IMPASSE ARBITRATION FOR BARGAINING UNIT 9

BEFORE JOE H. HENDERSON, HENRY KANDA AND SANFORD CHUN

STATE OF HAWAII

In the Matter of the Interest Arbitration between

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO.

Exclusive Representative,

and

NEIL ABERCROMBIE, Governor, State of Hawaii; PETER B CARLISLE, Mayor, City and County of Honolulu; WILLIAM KENOI, Mayor, County of Hawaii; ALAN M. ARAKAWA, Mayor, County of Maui; BERNARD P. CARVALHO, JR., Mayor, County of Kauai; MARK RECKTENWALD, Chief Justice, the Judiciary, State of Hawaii; HAWAII HEALTH SYSTEMS CORPORATION BOARD,

Employers.

______________________________________/

DECISION

HLRB Case No. 1-09-137

AAA# 74 390 L 00353-12
(Interest Arbitration)

Dates of Hearing: 5 days
November 5 - 9, 2012

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IMPASSE ARBITRATION FOR BARGAINING UNIT 9

I. INTRODUCTION

The State of Hawaii, the Hawaii Health Systems Corporation Board (HHSC), the Judiciary, the Department of Education (DOE), and the University of Hawaii (UH) (collectively the "Employer" or "Employers") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, Bargaining Unit 9 ("HGEA" or the "Union"), are at an impasse concerning the fiscal biennium ("FB") 2012-2013 collective bargaining agreement for Bargaining Unit 9 ("BU 9").

BU 9 is comprised of registered professional nurses as defined in § 89-6(a)(9), Hawaii Revised Statutes ("HRS"). The HGEA is the duly certified exclusive representative of employees in BU 9, and is authorized to negotiate a collective bargaining agreement on their behalf with the public employer, pursuant to § 89-8(a), HRS. HRS § 89-6(d)(1) defines the employer as the governor together with the mayors, the chief justice, and the HHSC Board if they have employees in the particular bargaining unit.

The HHSC is a public benefit corporation, established in 1996, pursuant to Chapter 323F, HRS. It is a body corporate and politic, which means that it maintains its own corporate boards to govern and oversee operations of all of HHSC's regional facilities. BU 9 has approximately 1,594 full-time equivalent positions ("FTE"), of those the HHSC employs the vast majority of BU 9 employees, or 76%, and only 24% are employed by the State in other areas. The nurses that work for the HHSC are State employees.

It is noted that, according to the April 9, 2012 HLRB Informational Bulletin No. 50 – Numbers of Employees – BU 9 includes the following: State of Hawaii, 9; Dept. of Education, 2; Judiciary. 3; UH, 9; HHSC, 1,093; for a total of 1,482.

The hearings were held at the HGEA offices in Honolulu, Hawaii, on the following dates: November 5, 6, 7, 8, and 9, 2012. At the conclusion of the hearings, the parties agreed to submit written post-hearing briefs on February 7, 2013.

II. APPEARANCES AND WITNESSES

For The Employers:

James E. Halverson	Deputy Attorney General, Employment Law Division
Sean K. Sanada	Assistant General Counsel, HHSC
Edward N. H. Chu	Chief Financial Officer, HHSC
Neil Dietz	Chief Negotiator for the State
Joy Inouye	Manager, Dept of HR Development, Compensation Div.
Neal Miyahira	Administrator, Dept of Budget & Finance, Budget Div.
Ralph Schultz	Dept of Budget & Finance

Also Present (on behalf of HHSC)

Cindy Inouye	Corporate Human Resources Administrator
Carolee Kubo	Corporate Personnel Program Manager
Juanita Lauti	Corporate Personnel Program Manager
Sandra Park	Personnel Program Officer
Paul Tsukiyama	Corporate Director of Human Resources

For The HGEA:

Alan C. Davis	Attorney for HGEA
Randy Perreira	Executive Director, HGEA
Barbara Ann Larrabee-Duarte	Critical Care Nurse, Maui Medical Center
J. Michael Messina	Labor Economist, AFSCME
Daylena Odom	Clinical Nursing Supervisor, Hawaii State Hospital
Timothy F. Reilly, CPA	Manager of Bachecki Crom & Co.
Barbara ("Susie") Uwekoolani	RN III, Maui Memorial Medical Center – HGEA Bargaining Team Member

Also Present

Gerald Ako	Kauai Division Chief, HGEA
Ricky Baker	Unit 9 Negotiator
Jeanne Beers	Unit 9 Negotiator
Lorena Kauhi	Union Agent, HGEA
Sue Kaulukukui	Unit 9 Negotiator
Joy Kuwabara	Union Agent, HGEA
Kay Mendes	Support Specialist, HGEA
Michele Mitra	Union Agent, HGEA
Scott Sommers	Unit 9 Negotiator
Joan Takano	Acting Field Services Officer, HGEA
Ian Takashiba	Hawaii Division Chief, HGEA
Alton Watanabe	Maui Division Chief, HGEA

III. TIMELINESS OF PROCESS

The arbitration process for BU 9 impasse was late – more than 1 1/2 years after the expiration of the previous contract that ended on June 30, 2011. The majority of State employees have already contributed a temporary 5% labor cost reduction by means of a mandatory salary waiver, effective July 1, 2011 through June 30, 2013.

