the employee retirement system and post-retirement employment benefits. These ratios indicate that Hawaii has a demonstrated strong credit worthiness relative to other U.S. government sectors.

7. With regard to unfunded liabilities, the evidence shows that while there exists a level of unfunded actuarial liability related primarily to retirees, measures are being taken legislatively to address these concerns. Moreover, for many years the State has been funding retirement and pension liability annually, and its current investment portfolio covers approximately sixty percent of the liability. Additionally, the Hawaii Legislature in 2011 made significant changes in the retirement statute concerning retirement benefit eligibility, to reduce the amount of the liability and to change the percentage of retiree benefits based on years of service.

8. All current financial evidence points to a strong, healthy General Fund solidly in the black and reflecting the ability of the Employers to meet the cost of the Union's proposal without raising any new taxes, fees or charges, or developing any other sources of revenue. Even under the State's estimate of the cost of the Union's proposal, the cost of that proposal is well within the surplus and will not disturb the balanced budget.

9. Even if the Employers are now basing their position on an unwillingness to pay rather than an inability to pay defense, they have failed to argue and articulate where they would prefer to spend the monies and how such expenditures might better be utilized for the greater public good, as required under pertinent prior interest arbitration cases in Hawaii. It is essentially undisputed here that the services provided by Unit 10 employees are the kind of services which should be prioritized, and that one of the priorities of the State's supplemental budget was to fund critical jobs, and to invest in the safety net – elements contained in virtually all of Unit 10 jobs.

10. While the Employers argue that a majority element of its proven inability to pay is the unfunded liability of OPEB and pensions, measures are already being taken to address those concerns. In addition, the Union's economic expert noted that Hawaii was not alone in having unfunded liabilities, and that only eighteen of fifty states, including Hawaii, had thus far adopted some sort of funding policy for these benefits. Furthermore, that economic expert pointed out

that bond rating agencies, more cautious today in their ratings, still give high ratings to Hawaii's financial condition despite knowledge of these unfunded liabilities – reflective of the position that the revenues and overall budget of the State are in a strong position.

11. The question of how to fund the unfunded liability for OPEB is a policy decision to be determined by the Legislature. Significant changes were made in 2011 in the employee retirement system to address concerns about unfunded liability. Efforts to curtail the liability for health benefits have been in play in Hawaii for fifteen years and the Legislature has adopted a "pay as you go" policy. This arbitration panel lacks the statutory authority to determine the State's policy on unfunded liabilities. The constitutional and statutory right to collectively bargain would be infringed upon if this panel denied an improvement in the standard of living of Unit 10 employees based on a change in State policy in this area.

12. The sole witness who testified in this case concerning the statutory criterion of "the present and future general economic condition of the counties and State" was Union witness LaCroix. He testified in this area that: 1) Hawaii's economy recovered from the 2008 recession by 2010; 2) since 2010 there has been a slow but persistent economic recovery "with such major economic indicators as personal income, employment, Gross Domestic Product (hereinafter GDP), visitor arrivals, and visitor spending "all growing at positive and substantial rates; 3) the State's GDP – which he described as the "best overall indicator of the economy" – has increased by 2.2% in 2011 and 4.1% in 2012; and 4) the economic recovery has been led by significant growth in tourism and visitor spending particularly from the Far East, Australia and New Zealand, and will continue in that pattern at minimum for the next six to eighteen months. The DBEDT has additionally found that Hawaii's major economic indicators were all positive in the first quarter of 2012, that State General Fund tax revenues were up 11% between the first quarter of 2011 and the first quarter of 2012; and that for the whole year of 2011, State General Fund tax revenues

increased by 8.1% and State general excise tax revenues increased by 8.8%. Arbitrators in prior interest arbitration cases have consistently recognized these leading economic indicators as relevant to an assessment of present and future economic conditions under this statutory criterion.

13. Additionally, such tourism development and trends have been carefully reviewed and considered by interest arbitrators in their assessment in this area in past cases in Hawaii. Union witness LaCroix is not alone in predicting a favorable economic picture for calendar year 2013 and into 2014. The DBEDT expects based upon the most recent developments in the national global economy, the performance of Hawaii's tourism industry, the labor market conditions of the State, and the growth of personal income and tax revenues, that the Hawaiian economy will continue positive growth for the rest of 2012 and into 2013. That Department projects that the economy will be on an expansion path with job growth expected to increase 1.5% in 2014 and 1.3% in 2015; visitor arrivals to increase 2.4% in 2014 and 2.3% in 2015; visitor expenditures to increase 4.3% in 2014 and 4.4% in 2015; and real personal income to increase 2.6% in both 2014 and 2015. Additionally, it projects that Hawaii's real GDP growth is expected to increase 2.4% in both 2014 and 2015.

14. It is noteworthy that the Employers have not called any witnesses to contradict LaCroix's findings or conclusions about the economy or the outlook provided by the DBEDT. This omission has not gone unnoticed in past arbitration cases in Hawaii, and arbitration panels have concluded in the absence of such evidence that the Employer's present and future economic conditions clearly justify an award of a wage increase.

#### DISCUSSION

Initially in this area, although both parties cited several and often differing sources for data concerning the past, present and future healthy of the State's economy and its budgets, it is the

panel majority's view that the panel should rely in this area upon data and forecasts of the COR, rather than other such data that may be contradictory. The COR is established under the State Constitution to prepare revenue estimates and to examine costs to assist the Governor and the Legislature in preparing and executing budgets, and in appropriating funds and where necessary enacting revenue-producing measures. COR is required to prepare revenue estimates for the then current fiscal year and for each ensuing five subsequent fiscal years – the current fiscal biennium and the two subsequent fiscal bienniums – with quarterly reports every three months.

That COR data as of May 30, 2012 reflected a 12% increase in tax revenue growth between fiscal 2011 and 2012 – a sharp reversal of negative fiscal year 2011 projected growth by COR in virtually all of its reports in 2010 and 2011. Although at its September 6, 2012 meeting the COR lowered its forecast for State General Fund tax revenue for fiscal year 2013 from 5.3% to 4.9%, COR still forecasts relatively healthy tax revenue growth rates of 3.9% in fiscal 2014, 5% in 2015, 1.2% in 2016, 4.2% in 2017, 5.1% in 2018 and 4.6% in 2019. General Fund tax collections were up sharply from \$4,329 million to \$4,849 million between fiscal 2011 and fiscal 2012, and it is apparent from State data that the very lean years of Fiscal 2009, 2010 and 2011 are now – halfway through fiscal year 2013 – a thing of the past. In addition, the data shows that the State's actual tax collections in fiscal 2012 were the largest ever – \$127 million over COR projections and an actual increase of 14.9% from fiscal 2011 to fiscal 2012. Moreover, according to the testimony of Employers' witness and State Director of Budget and Finance Calbert Young, the State's Ending Balance Surplus increased from \$126 million in fiscal 2011 to \$306.6 million in fiscal 2012, and will be a healthy \$242.1 million at the end of the current fiscal year despite a fiscal 2013 projection of expenditures over revenues of \$64.6 million.

State management itself additionally deserves some of the credit for the significantly improved financial picture due to its fiscal conservation and the imposition of tight financial

controls including wage reductions and furloughs, hiring freezes, temporary revenue measures, and restrictions on expenditures. The 5% or \$88.2 million in budget reductions for fiscal 2012 and 2013, irrespective of how these “hard-lined” amounts were met by the various departments, have had a significant positive effect upon the State’s fiscal health. That improvement comes despite the fact that these dollars in each of those fiscal years were utilized to pay down unfunded liabilities in the State’s retirement benefits – an element also having a salutary effect upon the State’s overall financial health.

The Employers in this latter area repeatedly pointed in their presentation to the significance of the unfunded liabilities in both the State pension program and in health insurance costs for retirees. While virtually all witnesses testified and the panel majority agrees that increased financial attention needs to be paid to these matters, the State’s funded ratio for such benefits is about 59%, and the State committed at least \$88.2 million in both fiscal 2012 and 2013 as partial payment of those unfunded liabilities. Moreover, such unfunded liabilities exist in virtually every American state and municipality, and Hawaii is thus hardly alone or distinctive in this area. Additionally, despite the known existence of these unfunded liabilities by buyers of bonds issued by the State, the State was able to refinance \$488 million of its general obligation bonds at low interest rates – a sale that resulted in a \$59 million savings to the State over the life of those bonds – and to issue \$800 million of new fixed rate bonds at low interest rates resulting in four times oversubscription of those bonds by potential buyers – all of which indicate a bond buying public with highly positive views of Hawaii-issued bonds. Also consistent with that confidence in Hawaii’s economy, the three largest bond rating agencies provided highly favorable bond ratings of AA or its equivalent in November, 2011. In addition in this area, the Legislature in 2011 made significant changes to the retirement statute to address unfunded liability concerns. Those changes: 1) increased employer and employee contributions to the retirement system; 2) decreased retirement

benefits for new hires; and 3) lowered benefits by raising the retirement age and decreasing the multiplier, among other changes. These changes affect benefits and employee costs and reduce the amount of unfunded liability.

Finally in this ability to pay area, the two largest elements of the Hawaii economy – tourism and military spending – are strong, and the panel majority expects those areas to remain strong. Tourism has recovered from 2009 declines, and visitor arrivals and visitor spending are growing at substantial rates, according to the State’s Department of Business and Economic Development and Tourism (DBEDT). A more favorable and simplified process for obtaining travel visas will likely result in increased visitors from Korea and Taiwan; the recent appreciation of the Japanese yen against the dollar makes Hawaii a less costly destination for Japanese tourists; and more frequent and new direct flights between China and Hawaii will allow better access to Hawaii by increasing affluent Chinese tourists. Moreover, the West Coast economy including California is slowly improving, likely resulting in more frequent visitors from those areas.

In the military spending area – now about 18% of the Hawaii economy – the panel majority believes that, whatever the result of the current U.S. fiscal issues at the federal level, that resolution is unlikely to significantly affect Hawaii long-term military spending – a budget element seldom significantly impacted in conservative political circles. In addition, the military has indicated that it intends to increase its presence in the Pacific Theatre – an element likely positive concerning the continued impact of military spending in Hawaii.

Turning next in this area to the specific issue of whether the Employers have the “Ability to Pay” for the final position of the Union on wages, if the Union’s proposal of lump sum across-the-board wage increases of 5.45% on July 1 of each of the two years of fiscal biennium 2012-13 is granted, the cost according to the Employers would be \$12.2 million. In view of both the projected surpluses for fiscal 2012 and fiscal 2013 as well as the evidence showing that such amounts may

be significantly underestimated based upon much of the above cited data, it appears that the Employers have not met their burden of showing an inability to finance that amount; there was no showing that the diversion of revenues to such a wage level would so seriously hamper other State government obligations that the public's interest would be substantively and adversely affected or that there would be a resulting inability to meet fundamental needs of the public – the standard applied in past such Hawaii public sector interest cases.