IV. BARGAINING HISTORY AND DECLARATION OF IMPASSE

The Employers and the Union were unable to agree in contract negotiations over the terms of a successor collective bargaining agreement to take effect on July 1, 2011. On January 31, 2011, the Hawaii Labor Relations Board declared that an impasse existed in these negotiations and appointed a mediator to assist the parties in the voluntary resolution of their dispute. After mediation proceedings were unsuccessful, the Board notified the parties on February 22, 2011, that the impasse is to be submitted to a three-member arbitration panel for resolution.

On March 23, 2011, the parties entered into an agreement to proceed under an alternative impasse procedure pursuant to HRS § 89-11(e). On July 2, 2012, the Union selected Sanford

Chun to serve as the Union's panelist. On July 3, 2012, the Employers selected Henry Kanda to serve as the Employers' panelist.

On September 11, 2012, the Union and the Employers selected Joe H. Henderson as the neutral arbitrator and chair of the arbitration panel.

Three issues remain unresolved, wages, working condition differential, and the duration of the Collective Bargaining Agreement. Hearings were held by the parties in the City of Honolulu, on November 5, 6, 7, 8, and 9, 2012. The parties timely filed their post-hearing briefs on February 7, 2013.

The parties agreed at the hearing to waive the 30 day provisions of HRS Section 89-11(e)(4) for the rendering of the Arbitration Panel's Decision after the post-hearing briefs were filed.

The Arbitration Panel held their executive sessions by conference calls on February 15, March 8 and March 29, 2013, and had numerous email communications.

The parties did not reach a settlement on the prior positions stated. Therefore, this Decision becomes effective with the concurrence of one of the Arbitration Panel Member's and the Neutral Arbitrator/Panel Chairperson's decision as set forth below.

V. LEGAL CRITERIA

Section 89-11(f) provides as follows:

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 factors 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; ***[N/A – no special funds involved]***

(2) Stipulations of the parties; ***[see p. 30]***

(3) The interests and welfare of the public; ***[see p. 31]***

(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; ***[see p. 12]***

(5) The present and future general economic condition of the counties and the State; ***[see p. 15]***

(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; ***[see p. 19]***

(7) The average consumer prices for goods or services, commonly known as the cost of living; ***[see p. 29]***

(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; ***[see p. 19]***

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; ***[see p. 32]*** 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. ***[see p. 34]***

<u>General Fund Restrictions</u> [paraphrased from part of State position statements]

The General Fund is the primary source of the State's operating budget. General excise and individual income taxes are the two main sources of the State's revenue, but property tax authority rests with the counties. The General Fund is the primary source of funding for the State employee wages and benefits, including the 386 registered nurses in BU 9 employed by the State outside the HHSC facilities. [<u>Note:</u> Ex. Employer P, April 9, 2012 HLRB Informational Bulletin No. 50, p.2, indicates BU 9 employees as follows: 375 State of Hawaii; 2 Dept of Education; 3 Judiciary; 9 UH [total 389]; and 1093 HHSC, for a grand total of 1,482]

The Hawaii Constitution imposes additional imitations on the State in its development of long-term funding commitments, and include limitations imposed by Constitutional and statutory guidelines pertaining to taxation and finance:

· The growth in government spending is limited to a level supported by the economy. ("Expenditure limit," Haw. Const., Article VII, §§ 8 and 9);

· General fund expenditures for any fiscal year cannot exceed the State's General Fund resources. ("Balanced Budget, "Expenditure Controls," Haw. Cont., Article VII, 9); and

· Revenue estimates by the Council on Revenues must be considered in budget preparation, funding authorization, and expenditure controls. ("Council on Revenues," Haw. Const., Article VII § 7; §37-111, Part VI).

The Hawaii Constitution also requires that the State operate on a balanced budget – expenditures for any fiscal year shall not exceed the State's current revenues and unencumbered prior year' cash balances.

VI. HHSC AS AN ENTITY

Edward Chu, the Chief Financial Officer of HHSC, testified regarding HHSC as summarized below:

It was a part of the Department of Health. Hawaii Health Systems Corporation was formed in 1997, upon the recommendation of a panel that was comprised of several members of the health care community. The act that formed HHSC called us a body corporate and politic, it is a corporation, also an agency of the State of Hawaii.

The Corporation has 13 facilities that it operates: The Big Island of Hawaii, there are five hospitals; Island of Maui, two hospitals; Island of Lanai, one hospital; Island of Kauai, two hospitals. They have one long-term care center called Maluhia in Kalihi on Oahu, and Leahi Hospital, which is primarily a long-term care center. It also has acute tuberculosis beds on Oahu and a not-for-profit affiliate, Kahuku Medical Center, on the North Shore of Oahu. The governing body is our corporate board, comprised of 13 members. Underneath that is each agency divided into five regions. Each region also a regional board by service areas.

Hawaii State Hospital, in Kaneohe, is not part of the system. It is still part of the Department of Health.

The HHSC serves all comers, whether you have insurance or not, this includes patients that are indigent. The agency serves Medicaid/Medicare patients.

The primary source of income is government type payors, which includes Medicare, Medicaid, and the State Quest program.

The Legislature generally appropriates $82.1 million. The Governor has imposed a labor savings restriction of $10.2 million, so the agency received $71 million as current operating funding.

Since HHSC is a separate corporation and a State entity, HHSC employees are State employees. The annual budget is generally over half a billion dollars. Revenues from Special Funds are about 85 percent of the revenues. The General Fund appropriations from the State for fiscal year 2012 was about $71 million.

VII. HHSC POSITION ON WAGES

For several decades, the public employees shared in the availability of increased revenues, resulting in wages that are above the market. For instance, the salaries of BU 9 employees are on par with the local private market and above the national average by 56%. The State's financial conditions have changed and the wage reduction that the Employer proposed is necessary at this time. The HHSC is financially broke – it is currently "in the red." As was the case with many other states, the State of Hawaii faced many fiscal challenges that started in 2008 because of what has been known as the greatest recession since the 1930s. Hawaii is just now coming out of a financial hole, but it has not fully recovered. The budget shortfall at the start of FB 2012-13 was 1.3 billion dollars. Not surprisingly, appropriations to the HHSC from the State's General Fund have been drastically reduced for FB 2012-13. Similarly, changes in the federal-state budgets for Medicare and Medicaid have contributed to the decrease in HHSC's revenues, while its expenditures continue to increase. While HHSC is doing all it can to shore up revenues and decrease expenses, it simply cannot afford to pay BU 9 employees any wage increase at this time.

With a substantial portion of the State's operating budget appropriated to labor, the 2011 Legislature was compelled to reduce labor costs by $88.2 million each year of the FB 2012-13, equal to approximately a temporary 5% wage reduction for the biennium. Instead of laying-off employees to achieve the labor savings imposed by the Legislature, the Employer attempted to negotiate a temporary 5% wage reduction across-the-board to all the bargaining units with collective bargaining agreements for FB 2012-13. The Employer believes a uniform wage reduction is a fair method of shared sacrifices of public employees, and is necessary to turn the State around and get the economy moving once again. President Barack Obama even made reference to shared sacrifices in his inaugural address, noting "the selflessness of workers who would rather cut their hours than see a friend lose their job." The vast majority of State employees (approximately 40,000) have seen their wages reduced by 5% since July 1, 2011. Their unions, including the HGEA, recognized the State's weak financial position at the start of fiscal year ("FY") 2012 and timely agreed to wage concessions. In this challenging environment, it is important to achieve fairness in the distribution of the financing burden, particularly for public employers that deal with numerous employees from different bargaining units whose every member represents the backbone of State government. The Employer's proposal treats BU 9 employees no different than their co-workers.

VIII. COUNCIL ON REVENUES (From Hawaii Treasurer's Internet site)

"About the Council on Revenues

The Council on Revenues is attached to the Department of Taxation for Administrative Purposes.

The Council on Revenues, established under section 37-111, Hawaii Revised Statutes, prepares revenue estimates of the state government for each fiscal year of the six-year state program and financial plan.

The Council reports its latest revenue forecast to the governor and the legislature on June 1, September 10, January 10, and March 15 of each year. In addition, the Council prepares estimates of the state total personal income for such calendar years as are necessary for establishing the state expenditure ceiling.

Forecasts of total personal income are reported to the director of finance, the governor, the chief justice, and the legislature each August 5 and November 5. Estimates prepared by the Council are considered by the governor in preparing the state budget, recommending appropriations, and controlling expenditures; they are considered by the legislature in appropriating funds and enacting revenue measures.

The Council consists of seven members, three of whom are appointed by the Governor for four-year terms and two each of whom are appointed by the President of the Senate and the Speaker of the House of Representatives for two-year terms. The Council is not required to comply with the law on open meetings for public agencies when confidential tax information is discussed, but all estimates submitted to the Governor and Legislature by the Council are public."

The Revenue forecasts made by the COR carries great weight in the opinion of the panel members.

IX. THE PARTIES' LAST BEST OFFER

The issues to be decided by the arbitration panel are wages, working condition differential, and the duration of the Collective Bargaining Agreement.

A. EMPLOYER'S LAST BEST OFFER

All State employees had their wages reduced during the prior contract period (2009-2011). As of July 1, 2011, all salaries were restored to the 2009 level, including the salaries of BU 9 employees. However, the salaries of all State employees with the exception of BU 9 and BU 10 were reduced during FB 2012-13, retroactive to July 1, 2011, equal to a 5% temporary wage cut from the June 30, 2009 base rate. The General Appropriation Act of 2011 (Act 164) mandated labor savings of an amount equal to 5% wage reduction for all bargaining units negotiating for the FB 2012-13 contract periods. Employees in BU 9 continue to receive salaries of up to 5% higher than their co-workers because no labor savings had been realized for this bargaining unit to date. The Employer's wage proposal seeks the same wage reduction as those obtained from the majority of State employees.

Since the time remaining in this fiscal biennium is compressed, the Employer made a final proposal of a temporary mandatory salary waiver of 24% from the issuance of the arbitration award through June 30, 2013.