Turning finally in this area to “the present and future general economic condition of the counties and the State,” the panel in this Award has already addressed the present, and to a degree the future economic condition of the counties and the State under the above “Ability to Pay” criterion. Addressing further that future condition, the State forecasts a health \$242 million surplus at the end of fiscal year 2014 despite a projected expenditures over revenues for that fiscal year. In addition, the Governor in a July 2012 press conference announced that based upon stronger than expected revenue growth during the then-recently completed 2012 fiscal year, funding would be restored for various critical state programs. Moreover, although the COR in its September 6, 2012 meeting lowered slightly its revenue projections for fiscal 2013 through fiscal 2019, those growth rate projections (except for fiscal 2016) remained at a healthy level of 4.9% in fiscal 2013, 3.9% in fiscal 2014, 5% in fiscal 2015, 1.2% in fiscal 2016, 4.2% in fiscal 2017, 5.1% in fiscal 2018, and 4.6% in fiscal 2019.

It is thus apparent that “the present and future general economic position of the counties and the State” is, and is projected to remain, strong for the foreseeable future. That economic indicator likewise supports the Employers’ Ability to Pay for a wage increase for Unit 10 employees in these circumstances.

Based upon the entire above, I find that the Employers have not met their burden of showing an inability to pay the proposal of the Union, and that the Employers therefore have such

an "Ability to Pay" under HRS Section 89-11(f)(4) and HRS Section 89-11(f)(5).

**B. THE "LAWFUL AUTHORITY OF THE EMPLOYER"**

Section 89-11(f)(1) requires the panel in reaching its decision to give weight to and to address in its decision:

- 1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or/and specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be.

The panel has already addressed, infra, the Union's contention that the Employers exceeded their "lawful authority" in infringing upon Unit 10 employees' basic rights, because the Hawaii Legislature's 2011 enacting of Section 96 of the State budget, by making it imperative that a 5% labor cost savings be achieved for all State bargaining units, thereby foreclosed bargaining with the Unit 10 employees. The panel majority found in that area that it had no jurisdiction over the element of that claim alleging a violation of the Hawaii Constitution and that, even if the panel had such jurisdiction under this statutory criterion, the Employer's actions in this area did not constitute as alleged by the Union a "complete prohibition of negotiations" and thus a violation of this statutory criterion.

In addition under this criterion, there is no showing that any of the actions of the parties was contrary to the "Lawful Authority of the Employer," nor any showing in the above "Ability to Pay" finding that such ability to pay would require the use of "special funds (available) only for authorized purposes and/or under specific circumstances because of limitations imposed by federal or state laws or county ordinances." Any wage increase resulting from this Award should be funded by General Fund dollars, and not by any "special funds" or those with the limitations set forth in this statutory criterion. This statutory criterion thus has no effect upon the panel's determination of the proper outcome here.

### **C. THE "COST OF LIVING"**

HRS Section 89-11(f)(7) requires the panel to give weight to "the average consumer price for goods and services, commonly known as the cost of living," and to address that element in its decision.

In these circumstances, the inflation rate percentage for the Honolulu Metropolitan Statistical Area (MSA) increased 2.4% in calendar year 2010, 3.7% in calendar 2011 and 3.2% (forecasted) for calendar year 2012. That rate is forecasted to increase, even under the Employer's data from the University of Hawaii Economic Research Organization, by 2.5% for calendar 2013 and 2.6% for calendar 2014. The CPI rate during the time of the contract at issue here has increased by 5.7%. Moreover, Hawaii's inflation rate during that most recent past time period has exceeded the national mainland rate by at least .5%. For the period 2003 through June 30, 2013, the compounded rate for inflation has increased 42.1%, compared to compound wage increases of 34.7% in Unit 10.

It is clear from these figures that this data provides more support for a wage increase for bargaining unit employees than it does for any wage decrease. This factor, however, has seldom if ever been viewed as dispositive by this or other arbitrators in interest cases, and the panel majority views it as carrying significantly less weight than, for example, the comparability criterion contained in HSA Section 89-11(f)(6) and (8).

In addition, to the extent that this criterion is argued by the Employers as more appropriately viewed as the cost of labor rather than the cost of living, that contention is addressed in the Discussion section herein of those comparability criteria.

### **D. THE "STIPULATIONS OF THE PARTIES"**

HRS Section 89-11(f)(2) requires the arbitration panel to give consideration and weight to any "Stipulations of the Parties," and to address that statutory criterion in its decision.

The panel majority has already determined, infra, that the evidence presented by the Union concerning the EUTF contribution percentage agreement and funding in late 2010 did not properly constitute in these circumstances a “Stipulation of the Parties.” There were, therefore, no pertinent “Stipulations of the Parties” that impact the panel decision. That statutory criterion therefore played no part in the panel’s decision here.

#### **E. THE “INTERESTS AND WELFARE OF THE PUBLIC”**

HRS Section 89-11(f)(3) requires the panel to consider the “Interests and Welfare of the Public” in making its award, and to address that statutory criterion in its decision..

The Employers argue in this area that this criterion should be given high priority, in that the panel should not make the award here in a vacuum by merely considering the interests of Unit 10 employees, but instead must consider the demands of all of Hawaii’s residents on the State’s limited resources, including delivery of efficient State services, health care and education. They further contend that, as discussed under the Ability to Pay criterion, the State’s challenges are great in this difficult economic climate, including maintaining fiscal integrity, recapitalizing depleted emergency funds, and addressing the State’s growing unfunded liabilities. Finally, they assert that this criterion requires an equal distribution of its financial burden among all State employees, and that to exempt Unit 10 from such financial burden at the expense of all other State employees is unfair and unjust.

The Union argues that the “Interests and Welfare of the Public” is in serious jeopardy due to inadequate and non-competitive wage rates among Unit 10 employees. It contends that the evidence shows that, particularly in the 24 hour per day, seven day per week Unit 10 positions in HHSC hospitals, the City/County EMS division, and correctional facilities and centers, there exists severe staffing shortages which directly affect morale and often require high levels of mandatory overtime and/or result in significant turnover – so much so that HHSC has had to resort to hiring

agency nurses at significantly higher pay rates. It contends in this area that the rural location of many of the HHSC facilities has resulted in recruitment and retention issues and acute shortages in virtually all HHSC Unit 10 positions, as determined in a recent HHSC audit and annual report. It claims concerning the Unit 10 EMS function that serious recruitment and retention problems have lead Unit 10 employees to pursue higher paying jobs in the Fire Department and in professional nursing, creating inadequate staffing with lower staff levels forced to meet increasing service demands through mandatory overtime, and leading to mental and physical exhaustion and sometimes burnout. It argues that among ACOs in the Department of Public Safety, a steadily increasing inmate population which has reached over-capacity has heavily taxed such ACOs, who often leave for high paying jobs in other Hawaii law enforcement areas, and as found by arbitrators in the past. It asserts that high turnover in the critical function of corrections serves neither the public interest nor the public welfare. Finally, it argues that interest arbitrators have consistently recognized the detrimental impact of both low wages and wage reductions have on employee morale, and the damaging consequences to the public interest.

#### DISCUSSION

As is apparent from an examination of the above arguments of both parties concerning this statutory criterion, the large majority of the assertions in this area relate to the statutory comparability criterion contained in HRS Section 89-11(f)(6) and (8), and to a lesser degree to the Employer's financial ability to finance any wage increases. The arguments of both parties concerning comparability – internal comparability (State) and external comparability (Union) – both have a degree of merit in this area, in that a finding in favor of the Union would likely impact the morale of other State employees who agreed to wage cuts during the fiscal biennium at issue here, while a finding in favor of the Employer would likely exacerbate existing personnel staffing shortfalls particularly in HHSC and EMS, and make more difficult the services provided to the public

in this critical area.

Generally under this criterion, however, it is the panel majority's view that, all other things being equal, it is in the interest and welfare of the public in order to protect health, safety and welfare, especially in the critical State job classifications in Unit 10, to have a well trained, motivated efficient work force not overburdened by staff shortages in critical employee classifications. It is undisputed here that Unit 10 employees provide a wide variety of services that directly impact both the public and public health and safety, and indeed these employees serve as the "safety net" providers of such critical services.

In view of the above, the panel majority finds that while this statutory criterion to a degree favors both the Employers and the Union, it weighs more heavily in favor of some degree of wage increase and therefore more in favor of the Union.

#### **F. WAGE COMPARISONS AND OVERALL COMPENSATION BENEFITS COMPARISONS**

HRS Section 89-11(f)(6) and (8) require the panel to consider and to address in its decision both:

- (6) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other persons performing similar services and of other state and county employees in Hawaii;

and

- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received."

The panel believes that while the parties' positions under these two criteria can be set forth together, the statute requires separate consideration of each of these criteria, and that they be addressed separately in the Award. Those elements follow here.

## POSITIONS OF THE PARTIES

### THE EMPLOYERS

1. In evaluating the wage proposals of both parties, HRS Section 89-11(f) requires the arbitration panel to give weight to both the comparison of wages, hours and conditions of employment with other persons performing similar services, and with other State and county employees in Hawaii; and to the overall compensation presently received by employees including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received...”

2. An independent wage study comparing Unit 10 wages and benefits with other persons performing similar services and with other State and county employees in Hawaii – which was performed by Berkeley Research Group (hereinafter BRG) headed by Employers’ witness Kilbourne – determined that Unit 10 wages and benefits exceed both local and mainland labor markets. That study concluded that: 1) Unit 10 compensation is 119% of the market; 2) after the Employers’ proposed wage reduction of 5% per year, Unit 10 compensation will still be 113% of the market; 3) overall economic indicators demonstrate that Unit 10 compensation is above market, and that turnover is exceptionally low and tenure is exceptionally high; 4) Hawaii government employee unions consisting of 34,042 employees have agreed to annual five percent wage reductions for the July 1, 2011 to June 30, 2013 contract period; and 5) public sector wages and benefits across the nation are trending downward.

3. Under the statutory criterion of comparisons of compensation of other State and county employees in Hawaii, the wage reduction proposed by the Employers for Unit 10 employees is consistent with labor savings obtained from other bargaining units subject to labor cost savings demanded by the Hawaii Legislature. Almost all bargaining units covered by Act 164 have made

labor concessions called for by that Act for a five percent wage reduction for fiscal biennium 2012-2013. While the wages of the majority of Hawaii State employees were reduced by five percent starting July 1, 2011, the wages of Unit 10 employees were restored to pre-reduction levels above that amount, and those employees' health benefits contributions remained at dollar amounts equal to 60% of the premium rate, while employees in other bargaining units have seen their health insurance contributions increase via their new payment level of 50% of that premium. If as shown here the Employers have already settled with one or more bargaining units and the Employers are proposing the same basic wage package in the arbitration proceeding, it has been argued by noted authorities on this subject that such a package is entitled to a high degree of support from interest neutrals. This is especially true because the Union failed to explain why employees in Unit 10 should not have their wages reduced by the same amounts as their coworkers.