The Employer's proposal is as follows:

ARTICLE 56 – SALARIES

A. Effective the first pay period after issuance of the arbitrator decision, the salary schedule shall be the salary schedule that was in effect 11:59 p. m., June 30, 2009.

1. Recognizing that the majority of State employees have already contributed a temporary five percent (5.0%) labor cost reduction by means of a mandatory salary waiver effective July 1, 2011, and since the time remaining in this fiscal biennium is compressed, a temporary twenty-four percent (24%) labor cost reduction by means of a mandatory salary waiver shall be implemented for all applicable employees. The parties recognize that a temporary twenty-four (24%) labor cost reduction effective the first pay period after issuance of the arbitration decision, is equivalent to the temporary five percent (5.0%) labor cost reduction experienced by other State employees.
2. Recognizing that the majority of State employees have already contributed a temporary five percent (5.0%) labor cost reduction by means of a mandatory salary waiver effective July 1, 2011, and since the time remaining in this fiscal biennium is compressed, a temporary twenty-four percent (24.0%) labor cost reduction by means of a mandatory salary waiver shall be implemented for all applicable employees ***not administratively assigned to the salary schedule***. The parties recognize that a temporary twenty-four (24.0%) labor cost reduction effective the first pay period after issuance of the arbitration decision, is equivalent to the temporary five percent (5.0%) labor cost reduction experienced by other State employees.
3. An employee may request the Employer to deduct the amount equivalent to a temporary twenty-four percent (24.0%) labor cost reduction from their paychecks over a longer period of time. Such request shall be subject to the approval of the department head.

B. There shall be no step movements or time creditable for step movements from July 1, 2011, to and include June 30, 2013.

ARTICLE 60 – DURATION

This Agreement shall be effective as of the date 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 09 Agreement.

Notices and proposals shall be in writing and shall be presented to the other party between _______________. When the notice is given, negotiations for the new Unit 09 Agreement shall commence on a mutually agreeable date following the exchange of written proposals.

B. UNION'S LAST BEST OFFER

On October 29, 2012, the Union submitted its "Final Position" to the arbitration panel.

With regard to salaries, the Union's Final Position was as follows:

1. *Across-the-board salary increase of ten percent (10%) effective July 1, 2011. (Article 56)*

2. *Across-the-board salary increase of twelve percent (12%) effective July 1, 2012. (Article 56)*

3. *Retroactive step movements for employees who were eligible for step movements from July 1, 2009 through June 30, 2011. (Article 56)*

4. *Step movements for eligible employees for the period from July 1, 2011 to June 30, 2013. (Article 56)*

5. ~~*Night shift differential for each hour to be increased from two dollars ($2.00) to three dollars ($3.00).*~~
   (Item 5 -- Withdrawn during the Hearing)

6. ~~*In addition to the basic or overtime compensation or night shift differential, a weekend shift differential in the amount of two dollars ($2.00) per hour for each hour of actual work performed during 6:00 p.m. on Friday to 6:00 a.m. on Monday.*~~
   (Item 6 -- Withdrawn during the Hearing)

7. *Working condition differential for each hour to be increased from fifty cents ($0.50) to one dollar ($1.00). (Article 34)*

The Union also proposed that the Panel's decision remain in effect to and including June 30, 2013 (Article 60-Duration) as follows:

> This Agreement shall become effective as of July 1, 2011, and shall remain in effect to and including June 30, 2013. It shall be renewed thereafter with respect to the subject matter covered, in accordance with statutes unless either party gives written notice to the other party of its desire to amend, modify or terminate the Agreement, and such written notice is given no later than May 15, 2013. After such written notice is given, the parties shall exchange their specific written proposals, if any, no later than June 17, 2013. Negotiations for a new Agreement shall commence on a mutually agreeable date following the exchange of written proposals, as applicable. In the event that agreement cannot be reached on a new Agreement, the current language of the Agreement shall continue in force and effect until the collective bargaining process is resolved as provided by law.

X. APPLICATION OF THE STATUTORY CRITERIA

HRS Section 89-11(f) requires the panel in reaching its decision to "give weight to factors and include in its report or decision an explanation of how factors were taken into account." (see listed factors, pp. 4-5)

A. ABILITY TO PAY

The Panel is of the opinion that it is critical to address the statutory criteria of HRS Section 89-11(f)(4) concerning the "financial ability of the employer to meet those 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."

If the Employer does not have the ability to pay, the remaining statutory criteria will have little or no impact on the Panel's decision.

1. STATE'S POSITION ON ABILITY TO PAY

Hawaii is coming out of a financial hole, but it has not fully recovered. The budget shortfall at the start of FB 2012-13 was 1.3 billion dollars. As stated in its post-hearing brief: "In this challenging environment, it is important to achieve **fairness** in the distribution of the financing burden particularly for public employers that deal with numerous employees from different bargaining units whose every member represents the backbone of State government. The Employer's proposal simply treats BU 9 employees no differently than their co-workers ....the only conclusion to be reached is to accept the Employer's wage reduction proposal because:

- The HHSC is financially unable to meet the proposed costs by HGEA on behalf of BU 9 employees, and the State is also unable to absorb any wage increases;
- The legislative imposed labor savings in Act 164 equal to approximately 5% wage reduction for FB 2012-13;
- The Employer's wage reduction proposal is equal to a 5% wage reduction spread over the FB 2012-13;
- The same wage reduction proposal made by the Employer to BU 9 has been implemented with almost all bargaining units, with the majority of

bargaining units voluntarily agreeing to the wage cuts due to the State's financial condition;

- It is fair to equally share the financial burden across-the-board to all bargaining units covered by Act 164, and unfair to members of the other bargaining units if BU 9 members continue to receive their current salaries without reduction;
- It is all the more unfair to the majority of State employees who have made early sacrifices contributing to the State General Fund ending balance in the black if BU 9 employees obtain any pay increases; and
- The HGEA's wage increase proposal has no merit because the overall compensation of BU 9 employees is competitive with the private market and ahead of the national labor market by 56%."

Mr. Chu testified that HHSC is "broke." The testimony was presented, as though HHSC was an independent agency, not part of the State government system. The State has historically funded a portion of the cost of the corporation, in an amount of 82.1 million dollars. Chu testified that the State had not funded the agency at the same rate. In the past two fiscal years, the funding was reduced by 10.2 million dollars causing great financial difficulties, which included delaying payment to vendors for several months. Placing HHSC in this financial position is the choice of the Legislature; they have the power to remedy the financial burden placed on the agency.

The Panel Chair notes that in past interest arbitrations the parties stipulated that the HHSC "wage or benefit increases would be funded through the State's General Fund, rather than the HHSC." (p. 4, HLRB Case No. I-09-113, 2007 Impasse) No such stipulation was offered in this proceeding; however, the Panel majority takes note that the HHSC Nurses were identified as State employees.

The Panel majority is of the opinion that any wage increase recommended for the Nurses, as employees of the State, is a matter for the Legislature of the State of Hawaii to fund no matter which Agency or Department the Nurse are identified with or may work for.

2. UNION'S POSITION ON STATE'S ABILITY TO PAY

Mr. Reilly testified on behalf of the HGEA/Union. His testimony made it clear that the State does have the ability to pay the Union's ten percent across-the-board pay increase effective July 1, 2011, and twelve percent across-the-board pay increase effective July 1, 2012.

Mr. Reilly computed the Union's proposal on the assumption that salary step movements would be reinstated. The cost of the Union's proposal for a ten percent (10%) across-the-board increase as of July 1, 2011, plus step movements, would be $18,000,000 for the fiscal year ending June 30, 2012. The proposed twelve percent (12%) across-the-board increase as of July 1, 2012, plus step movements, would be $40,500,000 for the fiscal year ending June 30, 2013, and $1,500,000 for the fiscal year ending June 30, 2014. This is due to the lag time in payment of the salary award for fiscal year ending June 30, 2013. According to Mr. Reilly, the total cost of the Union's proposal would be $64,300,000.

The Union asserts that Mr. Reilly's testimony and the Union documentary evidence (see p. 65 post-hearing brief) established that:

- Although the State's tax revenues fell during the Great Recession beginning in the fiscal year ended June 30, 2007, those revenues turned around and began to grow again during the fiscal year ended ~~July~~ June 30, 2011; [strikeout of July and inserting June re FY made by Panel Chair]
- The State's General Government Non-Tax Revenues did not decrease but instead continued to increase during the same period;
- During the period of Great Recession, from July 30 2007, to July 30, 2011 [sic], the State's total revenues actually went up rather than down in every year other than the fiscal year ended ~~July~~June 30, 2009, because when tax revenues went down there was a strong increase in intergovernmental revenues and nontax revenues that offset the decrease in tax revenues; [strikeout of July and inserting June re FY made by Panel Chair]
- The State's total revenues for the fiscal year ended ~~July~~June 30, 2011 were substantially greater than the State's total revenues during any of the preceding ten fiscal years; [strikeout of July and inserting June re FY made by Panel Chair]

- The State's tax collections for the fiscal year ended June 30, 2012, continued to grow and were 13.43% higher than the State's tax collections for the fiscal year ended June 30, 2011;
- For the month of July 2012, which is the first month of the 2012-2013 fiscal year, revenues were up $15.423 million, or 3.23 percent, which indicates that although overall tax revenues have fluctuated, they are coming back very strong so far in 2012;
- The State's total assets, asset to liability ratio and total fund balance for the General Fund, which had trended downward during the period of the Great Recession, trended strongly upward for the fiscal year ended June 30, 2011;
- The State used its reserves to meet its ongoing expenses during the great Recession, but the economy has recovered to the point that the State now has sufficient revenue that it is not only able to meet its ongoing expenses but also replenish its revenues and its Hurricane Relief Fund;
- The State's enterprise funds are extremely healthy, and will not have a negative impact on the General Fund; and
- The three major bond ratings agencies (Moody's Investors Service, Standards and Poor's, and Fitch Ratings) issued very high ratings of Hawaii's general obligation bonds on November 4, 2011, November 8, 2011, July 3, 2012, and November 7, 2012, on the basis of findings by those agencies that the State's economy is rebounding and that continued growth in the State's revenues can be expected."