4. It is even harder to understand why the Union proposed a 5.45% wage increase for each fiscal year of the fiscal biennium 2012-13 when most State employees have seen their wage levels reduced. Despite performing core services and essential functions for the State, employees represented by the Union in Unit 1 agreed to labor concessions equal to a 5% wage reduction, while as to health benefit contribution by employees a specific dollar amount to be paid by the Employer equivalent to 60% was reduced by agreement of the parties to a premium level paid by both parties of a dollar equivalent amounting to 50% effective July 1, 2011. The Union has failed to explain why Unit 10 employees should be treated more favorably than other State employees in the distribution of this financial burden.

5. In the area of comparison of wages and overall compensation to other employees performing similar services, the evidence showed that the wage rates of State ACOs are higher than that of their federal counterparts, even with inclusion of the added cost of living adjustment and locality pay paid to those federal employees. Although federal correctional officers are paid

\$2,826 higher than State ACOs at the entry level, the federal system requires either a college degree or three years of pertinent experience, while State requirements for that position are a high school graduation or one year of pertinent experience. Kilbourne testified that, generally speaking, there is a forty to fifty percent increase in compensation for a Bachelors degree over a high school degree. Despite that element, beginning federal correctional officers make only about six to seven percent more than their Hawaii State counterparts. At the top or senior level, the State pays more than \$3,000 more than their federal counterparts.

6. Union Compensation Analyst Messina's testimony that the salaries of State ACOs are lower than that of federal correctional officers at both the beginning and the maximum level is incorrect for two reasons. First, this information is outright incorrect as the ACO III maximum paygrade at the State is understated in his data by nearly \$2,000. Second, all of Messina's analysis regarding wages of federal and State comparisons is incorrect because Messina utilized an incorrect methodology when adding the COLA and locality pay to the federal employee base wage rate.

7. There is additionally no evidence to support the Union's claim that State ACOs seek federal correctional officer jobs due to better pay. Since the evidence showing that former State ACOs moved to the federal detention center when that facility first opened in 2001, the evidence shows virtually no such employee movement since that 2001 time period. That element renders such movement insignificant concerning any conclusion regarding pay differences between the State ACOs and federal correctional officers. Moreover, when the Union recently provided to the United States Attorney's Office a list of names of eleven hundred former State ACOs, asking whether they work or had worked for the federal correctional system, that response showed that only forty-two of them have been Federal Bureau of Prisons employees at some point, with the majority being hired in 2001 when the Hawaii federal detention center opened. Only 29 of those

42 are currently federal correctional officers, and thus only .026% of the eleven hundred former State ACOs became federal correctional officers, with the majority of them being hired more than a decade ago. This percentage is so low, and the date of hire is so remote, the only conclusion that can be derived is that salaries of State ACOs are competitive despite the fact that the federal government generally pays more in order to compete with State government for those comparable jobs.

8. In the area of State wage levels versus the market, Kilbourne's study indicated that the overall compensation for Unit 10 employees is above the local and national market, that wages are on par with the market, and that Unit 10 employees' benefits are substantially higher for a total compensation of 119% of market. Thus even with the proposed five percent wage reduction for fiscal biennium 2012-13, Unit 10 employees' overall compensation is still above market at 113%. Therefore, relative to the local and national market, Unit 10 salaries are competitive and even above the market.

9. In the area of wages, Unit 10 wages under Kilbourne's study are at 100% of the local labor market or on par with that market. Under the Hawaii Employers Council analysis, public sector wages are 2% above the local market – a level that supports the conclusion of the first wage study discussed above. Even under the American Federation of Teachers public employee union surveys of all fifty states, after adjusting for differences in costs of labor in Hawaii, Unit 10 wages are 99% of the wages of government employees in other states. The result of this survey is consistent with the other two surveys described above.

10. In the area of minimum and maximum wages, Kilbourne's study shows that Unit 10 employees are above the market at both minimum and maximum wages in the public and private sectors in Hawaii. The survey using Hawaii Employers Council data shows that Unit 10 wages are now at the minimum level are 108% of the market and 113% at the maximum level. Similarly,

at both the minimum and maximum levels, bargaining unit wages are above the averages in the Hawaii private and public sectors. The Kilbourne study wage analysis and conclusions are reliable, in they use multiple wage analysis to support the findings that Unit 10 wages are at parity with or above the market, Unit 10 positions match a substantial proportion of job positions of other employees in the survey, and the substantial sampling size of the analysis increases both the precision and the robustness of the analysis.

11. In the area of employee benefits, Unit 10 benefits are substantially better than in the local or national markets. The benefits received by Unit 10 employees are 171% of the market and represent 63.1% of employee wages, compared to the private labor market level of 36.75% of wages.

12. The Union's wage analysis is both problematic and flawed in a variety of areas: 1) it compares wages of Unit 10 employees to those of state employees in only four western states; 2) it inappropriately adjusts mainland wages based upon cost of living differences rather than the cost of labor differences – an adjustment which most experts say when based on cost of living is deeply flawed; and 3) the Union's analysis does not reveal what Union employees would earn in other states. In contrast, Kilbourne's study relied upon the AFT Survey, which is a labor union survey conducted of government employees in all fifty states. The AFT Survey shows that Unit 10 employees are paid 104% of the wages of government employees in other states based on an unadjusted weighted average, and 99% after differences in the cost of labor between Hawaii and the U.S. are taken into account.

13. Even if mainland data is used, it must be properly adjusted to reflect the differences in labor market(s) (cost of labor), not cost of living differences. Kilbourne's criticism of Messina's inappropriate use of the cost of living factor is supported by numerous publications and respected professionals in this area, all concluding that Messina's methodology is flawed. Those experts hold

that local wages do not predict cost of living levels, that cost of living is not a good predictor of wage levels; and that the proper procedure for employers is to ignore cost of living levels and concentrate on local market pricing for labor when administering pay programs. A more appropriate methodology is to compare the wages of government workers in Hawaii with similarly-situated workers in the private sector in Hawaii. This enables one to determine the appropriate market wage for the positions held by Unit 10 workers.

14. If the Union is intent upon using mainland wage data rather than available local labor market data, it should properly adjust the mainland wages based on geographic wage differentials or cost of labor differences rather than cost of living differentials. That data would show that the cost of labor in Hawaii is lower than in all of the locations to which Messina makes his comparisons; and that the cost of living in Hawaii is not higher than the locations to which Messina makes his comparisons. Unlike the Union's wage analysis using only four states, Kilbourne's analysis uses the AFT national survey of fifty states, compares the differences in the cost of labor to Hawaii using AFT wage findings, and adjusts them to what one would expect in Hawaii to account for the difference in the cost of labor, which captures the difference in cost of living as well as such elements as in geographic differences and local amenities.

15. In the area of macroeconomic indicators, consistent with the result of the detailed wage analysis performed by Kilbourne, the macroeconomic indicators support his analysis and finding that Unit 10 employees' compensation is well above the labor market. The voluntary turnover rate for Unit 10 employees is only 2.3% – a level significantly lower than that of Hawaii's overall turnover rate of 13.9% and the U.S., state and local government overall rate of 16.3%. Additionally, the average tenure of Unit 10 employees is thirteen years, which is substantially higher than the average among all other state governments of 6.4 years and the U.S. private sector average of four years. These two measures strongly indicate that Unit 10 employees choose, in

overwhelming numbers, to remain working with the State. Furthermore, low turnover rates signal that Unit 10 compensation is above the market, as higher wages generally lead to lower turnover. These statistics by themselves demonstrate that Unit 10 employees' overall compensation is competitive with or exceeds the market.

16. The Employers' proposed wage reduction is also consistent with measures taken by many public, private and government entities across the country in response to continuing financial problems brought about by the 2008 national and global recession. In fiscal year 2011, thirty-one states have implemented employee-related cost cutting actions such as layoffs, furloughs, salary cuts, and salary freezes. These labor cost cutting measures continued into fiscal year 2012. In addition, as previously described above, almost all State bargaining units have had their wages decreased by approximately five percent since July 1, 2011. Salary cuts of five percent were also extended to Hawaii legislators, executive and judicial branch employees through December 2013.

17. Under the statutory criterion of "interests and welfare of the public" set forth in HRS Section 89-11(f)(3), as related to the "Ability to Pay" criterion, the State's challenges are great in a time when it is coming out of the worst fiscal situation since the Great Depression. Among the many challenges faced by the State are maintaining fiscal integrity, recapitalizing the depleted emergency reserve funds, and addressing the State's growing unfunded liabilities. To exempt Unit 10 employees from such financial burdens at the expense of the rest of the State employees is simply unfair and unjust.

#### THE UNION

The Union makes the following arguments in support of its contention that the evidence concerning comparability under HRS Sections 89-11(f)(6) and (8) supports an increase in wages for Unit 10 employees, and specifically that it supports its proposal of a 5.45% increase during

each of the two years of the 2012-13 fiscal biennium.

1. Where, as here, the parties disagree over which employees or employers should be utilized for comparability purposes, past precedent in this area should be followed by the arbitration panel here. The decisions of past interest arbitrators in this bargaining relationship and in other Hawaii interest arbitrations have found that Unit 10 employees should be compared with their counterparts among federal workers in Hawaii; persons employed in private hospitals and emergency medical services in Hawaii; persons performing similar services in Alaska, California, Oregon and Washington; and Hawaii registered nurses in Unit 9, firefighters in Unit 11 and police officers in Unit 12. Since the issuance of those interest arbitrations, nothing has changed regarding the basis relationships which exist between the State and the City and County of Honolulu as the Employers and the federal government whose employees provide "similar services" at the Tripler Medical Center and the federal correctional center on Oahu; in the relationship between these Employers and private sector hospitals in Hawaii including Kaiser, Queens, Kuakini, Straub, Wilcox and Kapiolani; and the relationship of those Employers to West Coast states including in Alaska, California, Oregon and Washington. In addition, nothing has changed regarding the basis interrelationship between those Employers and State registered nurses in Unit 9, firefighters in Unit 11, and police officers in Unit 12. Therefore, it is those other employees and employers who provide the appropriate comparability group for comparison purposes in this case.

2. It is additionally axiomatic that communities used for comparability purposes in an interest arbitration should be located within the same labor market as the community where the interest arbitration dispute exists. The federal Tripler Medical Center and the federal Hawala Detention Center on Oahu are located in close proximity both to hospitals under the jurisdiction of HHSC and to the Hawaii correctional facilities located on Oahu and the other islands. Similarly, emergency medical services division employees on Oahu are properly compared with both private

and hospital emergency medical services personnel on Oahu and other islands.