B. ECONOMIC DATA - PRESENT/FUTURE CONDITIONS

The HRS § 89-11 (f)(5) requires the arbitration panel to give weight to the "present and future general economic condition of the counties and the State."

There is no question that the State encountered devastating financial impact as a result of the 2007 recession. The Legislature, Governor and Management of the State are to be commended for their efforts at finding methods of covering their 1.3 billion shortfall.

In 2011, the Legislature reduced the budget appropriations for labor costs $88.2 million for each year of FB 2012-13. This amounted to about a 5% wage reduction for the employees of all State bargaining units for the fiscal year 2012-13.

In addition to the wage reduction, the State also passed revenue enhancing measures on a temporary basis to address the shortfall. This included the transfer of approximately $100 million from the Hawaii Hurricane Relief Fund to the General Fund.

By taking the measures it did, the State was able to end the 2012 fiscal year with a positive fund balance of $275 million. The revenue to the State has grown giving the State the opportunity to address restoring the programs and services that were cut during fiscal years 2009-2011 and addressing the State's unfunded liabilities.

The primary strengths of the Hawaii economy is tourism and military/federal spending. It was reported that military spending constitutes 18% of the State economy. Even with uncertainties of the national financial status, the military presence in Hawaii will remain strong.

The State of Hawaii in October 2012, prepared an "Investor Presentation," promoting the sale of General Obligation Bonds for 2012. The Presentation states (at p. 6): "A highly strategic military presence provides important economic activity and will be enhanced by relocated personnel from Okinawa." It further shows (at p. 9) graphs and figures to support the heading on that page: "Hawai'i's Tourism Industry Continues to Show Remarkable Strength, Attracting a Global and Diversified Visitor Mix." Statistics show tourism has rebounded since the low of 2009, with 6,517,000 visitors who spend $9,993,000; 2010 there were 7,018,000 arrivals, spending $11,066,000; 2011, 7,299,000, arrivals spending $12,255,000; and the projection for 2012 is 7,929,000 arrivals, an increase of 9% over the 2011 arrivals, and spending $14,123,000. This expenditure level is 15% above the 2011 amounts. The number of arrivals is increasing and they are spending more.

The revenue from the tourists accounts for a substantial portion of the General Fund Revenue; it is the number one industry of the State. This growth has not been reflected in all areas of the economy. Construction, though increasing, still has not reached prior levels.

The projections for construction shown in the Investor Presentation for the bond issuance are impressive. On page 12, 24 "Indicative Private Investments" are listed. These are announced construction/development projects. Of the 24, there are 11 projects with the announced dollar expenditure that is anticipated totaling \$3.291 billion. Unfortunately, there is not a timeline given for the 24 private investment projects. In addition to the private investment projects, there are the military projects that are ongoing (at p. 11) which total \$3.447 billion. That does not include the cost of the Statewide on-base Navy Solar Power Project, nor the "muti-billion dollar investment (that) will be required to support the redeployment from Okinawa."

This leads the Panel Chair to conclude that the construction industry is headed for recovery. This speaks well for the future of the State economy.

The State believed the across-the-board salary decrease was a fair method of sharing the necessary spending reduction among the employees and was a necessity to meet the revenue shortfall. The Panel is aware that any increase in salaries granted to Unit 9 will be at the expense of the other State employees whose salaries were reduced by the actions of the State (which enabled it to place the State in the black by the end of the 2012 FY).

The Panel majority determined that the Panel should rely on the data and forecasts of the Council on Revenues rather than any other data that may be contradictory. Other data was reviewed and considered, but the primary source is the COR reported data.

The two largest elements of the Hawaii economy are tourism and military spending, both are strong and the Panel majority expects them to remain so.

In a reversal of the negative fiscal year 2011 projected growth by COR in its reports in 2010 and 2011, the COR data as of May 30, 2012 reflected a 12% increase in tax revenue growth between fiscal years 2011 and 2012. General Fund tax collections were up substantially from

$4,329 million to $4,849 million between fiscal year 2011 and fiscal year 2012. The data shows that the State's actual tax collections in fiscal year 2012 were the largest ever. The collections were $127 million over the COR projections and an actual increase of 14.9% from fiscal year 2011 to fiscal year 2012.

On February 7, 2013, the Panel was informed by Alan C. Davis, counsel for the HGEA, that information was received from Timothy Reilly regarding the 2012 CAFR [Comprehensive Annual Financial Report]: "Mr. Reilly has advised us that the State of Hawaii's unrestricted fund balance increased by $250.4 million ($557 million to $807.4 million) during the 2011-2012 fiscal year. The unrestricted fund balance to revenues ratio increased from 11.02% to 15.08%. The unrestricted fund balance to expenditures and transfers ratio increased from 12.19% to 15.48%." The 2012 CAFR is online and available pursuant to HRS Section 89-11(f)(9).

The January 3, 2013, revised forecasts of the COR on State General Fund tax revenues for fiscal year 2013 through fiscal year 2019 are shown in the table below:

General Fund Tax Revenues

Fiscal Year	Amount (in Thousands of Dollars)	Growth From Previous Year
2013	5,233,350	5.1%
2014	5,589,486	6.8%
2015	5,937,865	6.2%
2016	6,021,496	1.4%
2017	6,272,062	4.2%
2018	6,585,608	5.0%
2019	6,893,137	4.7%

The State is fortunate at the turnaround in the State revenue collections over the past 2+ years as reported by Council on Revenues.