3. The comparisons of Unit 10 employees to federal government employees in Hawaii indicates significant current wage disparities. Unit 10 nurses aides' maximum salary is 13.5% less than nurses aides at Tripler Medical Center; licensed practical nurses in Unit 10 receive 6.1% less at the entry level and 17.7% less at the maximum level than nurses at Tripler; ACOs in Unit 10 receive at the entry level 13.8% less and at the maximum 23.2% less than correctional officers in the Halawa Federal Detention Center; Unit 10 psychiatric technicians receive at the entry level 2.9% less and at the maximum 17.2% less than psychiatric technicians at Tripler; paramedical assistants II in Unit 10 receive 2.1% less at the entry level and 13.5% less at the maximum level than paramedical assistants II at Tripler; and paramedical assistants III in Unit 10 receive at the entry level 6.8% less and at the maximum 17.7% less than paramedical assistants III at Tripler. Such evidence strongly supports the need for a wage increase to bring the Unit 10 employees closer to wage levels received among federal employers with whom the State competes in Hawaii.

4. The comparison of Unit 10 employees to federal government employees in Hawaii also indicates significant disparities in health benefits and costs. Unit 10 employees pay \$60 per month more for health benefit family coverage than their counterparts in the federal government. The State as the employer pays \$170 per month less for single coverage and \$179 per month less for family coverage than their counterparts in the federal sector. For Unit 10 ACOs, this translates to a 20% reduction in take home pay compared to their counterparts at the federal detention center, and a 6% reduction in take home pay for psychiatric technicians in Unit 10 when compared to that classification at Tripler.

5. The Union's comparisons, which disclose significant disparities in wages and benefits between Unit 10 employees and federal government employees, are compelling for at least two reasons. First, external comparisons are particularly valuable when the same

comparability group has been previously used in arbitrations and the comparisons are to employees performing similar duties. Second, the Union's comparisons are equally compelling because they involve health care hospitals and employers of similar size as well as employees who are represented by labor organizations and perform similar duties. Arbitrators have generally agreed that while population size and potential public revenues are partial determinants of wages, it is also true that union/non-union status effects wages. Any comparison similar to that claimed appropriate by the Employers is hindered by not separating out employees who have a say in their wages and other compensation through collective bargaining.

6. The comparison of Unit 10 wages to employees in private sector hospitals in Hawaii indicates a significant disparity in wages. LPNs in Unit 10 receive 28.65% less per year than LPNs at Kaiser, 25.9% less per year than LPNs at Queens, and 14% less per year than LPNs at Kuakini in the area of wages. That gap has continued to grow since at least 2003. Nurses aides in Unit 10 receive 12.07% less per year than aides at Kaiser, 11.1% per year less than aides at Queens, .08% less per year than aides at Kuakini and Wilcox, 4.9% less per year than aides at Straub, and 4.8% less per year than aides at Kapiolani. Unit 10 psychiatric technicians receive 11.3% less per year than psychiatric technicians at Queens – the only Hawaii private sector hospital employer employing psychiatric technicians.

7. The comparisons of employees in Unit 10 to employees in private sector hospitals in Hawaii also indicates significant disparities in health benefits and costs. Unit 10 employees pay \$161 per month more for single coverage than their counterparts at Kaiser and Queens, and \$125 per month more for single coverage than their counterparts at Kuakini. For family coverage, Unit 10 employees pay \$497 per month more than their counterparts at Kaiser, \$349 per month more than their counterparts at Queens, \$283 per month more than their counterparts at Kuakini, and \$285 per month more than their counterparts at Straub, Wilcox, and Kapiolani. For single

coverage, the State as an employer pays \$668 per month less than Kaiser, \$236 per month less than Queens, \$85 per month less than Kuakini, and \$205 per month less than Straub, Wilcox and Kapiolani. For family coverage, the State pays \$176 per month less than Kaiser, \$380 per month less than Queens, \$129 per month less than Kuakini, and \$383 per month less than Straub, Wilcox and Kapiolani.

8. The comparative costs of health care for Unit 10 employees translates into a 40% reduction in take home pay for a Unit 10 nurses aide compared to a nurses aide at Kaiser, a 38% reduction in such pay compared to nurses aides at Queens, and a 28% reduction in take home pay for a nurses aide compared to that classification at Straub. For Unit 10 licensed practical nurses, this translates to a 63% reduction in take home pay compared to licensed practical nurses at Kaiser, and a 57% reduction in pay compared to licensed practical nurses at Straub.

9. The comparison of Unit 10 employees to their counterparts on the West Coast of the mainland indicates growing disparities in rank in minimum and maximum pay levels. Nurses aides in Unit 10 move from rank one out of five at minimum salary to a rank three at maximum pay; LPNs in Unit 10 move from rank two at minimum salary to a rank three at maximum pay; ACOs in Unit 10 rank two at minimum and four out of five at maximum; and Unit 10 psychiatric technicians rank three at minimum level and four out of five at maximum pay level. Unit 10 paramedical assistants II are at rank one out of five at minimum but rank three at maximum pay; paramedical assistants III are at rank two out of five at minimum and three out of five at maximum; emergency medical technicians rank one out of two at minimum and at maximum pay level. Emergency medical care specialists rank fourth compared to comparable West Coast cities at minimum and maximum levels. The reduction in the rank of Unit 10 employees at maximum levels is generally due to the fact that there is no available step movement in Unit 10 wage levels. There is also a downward shift in rank in virtually all these classifications when relative cost of living is taken into

consideration.

10. When it comes to health care employees, out of AFSCME-represented employees in thirty states, Unit 10 employees pay the highest amount per month for single health insurance coverage and the fifth highest for family coverage. In that group, the State as an employer pays the second lowest amount at 29<sup>th</sup> for health coverage. All West Coast states rank better than Hawaii in terms of what those state employers pay for health care coverage for their employees.

11. With regard to evidence on the “internal comparison” of the most relevant bargaining units of “State and county employees in Hawaii” under HRS Section 89-11(f)(6), there are and have been significant disparities between the wages and benefits of Unit 10 employees compared to those of registered nurses in Unit 9, firefighters in Unit 11, and police officers in Unit 12. In across-the-board wage increases from July 1, 2003 to June 30 2011, registered nurses in Unit 9 have received increases of 35.6% compounded, firefighters in Unit 11 have received increases equal to 44.8% compounded, and police officers of Unit 12 have received increases equal to 47.7% compounded. This is in comparison to the compounded wage increases received by Unit 10 employees during that same time period of 34.7%. In the same period, Unit 10 employees received no step increases while step increases were received by registered nurses in Unit 9, firefighters in Unit 11, and police officers in Unit 12 for four of the past fiscal years. These differences places Unit 10 employees at a significant disadvantage to Unit 9 when compared to employees who have long enjoyed step movement based on longevity or length of service, and to firefighters and police officers who have negotiated step increases from 2003 to 2009 in addition to the across-the-board wage increases.

12. During the “recession period,” while Unit 10 employees received pay reductions equal to 5.45% each year for the period of January 1, 2010 through June 30, 2011, firefighters in Unit 11 received a 5% across-the-board wage increase effective July 1, 2009 and 5% more

effective July 1, 2010; and police officers in Unit 12 received a six percent across-the-board wage increase effective July 1, 2009 and 6% more effective July 1, 2010. From July 1, 2009 through March 1, 2011, the Employers here increased the employee cost of providing health benefits for Unit 10 employees from 40% to approximately 60% of the cost of premiums, while firefighters in Unit 11 and police officers in Unit 12 continued to pay just 40% of the cost of health benefits premiums throughout that same time period. Disparities between Units 9, 10, 11 and 12 in wage and benefits equity and fairness are relevant considerations for the panel in these circumstances.

13. Arbitrators generally hold that where the comparisons show that the general level of wages paid by an employer is below comparable wages paid by comparable employers, the union is justified in pressing for a catch-up in wage increases in addition to those justified by the cost of living. A catchup is clearly warranted for Unit 10 employees in these circumstances. Police officers were granted a 6% annual wage increase effective on both July 1, 2009 and July 1, 2010; firefighters wages increased effective July 1, 2009 and July 1, 2010 by 5% each year. These wage increases placed Unit 10 employees 10.1% behind the general wage levels of firefighters in Unit 11, and 13% behind such levels of police officers in Unit 12. Similarly, Hawaii University and Community College faculty who took a temporary wage reduction of 6.66% effective July 1, 2010 are being afforded a "catchup" in lump sum payments effective August 1, 2012, enabling them to get back to the wage level they lost for one year in 2010. These developments in Units 7, 11 and 12 indicate that employers have recognized the need for catch-up to keep pace with wage levels for "other State and county employees in Hawaii" under HRS Section 89-11(f)(6).

14. Although the Employers cite for comparison purposes the Hawaii government Employees' settlements in Units 2, 3, 4, 6, 8 and 13, the unilateral State implementation of wage decreases for Hawaii State Teachers Association employees, and the Union's settlement calling for a five percent labor cost savings, furloughs and no layoffs in Unit 1, these so-called "internal

comparables” are entitled to much less weight than the impressive external comparables presented by the Union. The Employers’ reliance on “internal comparables” cited above is also entitled to less weight because the “internal comparables” in Units 9, 11 and 12 are directly relevant to first responders – similar to the functions of employees in Unit 10. The “equal pay for equal work” concept applies directly to those whose nature of work and occupations require specialized training; Unit 10 positions in this area are similar to those of first responders in Units 9, 11 and 12. Therefore, the external comparables cited by the Union as well as the internal comparables for Units 9, 11 and 12 should be given significantly more weight than the internal comparables cited by the Employers in these circumstances.

15. Under the statutory criterion of the overall compensation of employees under HRS Section 89-11(f)(8), the Employers’ presentation of a chart which purports to compare “Unit 10 benefits as a percentage of payroll” to “the Hawaii labor market” is highly inappropriate, contrary to law and misleading. HRS Section 89-11(f)(6) allows for a comparison of “wages, hours and conditions of employment” of employees involved in the arbitration proceeding with “other persons performing similar services.” What the Employers have done is to substitute the statutory phrase “other persons performing similar services” with the term “Hawaii labor market” by which the Employers contend that private sector benefits as a cost of payroll are 36.7%, compared to a substantially higher percentage for State employees. The Hawaii Employers Council study relied upon by the Employers in this area is not properly suited for comparison purposes with employees who perform “similar services,” because it is based on both non-union employees and employers, and many Hawaii employers substantially smaller in size than those involved in Unit 10. That study additionally fails to differentiate between job titles, classifications, or duties and responsibilities. Moreover, although the Employers contend from the claimed analysis of “Benefits as a Percentage of Payroll” that Unit 10 benefits are 171% of market, a careful examination and review of the Hawaii

Employers Council data concerning private sector “benefits” based on size of companies contradicts that assertion. For example, fifty percent of Hawaii private companies which employ 1,000 or more employees and 38.9% of such companies which employ between 400 and 1,000 employees offer defined benefit retirement and pension plans like those offered by the State. Private companies which employ 1,000 or more employees pay more in vacation benefits, similar amounts in holiday benefits, and provide similar benefits in the area of temporary disability payments compared to those received by Unit 10 employees.

16. Even if Unit 10 employees receive benefits in these areas better than those received by comparable Hawaii private employers, the evidence clearly shows that Unit 10 employees pay substantially more for their health insurance premiums than do those Hawaii private employers. The evidence shows that health care costs have severely diminished the take home pay of Unit 10 employees. ACOs are paid \$22.44 per hour after health benefits coverage by the federal detention center compared to \$18.75 per hour by the State after health insurance deductions; a psychiatric technician is paid \$15.48 per hour after health benefit coverage deductions by Tripler compared to \$14.63 per hour after health benefit deductions by the State; a nurses aide is paid \$18.84 per hour after health benefit coverage deductions by Queens and \$13.66 per hour after health coverage deductions by the State; and a nurses aide is paid \$17.43 per hour after health benefit coverage deductions by Straub and \$13.66 per hour after health benefit deductions by the State. Additionally, an LPN is paid \$25.83 per hour after health benefits coverage deductions by Kaiser and \$15.87 per hour by the State after health benefit coverage deductions; and an LPN at Queens is paid \$24.86 per hour after health benefit cost deductions compared to \$15.87 per hour after health benefit deductions by the State. Arbitrators have held that maintenance of “take home pay” is a legitimate concern, particularly in the age of skyrocketing health care costs. This evidence clearly shows that the Unit 10 employees do not compare well

in terms of overall benefits when compared to similar employers in the State of Hawaii.

17. The Union's comparisons to federal government employees in Hawaii provide a better comparison than that of the Employer in this area. Union witness Messina conducted an examination of the labor market in Hawaii and found appropriate matches to selected Unit 10 jobs comparable to federal government employees in Hawaii, and he examined relevant job descriptions, pay plans and schedules, classifications and collective bargaining agreements applicable to both groups for purposes of benchmarking and matching. He found "good matches" (based on similarities in duties, responsibilities and job knowledge requirements) for nurses aides, licensed professional nurses, psychiatric technicians, and paramedical assistants IIs and IIIs – all employed at Tripler, and for Correctional Officer IIIs employed at the federal detention center in Honolulu.

18. In summary, the evidence in this area shows that the wages of Unit 10 employees are not competitive with their counterparts at Tripler and the federal detention center; and that this significant disadvantage would be more pronounced if the arbitration panel were to implement the 13.3% wage reduction urged by the Employers. For example, for ACOs such a decrease would result in a \$12,744 per year difference at the entry level or a 25.3% decrease, and a \$21,279 per year difference at the maximum level, or a 33.4% decrease. For nurses aides, the second most populous Unit 10 title, there would be a \$3,693 per year difference at the entry level (11.5% decrease) and a \$10,429 per year difference at the maximum level or a 25% decrease at that level.

19. Contrary to the Employers' contention, the Union's use of correctional officers at the federal detention center in Honolulu is appropriate as a comparability group for that portion of Unit 10 involving ACOs. Those federal positions accept experience and do not require a bachelors degree as a initial job requirement, the Employers' comparison of Unit 10 ACOs was based on a longevity step in the parties' contract which is no longer used by the Employer or the Union, and

the Union properly utilized the federal pay amounts to include increases involved in both locality pay and cost of living adjustment paid to federal correctional officers.

20. The Employers also relied on two nationwide studies which included states that have no proximate geographic relationship to Hawaii for their conclusion that Unit 10 ACOs are paid at 100% of the wage market. Because that analysis includes salary comparisons for correctional officers in states clearly not comparable to Hawaii, as well as Union and non-Union employees, and additionally includes a jailer's classification not included in this bargaining unit, that study does not properly involved employers which compare to job classifications and union status of correctional employees in Unit 10. Moreover, even if that study was appropriate, Hawaii ranked seventeenth among the fifty states in correctional officer pay in the journeymen and senior lead classifications. Similar problems exist with the Employers' comparison with the Bureau of Labor Statistics data, which also did not distinguish between union and non-union officers and included the jailers classification. Even with these discrepancies, that survey ranked Hawaii sixteenth for entry level positions and seventeenth for senior lead positions compared to other states and the District of Columbia.

#### DISCUSSION OF HRS SECTION 89-11(f)(6) 'WAGES, HOURS AND CONDITIONS OF EMPLOYMENT COMPARABILITY CRITERION

HRS Section 89-11(f)(6) requires separate comparability consideration of Unit 10 employees both with "other persons performing similar services" (external comparability) and "other state and county employees in Hawaii" (internal comparability). Discussions of those elements and the weights given to them are set forth separately below.

#### INTERNAL COMPARABILITY

Initially in this comparability area under HRS Section 89-11(f)(6), the panel majority believes it appropriate to initially discuss the issue of internal comparability and the weight or lack thereof to be afforded to such internal comparability. In this area, it is the arbitrator's general view that, due

to the relative scarcity of potential external comparability in Hawaii, particularly in the public sector, this internal comparability is entitled to greater weight than it might otherwise deserve where more external market-based comparability data exists. Such added weight is also appropriate where, as here, HRS Section 89-11(g)(6) requires arbitral consideration not only of the “wages, hours and conditions of employment of other persons performing similar services” – external comparability – but also of such wages, hours and conditions of employment of “other state and county employees in Hawaii.” That latter statutory element, since it does not require the performance of “similar services,” is a clear reference to internal comparability seldom found in interest arbitration statutes outside of Hawaii.

At the same time, however, arbitrators including the panel chairperson here generally give greater weight to external comparability in wage disputes, unless it can be shown that a clear pattern has been established in wage increases or decreases in internal comparisons of bargaining units. Indeed, where there exists a well established internal wage pattern, that pattern is generally given greater consideration by arbitrators than external patterns.<sup>1</sup>

In this situation, while the Employers give great emphasis to the previous settlements reached with Units 1, 2, 3, 4, 6, 8 and 13 for the fiscal biennium at issue here for a 5% across-the-board wage reduction, that emphasis is based upon the theory that all bargaining units should equally share in the economic sacrifice necessitated by the Employers' financial difficulties. While that argument certainly has a degree of merit, there was no showing by the Employers that historically these or any other Hawaii public sector bargaining units and Unit 10 have had a consistent wage settlement pattern. Put more succinctly, there was no showing that a clear pattern of internal wage settlements has existed over any period of time between Unit 10 and employees

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<sup>1</sup> See, e.g., City of St. Paul 101 LA 1205 (Jacobowski, 1995); City of West Bend 100 LA 1118 (Vernon, 1993).

of such bargaining units.

The Union contends in this area that the most recent contract settlements in Unit 9 (nurses), Unit 11 (firefighters) and Unit 12 (police) should be examined and given weight to by the panel under the "other state and county employees in Hawaii" language of HRS Section 89-11(f)(6), in essence on the grounds that, like employees in Unit 10, employees in those bargaining units are "first responders" who constitute the "safety net" among Hawaii government employees. The Union also asserts that wages in these bargaining units, rather than in Units 1, 2, 3, 4, 6, 8 and 13, have been compared under that criterion in previous Unit 10 interest arbitrations.

While the panel majority understands those "safety net" comparisons and agrees that those units have been cited under this statutory criterion in prior Unit 10 interest arbitration cases more than have other State bargaining units, wage comparisons particularly with firefighters and police involve, with minor exceptions contained in the firefighters unit, only employees of Hawaii counties rather than of the State, and the evidence in this area proffered by the Union failed to show whether such counties have or have not also experienced the past economic difficulties experienced by the State. In addition, county government funding is based largely upon property tax in contrast to the tax funding basis of the State and HHSC discussed above. Moreover, the pertinent statutory language refers to other state and county employees, not merely to county employees such as police and firefighters. That language, notwithstanding the Union's "first responder" and "safety net" contentions, on its face makes no distinction for comparability purposes between "other state" and "other county" employees in Hawaii, and makes such comparisons under that statutory criterion necessary with both "State" and "county" employees in Hawaii.

Certainly, the Employers' contention that all employees should share equally in the State's past financial difficulties, without consideration of other statutory elements including external comparability, has a degree of appeal to the panel as a element of "fairness" and "equal treatment"

under the statutory criterion of “other state and county employees in Hawaii.” At the same time, the “safety net/first responder” element, along with past arbitral consideration of settlements in the statewide nurses, firefighters and police units, has a degree of appeal to the panel under that same statutory phrase. In view of these conflicting elements, however, it is the panel majority’s view that this internal comparability element under that portion of HRS Section 89-11(g)(6), largely because of the relating scarcity of Hawaii-based external comparability, favors the Employers slightly more than it favors the Union in these circumstances.

#### EXTERNAL COMPARABILITY

In the area of external comparability under HRS Section 89-11(f)(6), the parties have substantial disagreements both over what employers should properly be considered comparable to Unit 10 employees, and over how that comparability should be measured among those prospectively comparable groups.

The panel chairperson, in his nearly 100 past interest factfinding and interest arbitration case decisions in eight other states, has consistently expressed the view that as a general rule, external comparability is most properly market driven, and the most comparable employers generally should be located nearby in the same labor market, be of relatively similar size, serve similar populations, and draw upon similar resources and where applicable similar tax bases. In the final analysis, the prevailing practice in the wage and conditions of employment that should be used for comparisons is that of the employers’ competitors, whether within or without the area, or that of other employers so situated with similarity of interests.<sup>2</sup> Labor markets tend to have geographic boundaries – and particularly so given Hawaii’s relative geographic isolation – and what occurs among employers within reasonable geographic range may be expected to affect the ability

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<sup>2</sup> See, e.g., University of Chicago Hospitals 63 LA 824, 826 (Mueller, 1974); Town of Dedham 67 LA 384, 386 (Holden, 1976).

of the employer to employ and retain workers.<sup>3</sup>

Certainly, where no geographically close, similarly-situated employers exist – the best example being the statewide, county-based unit of Hawaii police officers – the arbitration panel would have little choice but to compare their wage and benefit levels to those in existence in similarly-situated police employers on the mainland. But where, as here, comparable employers and employees exist for the vast majority of Unit 10 employees, it is those comparables that must be given priority emphasis, and particularly so given the substantial geographic separation between Unit 10 employees and those performing similar services on the mainland.