The Panel majority sees the future projection of the State's economy to be positive.

The Panel majority finds that the State's "last best offer" is not sustainable based on the data presented above on economic factors.

The Panel majority finds that the State has the ability to pay a salary increase to the BU 9 Nurses.

C. COMPARABLE WAGES PAID TO EMPLOYEES IN SIMILAR EMPLOYMENT AND OVERALL BENEFITS

Union Ex. 34 was a report by the HHSC (Management Discussion and Analysis) which addressed the shortage of medical staff. It is quoted here:

> *...since the majority of HHSC's facilities are rural locations, management faces many recruiting and retention issues of key clinical personnel. Areas of acute shortage include RN's and LPN's, anesthetists, Imaging technicians, physicians, surgery technicians, pharmacists and pharmacy technicians, and health information management specialists. These shortages are areas are caused by several factors: (1) A nationwide shortage of healthcare workers, (2) the inability of local colleges and universities to provide sufficient classes and teachers that can educate students in these areas, and competition for these same types of positions with private hospitals, which can pay significantly higher wage rates than HHSC. In particular the shortage of RN's and LPN's result in HHSC having to expend significant amounts for agency nurses, which are paid at significantly higher rates. Agency nurses expenses for fiscal year 2011 and 2010 were $9.1 million and $5.8 million respectively.*

In evaluating the wage proposals, HRS § 89-11(f) requires the arbitration panel to give weight to the following factors:

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

* * *

(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;

1. UNION'S POSITION COMPARABLE WAGES/OVERALL COMPENSATION

J. Michael Messina has been employed as a Labor Economist in the AFSCME Department of Research and Collective Bargaining Services for 26 years. His duties include providing AFSCME affiliates around the country with technical assistance. HGEA is an affiliate of AFSCME.

Mr. Messina testified that he performed a comparability analysis of wages, hours, and conditions of employment of employees in comparable public and private employment. He selected as the focus of that work the job title of Registered Professional Nurse III because that is the job title in the bargaining unit that by far has the largest number of incumbents. According to a document provided by the State, as of July 1, 2012, there were 1,140 Registered Professional Nurses III in BU 9, their salary range is 20 on the State's compensation table. There are a total of 1,594 employees in BU 9, seventy-five percent (75%) of the employees in BU 9 are at Salary Range 20.

A comparison was made with the Tripler Army Medical Center, in Honolulu, Nurses' wages and the State Nurses' wages. The BU 9 Nurses starting salary is $68,736. Over time, the Nurse progresses through the steps on the pay schedule, reaching the maximum annual salary of $85,320. A Nurse with the same duties at Tripler Medical Army Center starts at $93,000, and progresses through the pay steps to reach an annual salary of $114,000 approximately. The Tripler Nurse starts at $24,000 more than the Nurse that works for the State, a difference of 35 percent. Over time, the Tripler Nurse would make $29,000, or 33.5 percent more than the same Registered Professional Nurse working for the State. The Tripler Nurse would reach her maximum step two years earlier than the State Nurse.

Mr. Messina testified if the arbitration panel were to reduce the pay of the Nurses by 24%, as requested by the State, the Nurse would be making $41,000, or 78 percent less at the minimum level and at the highest step $49,000, or 76 percent less than the Tripler Nurses. Even if the Panel were to award the pay increases requested by the Union -- 10 percent on July 1, 2011 and 12 percent increase on July 1, 2013 -- the salaries of BU 9 Nurses at the minimum level would still be behind the Tripler Nurses by $8,312, or 9.8 percent less, and, at the maximum salary step, the BU 9 nurses would be making $8,809, or about 8.4 percent less than the Tripler Nurses.

The testimony as to the increase in the difference between the BU 9 and Tripler Nurses minimum salary has increased from 20.3% in 2005 to 35.3% in 2012. The difference between the maximum salary steps for BU 9 and Tripler Nurses has increased from 26.7% in 2005 to 33.5% in 2012.

A private sector comparison was also prepared with the six largest hospitals that have Collective Bargaining Agreements. A salary comparison was made to BU 9 Nurses, specifically the Salary Range 20 Registered Nurse. Mr. Messina determined that the annual salary of a Registered Professional Nurse III in BU 9 is $16,379 less than the annual salary of the lowest pay scale of the private sector hospitals, which is a difference of 21.2%, and $27,008 less than the highest annual salary of the private sector hospitals, a difference of 34.9%.

If the Panel were to adopt the State's position of reducing the Nurses pay by 24%, a Nurse working for the State would be making $34,932, or 59.5% less than the lowest annual pay scale of the private sector hospitals, and $44, 604, or 75.9%, less than the highest annual salary of the private sector hospitals.

If the Panel adopts the Union position, the State Nurses would be making $1,556, 1.6% more than the lowest pay scale, and $9,073, or 9.5% less than the highest annual pay scale in the private sector hospitals.

The difference between the Kaiser Foundation Hospital/Health Plan and BU 9 Nurses was $12,406 in 2005, and has now grown to $26,051 in 2012.