The importance of Hawaii-based external comparability groups for comparison purposes is further enhanced by the fact that such employers are the only ones upon which the parties agree are comparable here. Such agreement has been found in past arbitration cases as the determinative factor in the selection of appropriate comparability groups.<sup>4</sup> While the parties still disagree even among these comparables upon the size and union/non-union status of this Hawaii-based comparability group – areas addressed infra – that agreement generally on those comparable employers is a key element to the panel's determination of the appropriate comparable group(s).

Each of the parties here suggest additional appropriate comparable groups made up of certain mainland employers which perform municipal or state government functions similar to those performed by Unit 10 employees. The Employers point to public employee wage surveys of all mainland states performed by the American Federation of Teachers and by the federal Bureau of Labor Statistics, while the Union points to data claiming as comparable similar work

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<sup>3</sup> See, e.g., Town of Willowick 110 LA 1146 (Ruben, 1988); Sherburne County 112 LA 889 (Bognanno, 1999).

<sup>4</sup> See, e.g., City of Edmonds 112 LA 137 (Baroni, 1999); City of Waterville 107 LA 1194 (Dichter, 1996).

performed in the four western states of Alaska, Oregon, Washington and California, as well as data from state prison systems where affiliates of its International Union represent correctional officers. While those claimed comparables are interesting and appear to require some degree of consideration under HRS Section 89-11(f)(6), there is simply no way that Hawaii competes for correctional officers, licensed practical nurses, nurses aides or any other Unit 10 position with, for example, similarly-situated employees in the State of Delaware or those in the State of Alaska. The “market” for services performed by Unit 10 employees has virtually no relationship with any of those mainland comparable job classifications. Those classifications, in my judgment, therefore have little practical utility and thus limited weight determining the appropriate wage (or benefit) level of Unit 10 employees under either HRS Section 89-11(f)(6) or (8) in these circumstances.<sup>5</sup>

Turning next to appropriate employers within the proposed Hawaii-based comparability groups, arbitrators including the panel chairperson require subsequent to the selection of comparable employers an analysis of the comparable nature of the jobs involved in such comparability groups. Mere job titles are often not reliable and are by no means conclusive. It is incumbent upon the parties to supply reliable job descriptions in order to establish a basis for comparison.<sup>6</sup>

Additionally, while otherwise comparable employees are appropriate for examination and reliance upon, if they are engaged in comparable work for geographically nearby employers, where such employees are represented by a union – as they are in Unit 10 – that comparison is more

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<sup>5</sup> The employers argue that the panel must consider the relative “cost of labor” rather than the “cost of living” in examining claimed comparable external pay rates. However, because those contentions relate exclusively to comparisons of Unit 10 employees with employees performing similar functions in certain mainland states, and because the panel majority has given such comparisons virtually no weight in view of the existence of clearly comparable employees in the Hawaii federal and private sectors, the panel finds it unnecessary to address the Employers’ “cost of labor” contentions.

<sup>6</sup> See, e.g., City of Marquette 54 LA 981, 986-7 (Barstown, 1971).

appropriate in determining wage rates. Employees represented by a union have an effective vehicle by which to present their views on appropriate salaries and fringe benefits; employees without such representation can be said to be other than similarly situated.<sup>7</sup>

In this situation, the federal sector Tripler Medical Center and the federal Halawa Correctional Facility are both located on Oahu, in close geographic proximity to both hospitals under the jurisdiction of HHSC on at least four of the Hawaiian Islands and to Hawaii correctional facilities located on Oahu and the other Islands. In addition to that close geographic proximity, they employ workers whose functions are generally quite similar to those performed by Unit 10 employees in corrections and health care. Like Unit 10 employees, they are generally represented by unions, often serve the same customer base, and are largely of similar size to Unit 10 institutions. These employers are therefore clearly comparable in function and employees to those in similar job functions in Unit 10.

Similarly, private sector Hawaii hospitals – Kaiser, Queens, Kuakini, Straub, Wilcox and Kapiolani – all employ between 565 and 4,400 employees, all have certain job classifications highly similar in function to those performed at the thirteen HHSC hospitals containing Unit 10 employees, and all have such employees represented by a union. They are therefore also highly comparable to HHSC hospital employees, where HHSC employs about 3,700 full-time employees in its 13 major hospitals across Hawaii.

The Employers' data concerning the Hawaii private sector wage comparisons are based on information in a "Health Care Rate Survey" compiled by the Hawaii Employers Council (HEC), who according to that data "surveyed employers including over 100,000 workers in Hawaii." While that data is clearly from employers in the same geographic area, it includes information from very

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<sup>7</sup> See, e.g., Sioux County 87 LA 552, 555 (Dilts, 1986); City of Farmington 85 LA 460, 464 (Bognanno, 1985).

small Hawaii health care employers, fails to account for the union/non-union status of surveyed employers, and sets forth a composite of wage rates within a particular job title, including full performance and entry level rates. Moreover, for many of the cited classifications, it fails to examine job descriptions to assure that the involved employee performed “similar services” as required under HRS Section 89-11(f)(6). For example, under that HEC study, nurses aides – one of the largest classes of Unit 10 employees – “...assist physicians with patient care as well as routine office and business practices in clinic or a medical private office.” None of the nurses aides in Unit 10 have included in their duties “routine office and business practices” nor work in “ medical private offices.” As previously determined, infra, it is incumbent upon the parties to put forth reliable job descriptions in order to establish a legitimate basis for comparison.

It is therefore the panel majority’s considered judgment that the appropriate comparability group for Unit 10 HHSC employees is employees performing similar health care functions both the federal Tripler Medical Center, and in the six over 550 employee Hawaii hospitals of Kaiser, Queens, Straub, Kuakini, Wilcox and Kapiolani. The Employers’ data does not separate these comparable employers from the general averages contained in the HEC report ,although that report does distinguish among employers of more than 400 and more than 1000 employees.

With regard to its comparisons for the largest number classification in Unit 10 – Adult Correctional Officers – it is apparent that the Employers used for maximum salary Unit 10 comparability purposes the Z-1 longevity step in the Unit 10 contract which is no longer used by the parties. The proper top step maximum for that classification is actually Step 4. Moreover, the HEC study included “jailers” in the correction officer comparable classification function, a classification which does not exist in either Unit 10 or State services. The Employer’s pay analysis is therefore somewhat skewed by that improper top step and broader classification usage.

Even with these survey/comparability deficiencies in the Employee's study, the HEC data shows in 9 of 13 job titles examined that Unit 10 employees wages are below the market rate in Hawaii. While less than market, these classes did not include the largest Unit 10 classifications of ACOs and nurses aides. They did include the third, fifth and sixth largest classes of LPNs (89% of market), certified respiratory technicians (94% of market) and pharmacy technicians (86% of market). That data, inter alia, finds the ACOs' pay at 100% of the Hawaii market, nurses aides at 105%, emergency medical technician at 105% – the largest, second largest and fourth largest classifications in Unit 10.

According to the Union's data in this area, Unit 10 nurses aides earn \$36,000 per year comparable to an average of \$38,130 among comparable private hospitals; LPNs in Unit 10 earn \$41,760 per year compared to an average of \$51,299 in that private hospital group; and Unit 10 psychiatric technicians earn \$38,604 compared to \$42,973 at Queens – the only private sector hospital with employees in that classification.

With regard to Unit 10 classification comparisons with similarly-situated federal sector jobs, that data is in minimum and maximum salary levels, and provides as follows on Page 57.

Although the Employers argue that the Union has miscalculated the federal cost of living allowance (COLA) for Honolulu and the locality differential for Hawaii resulting in higher than actual wage differentials, and the panel majority agrees, those differences have minimal impacts upon the above dollars and percentages, and all of the maximum percentage differentials remain above 10% even with that mathematical change.<sup>8</sup>

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<sup>8</sup> Federal employees surveyed have ten experience steps which constitute wage increase possibilities, while Unit 10 comparable employees have little or no such steps.

Current Minimum and Maximum Salaries for Select Unit 10 Job Titles  
and Comparable Federal Government Job Titles in Hawaii  
2012

Job Title	Jurisdiction	Minimum	Maximum
Nurse Aide - FP	Federal Hawaii diff. amount diff. percent	\$ 32,065 32,736 (671) (2.1)	\$ 41,682 36,060 5,622 13.5
Licensed Practical Nurse - FP	Federal Hawaii diff. amount diff. percent	39,979 37,248 2,731 6.8	50,737 41,760 8,977 17.7
Adult Corrections Officer III	Federal Hawaii diff. amount diff. percent	50,365 43,404 6,961 13.8	63,702 48,948 14,754 23.2
Psychiatric Technician - FP	Federal Hawaii diff. amount diff. percent	35,875 34,836 1,039 2.9	46,633 38,604 8,029 17.2
Para Medical Assistant II	Federal Hawaii diff. amount diff. percent	32,065 32,736 (671) (2.1)	41,682 36,060 5,622 13.5
Para Medical Assistant III	Federal Hawaii diff. amount diff. percent	39,979 37,248 2,731 6.8	50,737 41,760 8,977 17.7

FP = Full Performance

Note:

- (1) The current federal cost of living (COLA) allowance for the City and County of Honolulu is 12.25%. The current locality differential for Hawaii is 16.51%. Federal salaries include both the COLA and locality differential.
- (2) Federal Nurse Aide and LPN at Tripler Army Medical Center, Honolulu.
- (3) Federal Adult Corrections Officer at Federal Detention Center, Honolulu.
- (4) Federal Psychiatric Technician at Tripler Army Medical Center, Honolulu.
- (5) Federal salary schedule has 10 steps, 15 years to maximum.

Source:

Federal Position Classification Standards, Office of Personnel Management.

The Employers further argue that federal correctional officers' salaries are greater because that employer requires a college degree as a prerequisite for correctional officer employment, while Unit 10 employees are only required to have a high school education. The evidence shows, however, that on the federal level, the Bachelor's Degree can be substituted for by at least three years of experience in, among other things, "selling products or services (persuasive commission of sales)," in such areas as "automobile, insurance, etc."

It is thus clear that, while the initial qualifications for federal correctional officers are higher than for a Unit 10 ACOs, that difference is not between a high school and a college degree. That qualifications difference, in the judgment of the panel majority, does not account for the entirety of the high level of wage difference at either the minimum or maximum level, even when the locality pay and COLA percentages are properly applied, and even if as the Employers assert the ACOs maximum pay rate is understated. Those corrected figures still likely show a slightly higher maximum salary for ACOs.

It is apparent to the panel majority based upon all of these findings and data, that the statutory criterion set forth in HRS Section 89-11(f)(6) provides significantly greater support for the Union's position of a wage increase for Unit 10 employees than it does for the Employers' position of a wage decrease.

#### DISCUSSION UNDER SECTION 89-11(f)(8) "OVERALL COMPENSATION" CRITERION

In this area, the panel believes it is initially again necessary to emphasize that such "overall compensation," including "insurance and pensions" and "medical and hospitalization benefits" are not at issue before the panel here. This subject is therefore being examined and addressed only in the context of any effect such "overall compensation" may or may not have over the wage issue that is before the panel here.

Turning to the area of internal comparability under this statutory criterion, the evidence shows that, while other State bargaining units currently receive the same level of benefits as employees in Unit 10 in virtually all of the “overall compensation” categories contained in HRS Section 89-11(f)(8), employees in Units 9 and 10 – the only State units without a contract for the fiscal 2012-2013 biennium – receive a higher level of State contributions for “medical and hospitalization benefits” than do employees in Units 1, 2, 3, 4, 5, 6, 8 and 13, and possibly also those amounts paid to Unit 7 employees. In accordance with the December 23, 2010 agreements between all State unions and the then-newly elected governor, employees without a contract as of July 1, 2011 – in this case, Units 9 and 10 – were restored to the 60%-40% dollar equivalent employer-employee share of health benefits costs that existed during fiscal years 2009 and 2010. The remainder of the bargaining units set forth above agreed to new contracts prior to that July 1, 2011 time, calling for a 50%-50% dollar equivalent share of the health benefit costs between the employees and the State during the 2012-13 fiscal biennium. Since that time period, which is the contract period at issue in this case, Unit 10 employees have enjoyed lower benefit contributions than these other State bargaining units since at least the July 1, 2011 beginning of the new contracts for those units. Given this clear difference and the lower employee health benefit costs in Unit 10, this internal comparability criterion favors the position of the Employers for a wage decrease under the HRS Section 89-11(f) statutory criterion.

Turning next to the area of external comparability under the “overall compensation” criterion contained in HRS Section 89-11(f)(8), the Employers based upon the HEC data contend that although Unit 10 wages under that data are 100% of the market, employee benefits are 171% of the market, resulting in a total compensation amount for Unit 10 employees which is 119% of the market. However, based upon the reasons set forth above for the panel majority’s finding that the entirety of the HEC data utilized by the Employers to determine the “market” is not properly

comparable to work functions of Unit 10 employees, those percentages do not accurately reflect the “market.” Instead, as determined above, the “market” for Unit 10 employees is the Halawa Federal Correctional Facility, the Tripler Federal Medical Facility, and Hawaii private hospitals of at least 400 employees – Kaiser, Queens, Kuakini, Straub, Wilcox and Kapiolani. Since the Employer’s data allows for no potential Hawaii “market” comparability group other than the broad HEC group argued by the Employers, the panel is unable to determine from that data whether or by how much Unit 10 total compensation compares to the actual Hawaii “market.”

A review of benefits received by Unit 10 employees shows, inter alia, that like all Hawaii employees they receive “statutory benefits” of workers’ compensation, unemployment compensation, Social Security and Medicare at the same percentage of payroll as do Hawaii private sector employees. The HEC data for private employers of over 400 employees – the closest private sector comparable data in the record before the panel – shows that Unit 10 employees receive similar levels of vacation and sick leave benefits and about 2.5 holidays per year more than the average among such private sector employers. That data also shows that in contrast to the employee-preferred defined benefit pension plan for Unit 10 employees, most large Hawaii private employers offer employees a defined contribution pension plan such as a 401K plan, and less than 50% of such employers have defined benefit plans. Also in that survey, in contrast to Unit 10 retiree health benefits, significantly less than 30% of such 400-1000 employee private sector employers offer medical and prescription drug coverage for their retirees. With regard to active employee health care benefits, Hawaii private employers are required to provide prepaid health care coverage under a 1974 statute at a cost level to the employee not to exceed 50% of premiums or 1.5% of their wages. Most of the large private employers in the HEC survey pay 100% of the employee health care cost, and at least 80% of the dependent coverage cost.

Although Unit 10 employees take home pay after the 40% health insurance benefit cost and other deductions under the Union's data is less than the take home pay for comparable employees at the Halawa Federal Correctional Institution and at the Tripler Medical Center, the percentages of such differences are skewed to a degree by the Union's improper calculation methods, in the opinion of the panel majority, for federal employee COLA and locality pay, and the inaccurate ACO top step wage level used by the Union. However, even if the proper calculation method and the proper ACO top step pay is utilized, Unit 10 employees' take home pay after these deductions is still significantly less than at these federal institutions. Take home pay for Unit 10 employees, due to the amount of health care cost paid by the employees, is also significantly less at the benchmark classifications of nurses aide, LPNs and psychiatric technicians when compared to such amounts among comparable employees at the Hawaii private hospitals of Kaiser, Queens and Straub. Moreover, contrary to the wage schedules for the Federal Correctional Institution, Unit 10 ACOs have no ability to achieve salary step pay movement based on longevity or years of service.

Thus, while employee benefits in the categories of holidays and holiday pay, pensions, and retiree health benefits favor the Employer's position of a wage decrease under this statutory criterion, the areas of health benefit costs, take home pay differentials and salary step movement provide more support for the Union's position of a wage increase under this criterion.

This statutory criterion also requires the panel as an element of "overall compensation" to address "...the continuity and stability of employment." In this area, because of the essential nature of virtually all of Unit 10 job classifications, layoffs have overwhelmingly not been at issue in this bargaining unit, and as previously found the parties here agreed that furloughs were not an appropriate option in the event that the panel were to award a wage decrease.

What particularly surprised the panel chairperson under this statutory criterion is the virtually complete absence of employee turnover within Unit 10 and movement to higher paid jobs with other comparable Hawaii employers. Despite what the Employer and particularly HHSC documents admitted are tight labor markets for many Unit 10 positions, and despite Union claims that many Unit 10 positions are underpaid significantly compared to similar positions with Hawaii comparable employers, the evidence shows a voluntary turnover rate for Unit 10 employees of only 2.3%, compared to an overall Hawaii turnover rate of 13.9%. Even more surprising was the virtually complete absence of movement by ACOs to the Halawa Federal Correctional Institution subsequent to its initial opening in 2001. Even when that data is examined in a light most favorable to the Union, since 2001 less than .4% of ACOs leaving State employment worked at some point for facilities encompassed by the federal Bureau of Prisons. Moreover, the average employment tenure of Unit 10 employees is about thirteen years – well above the 6.4 year average among employees of other states, and four years in the U.S. private sector.

In view of these elements, it is apparent that even with generally lower wage levels than those received by comparable federal and private sector employees, Unit 10 employees given these tenure and turnover rates appear to be relatively content with their wage and benefit levels, and that any discontent in this wage and benefit area is not sufficient in most cases to cause those employees to pursue higher paying positions with comparable employers. This portion of HRS Section 89-11(f)(8) strongly favors a wage level more in line with either no wage increase or a decrease as advocated in the position of Employers here.

In view of the entire above, it is the finding of the panel majority that, in weighing all of the elements discussed above under the “overall compensation” statutory criterion contained in HRS Section 89-11(f)(8), this statutory criterion overall provides greater support to the Employers’ position of a wage decrease than for the Union’s position.

## **G. THE "CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES" CRITERION**

HRS Section 89-11(f)(9) requires the panel to take into account and to address in its decision "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." The panel majority believes the phrase "during the pendency of the arbitration proceedings" refers to the time period between the July 18, 2012 beginning of the interest arbitration hearing itself and the filing of final briefs by the parties in November, 2012.

In this area, the panel has already in the "Ability to Pay" section of this Award addressed the slight downward projections of the COR in State General Fund tax revenue tax growth for fiscal years 2013 through 2019, made subsequent to the end of the hearing here in the COR's September 6, 2012 meeting. The panel majority found there that these minor decreases in COR projections did not impact the Employers' Ability to Pay in this case.

The evidence does show, however, via the Second Quarter "Statistical and Economic Report" issued by DBEDT, that: 1) virtually all of Hawaii's major economic indicators were positive in the first quarter of 2012; 2) the outlook for the economy is generally positive through 2015; and 3) the annual General Fund revenues for calendar 2011 reached an all time high of \$4.67 billion. Similarly, the State Director of Taxation reported in mid-July, 2012 concerning State general fund tax revenues as of the June 30, 2012 fiscal year end that in addition to the aforementioned 14.9% increase in General Fund tax revenues compared to fiscal 2011, general excise and use taxes – the largest single category of collections – were up 8.1% over the end of fiscal 2011, and the transient accommodations tax was up 13.9% over fiscal 2011. Moreover, on the July 19 second day of this hearing, the Governor in a press conference announced that based on stronger than expected revenue growth in fiscal 2012 over fiscal 2011, he would be restoring spending on critical state programs – specifically citing the higher than projected surplus of \$306 million and state tax collections being up 14.9%, 2.9% higher than the COR projection.

Each of these elements of information received subsequent to the beginning of the hearing provides, in the opinion of the panel majority, additional support for the above finding that the Employers have the Ability to Pay for an increase in wages for Unit 10 employees in the fiscal 2012-2013 biennium.

#### **H. THE "OTHER FACTORS" CRITERION**

Finally among the statutory criteria, HRS Section 89-11(f)(10) requires the panel to give weight to and to include in this Award an explanation of the impact of the following criterion:

- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties in the public service or in private employment.

In the judgment of the panel majority, the "other factors" claimed as appropriate for consideration under this criterion by the parties have already been addressed and "given weight to" by the panel under the other statutory criteria addressed above. In the panel majority's view, there are no such "other factors" which have not been already addressed by the panel. This final statutory criterion therefore has no weight properly attached to it in determining the appropriate wage level here.

#### **THE APPROPRIATE WAGE AMOUNT AND TIMING**

Turning finally in this case to the panel majority's determination of the appropriate wage amount, it is initially apparent, particularly under the overall comparability data and the Ability to Pay findings, *infra*, that a wage increase is appropriate in these circumstances. It should be understood by the Union and the Unit 10 employees, however, that the mere finding that the Employers have the Ability to Pay is not equivalent to the necessity of the panel awarding the final position of the Union here. Rather, any such amount should be determined based upon the other statutory criteria contained in HRS Section 89-11(f), including "the present and future general economic condition

of the counties and the State” under HRS Section 89-11(f)(5).

The panel majority finds in these circumstances, after consideration and appropriate weight as set forth above is given to the criteria contained in HRS Section 89-11(f), that the proper wage increase for Unit 10 employees is a 3.2% across-the-board wage increase; that such a wage increase shall be provided on the existing wage rates to all Unit 10 employees at the beginning of the first pay period subsequent to the issuance date of this Award; and that the effective date (duration) of the contract shall be July 1, 2011 through June 30, 2013, consistent with the pertinent fiscal 2012-13 biennium.

This wage increase is appropriate under the statutory criteria for numerous reasons, not necessarily listed below in the order of their importance. First, while the external comparability data discussed above is generally favorable to a larger wage increase percentage, the still somewhat uncertain budget elements combined with the July 1, 2013 expiration of the “temporary” wage cuts for Units 1, 2, 3, 4, 5, 6, 8 and 13 in the panel majority’s view call for a smaller wage increase percentage.

Second, while external comparability is favorable to a larger wage increase, internal comparability, particularly under the “overall compensation” statutory criterion, is clearly favorable to a more moderate wage increase.

Third, included in that “overall compensation” criterion was clear evidence of extremely low Unit 10 comparative employee turnover and longer comparative employment tenure, despite what appears to be higher wages in comparable Hawaii federal and Hawaii private sector employers. That data is indicative of a degree of employee job and wage level satisfaction, or at least minimal Unit 10 employee attempts to be employed by higher paying comparable employers.

Fourth, although in the panel majority’s view the overall economic picture reflects this not to be an appropriate time period for a wage level “catch-up,” there is no indication in the record

that higher paying federal and private sector comparable employers have or plan to provide wage increases to their employees in 2013. The practical effect of this Award will therefore be a degree of “catch-up” to wage levels paid by those comparable employers.

Fifth, while the Employers’ case on economics and comparability was grounded to a large extent on the “shared sacrifice” contention relating to the wage and percentage health insurance benefit cuts agreed upon by employees in Units 1, 2, 3, 4, 5, 6, 8 and 13, the fact of the matter is that the economic and budget situation before the panel here is not what it was at the time those contracts were agreed upon. Put simply, and as discussed at length under the Ability to Pay criterion, the current and likely future economic, revenues and budget projections are substantially better than those in existence at the time of agreement upon those contracts.

Sixth, even in view of those more clearly positive economic indicators, at least a degree of budgetary caution is appropriate in the current circumstances. Even Union financial area witnesses agreed that unfunded pension liabilities and particularly unfunded accrued liabilities for retiree health benefits remain a significant concern, and the short term budgetary forecast is for expenditures to exceed revenues by the end of fiscal 2013, even without consideration of the cost of this Award. The relatively modest percentage wage increase found appropriate here is consistent with those elements.

Seventh, the fact remains that Unit 10 employees, in comparison to employees in Units 1, 2, 3, 4, 5, 6, 8 and 13, have enjoyed an economic advantage in both wage levels and Employer-paid health benefits contribution for at least the last eighteen months. It also appears likely to the neutral panel chairperson that such a Employer benefit level percentage contribution will remain in effect, at least through the June 30, 2013 end of the current fiscal year. While that comparison to “other State...employees” is far from the most pertinent comparable element, it is clearly a factor here under HRS Section 89-11(f)(6) and (8). Such a Unit 10 wage and benefit advantage

again points to a more modest wage increase here.

Eighth, the 3.2% across-the-board wage increase when added to all existing Unit 10 wage levels, while not bringing their wage and take home pay levels to those paid in the comparable Hawaii federal and private sector positions, will move the pay levels of Unit 10 employees more in the direction of making up at least a portion of those wage and take home pay levels advantages of such comparable employers. Such addition to base pay rates, in contrast to lump sum payments, better addresses the HRS Section 89-11(f)(6) required comparison to "other persons performing similar services" in Hawaii.

Ninth, while cost of living is not a major basis for any interest arbitration award including that involved here, consistent with the discussion in that area above, the 3.2% wage increase will match the Hawaii cost of living percentage under BLS statistics of a 3.2% cost of living percentage increase for calendar year 2012.

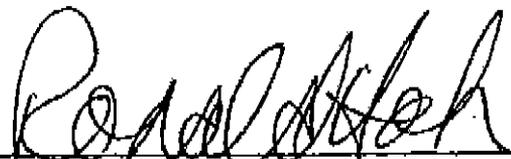
Tenth, the absence of retroactivity in the across-the-board wage increase found here is appropriate here. A major goal here is to move Unit 10 employees closer to wage rates paid to comparable employees in Hawaii. The absence of retroactivity allows placement of a higher percentage increase in dollars on wage increases that would not be appropriate at that level had the wage award been retroactive. The panel majority believes it more important to move Unit 10 employee wage levels closer to those of comparable employers than to provide a smaller retroactive wage increase. In addition, and secondarily in this area, as determined above Unit 10 employees already enjoy wage and benefit levels about those in Units 1, 2, 3, 4, 5, 6, 8 and 13, and a retroactive pay rate increase would exacerbate those already existing differences.

Finally, the 3.2% wage increase, based upon the Employers' \$12.2 million cost attached to the Union's final position, will cost the Employers by the neutral arbitrator's calculation less than \$3,587,000. That amount is easily affordable for the Employers based at minimum on the projected versus actual budget surplus at the end of fiscal year 2012.

**AWARD**

In view of the entire above, the panel majority awards a 3.2% across-the-board wage increase to all Unit 10 employees, payable the first pay period after the date of this arbitration Award. In addition, the duration of this contract shall cover the period of July 1, 2011 through June 30, 2013 – the fiscal 2012-2013 biennium involved here. All other provisions of the parties' contract shall remain the same.

Date:

  
\_\_\_\_\_  
RONALD HOH  
Neutral Panel Chairperson

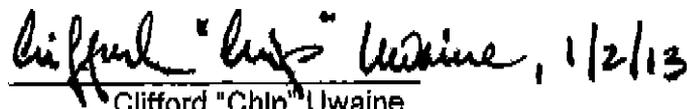
Concur

Dissent

Concur

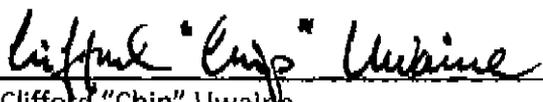
Dissent

\_\_\_\_\_  
William Elliott  
Employers Panel  
Member

  
\_\_\_\_\_  
Clifford "Chip" Uwaine  
Union Panel  
Member

**CONCURRING OPINION**

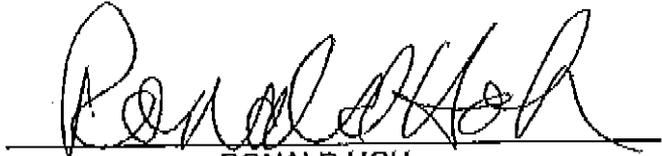
I concur with the opinion of the neutral panel chairperson particularly since Employer paid health benefit contribution amounts for the last eighteen months appears likely to remain in effect, at least through June 30, 2013, the end of the current fiscal year.

  
\_\_\_\_\_  
Clifford "Chip" Uwaine  
Union Panel Member

**AWARD**

In view of the entire above, the panel majority awards a 3.2% across-the-board wage increase to all Unit 10 employees, payable the first pay period after the date of this arbitration Award. In addition, the duration of this contract shall cover the period of July 1, 2011 through June 30, 2013 – the fiscal 2012-2013 blennium involved here. All other provisions of the parties' contract shall remain the same.

Date: *1/8/2013*

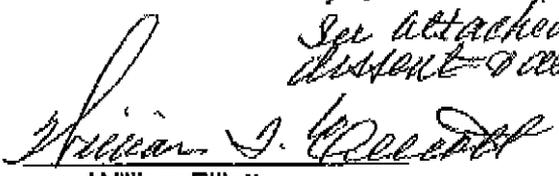
  
\_\_\_\_\_  
RONALD HOH  
Neutral Panel Chairperson

Concur

Dissent

Concur

Dissent

  
\_\_\_\_\_  
William Elliott  
Employers Panel  
Member

*See attached  
dissent & award revision*

\_\_\_\_\_  
Clifford "Chip" Uwaine  
Union Panel  
Member

DISSENTING OPINION OF EMPLOYER REPRESENTATIVE WILLIAM T. ELLIOTT

I regret not to be in full agreement with the other members of the arbitration panel.

While I share many of the conclusions of the Award, particularly the conclusion that "fairness" and "equal treatment" under the statutory criterion of "other state and county employees in Hawaii" under the internal comparability portion of HRS Section 89-11(g) (6) favors the Employer, it is my respectful opinion that the Award stops short of recognizing a number of undisputed facts that support a finding of a wage reduction, rather than the 3.2% across-the-board wage increase.

My main disagreement with the Award concerns the statutory criteria contained in HRS Section 89-11(f) (4) and (5) concerning the Employer's "ability to pay" and "present and future economic condition." For fiscal biennium ("FB") 2012-13, the State's actual General Fund balance was \$275 million and not the initially anticipated fund balance of \$306 million. The reliance on this General Fund ending balance to show that 1) the State has ability to pay the 3.2% across-the-board wage increase award, and 2) the present economic and budgetary condition of the State has improved and not the same budgetary condition when the majority of bargaining units voluntarily agreed to a labor cost savings of 5% for the fiscal biennium, is based on a superficial assumption. The State ended with a positive fund balance because of many factors unrelated to the health of the economy, including the carry-over of fiscal year 2011 ending fund balance of \$126 million, and numerous temporary measures such as the transfer of \$111 million from the Hurricane Relief Fund to the General Fund and use of emergency relief fund monies, the annual labor savings of \$88.2 million for the biennium, and the \$38.2 million reduction in health care contributions by the State, among others.

The Award also fails to consider that the budgets of PSD and HHSC have already been reduced by their pro rata share of estimated savings for all bargaining units that did not have

DISSENTING OPINION OF EMPLOYER REPRESENTATIVE WILLIAM T. ELLIOTT

contracts in place for FB 2012-13, including UPW Unit 10. As a result of the wage increase award, PSD and HHSC will continue to experience salary shortfalls which will be unrecoverable as labor savings had been hard-lined in the departments' budgets. PSD and HHSC had to subsidize the salaries of BU 10 employees by using funds earmarked for other operational purposes. The real effect of this decision is that HHSC and PSD will continue to be behind in payments for critical services, prison facilities will not continue to run full operation, inmate programs will continue to be cut, prison cells will continue to be in lockdown due to staffing shortage because of the departments' inability to afford to hire critical staff, and so on.

What is clear is that my colleagues have put more emphasis on the future economic condition of the State in awarding wage increases, rather than how the State achieved its present budget situation. While I do agree that the future economic and budgetary situation of the State is more promising now than when many State employees voluntarily agreed to labor savings early in FB 2012-13, I do not believe that this factor is as important for this biennium contract as it is for the next round of contract negotiations.

I believe that this Award creates a real tragedy which I do not wish to be a part of for the following reasons: (1) the wage increase award to Unit 10 employees will be made on the backs of the majority of State employees who have made early sacrifices contributing to the State General Fund ending balance in the black; and (2) rewards the union engaging in delay tactics to prolong the negotiation process instead of entering into early voluntary agreements to resolve disputes.

I respectfully dissent.