Mr. Messina prepared a comparison of the wage increases of BU 9 during the past 10 years with the wage increases provided to employees of Unit 10, 11, and 12. Unit 10 are correction officers, LPNs and nurse aids represented by the United Public Workers, Local 646 of AFSCME. Unit 11 is comprised of firefighters represented by Local 1463 of the International Association of Fire Fighters. Unit 12 members are police officers represented by the State of Hawaii Organization of Police Officers.

The comparison of BU 9 wage increases with the wage increases that have been provided to employees in Units 10, 11 and 12, is appropriate pursuant to an April 18, 2007 Interest Arbitration Decision, which stated that the three Units are the "first responders" – "those employees that are primarily engaged in providing services that are essential for the preservation of public health and safety." This Panel majority is of the same opinion.

Units 11 (firefighters) and 12 (police officers) negotiated their contracts in 2007. The firefighters received a 5% increase on July 1, 2009 and, on July 1, 2010, another 5%. The police officers received a 6% increase on July 1, 2009 and, on July 1, 2010, another 6%. These raises, having been negotiated prior to the recession, were not impacted by the wage reductions of other State employees. Both the fire and police personnel are paid from the County budgets, which are primarily financed by property taxes.

The total percentage of wage increases compounded over the period from July 1, 2003 to June 30, 2011, was 44.8 percent for the firefighters and 44.7 percent for the police officers, but only 35.8% for the Registered Professional Nurses. Mr. Messina stated that Unit 9 Nurses have not only fallen behind the wages of Nurses in other public employment and private employment in the State, but have also fallen behind the wages of other State of Hawaii employees who are similarly situated.

A comparison was made with the Nurses in mainland states that border the Pacific Ocean, being Alaska, California, Oregon and Washington. In these states, it take from six to 13 years to reach the top pay step but, in Hawaii, it takes 20 years.

If the State wage reduction is implemented (24% reduction), Hawaii Nurses minimum salary would rank fourth and the maximum salary would then rank last among the five states. Mr. Messina also testified other states that have recently settled contracts with AFSCME have agreed to annual wage increases in 2012 and 2013 of between two percent (2%) and five percent (5%). These states had imposed pay reductions and furloughs during the recession.

Overall Compensation of BU 9 Employees. Health care coverage is a significant cost to the employees and their employers. BU 9 Nurses pay $159 per month for a single employee and for family health coverage pays $490 per month, which is 40% of the total cost of the benefit.

Tripler Army Medical Center pays $185 per month for a single employee, 31% of the total cost, and $430 a month for family health care coverage, 32% of the total cost of the benefit.

The private hospitals in Hawaii pay for the employee. For family health care coverage, the monthly cost ranges from $90 to $214.

As for the mainland states (California, Washington, Alaska and Oregon), the nurses pay between $50 and $107 compared to BU 9 Nurses cost of $159 per month for a single employee.

The family health care coverage for the four mainland states is between $68 and $277 per month; BU 9 Nurses pay $490 per month for family coverage.

2. EMPLOYER'S POSITION COMPARABLE WAGES/OVERALL COMPENSATION

The Employer states that the evidence shows that its submitted wage proposal is consistent with the majority of the Hawaii government employee unions who have agreed to an annual 5% labor savings reductions for July 1, 2011 to June 30, 2013 contract period. Further, the total compensation of BU 9 compensation is on par with the private sector and substantially above the nurses in the private sector nationwide. Further, the overall economic indicators demonstrate that BU 9 compensation is above market. Recruitment is exceptionally high, turnover is exceptionally low, and tenure is exceptionally high. Finally, public sector wages and benefits across the nation are trending downward.

The State points out that salaries of the majority of State employees were reduced 5% starting July 1, 2011; the salaries of BU 9 employees were restored to 2009 pre-reduction levels. Further, the Employer's health benefit contributions to the EUTF remained at dollar amounts equal to approximately 58% of the premium rate, while the Employer's contributions for other bargaining units decreased from 60% to 50%.

The State pointed out that labor savings had been obtained from Bargaining Units 2, 3, 4, 6, 8, and 13, which were a 5% across-the-board wage reduction for July 1, 2011 through June 30, 2013. In addition, the employees pay 50% of the health benefits premium rate. There are 20,207 employees in these bargaining units from the State Executive branch only comprising 44% of the total State executive employees. (S, Chart 4).

BU 1, represented by UPW, agreed to 27 days of direct leave without pay (DLWOP) through June 30, 2013. This amounts to the equivalent of 5% wage reduction. There are approximately 4,884 in this unit from the State executive branch only comprising 10% of the total State executive branch employees.

The State implemented labor savings equal to 5% wage reduction on BU 5 in the form of a 1.5% reduction in the salary schedule for the FB 2012-2013 and DLWOP's (7.5 days for 10-month employees, and 9 days for 12-month employees). BU 5 also pay 50% of the health benefits premium.

With regard to BU 10, 11, and 12, Messina testified for the Union that these units primarily serve the public health, welfare, and safety functions and thus internal comparability should be limited to these units. His argument is incorrect. First, the internal comparison required under §89-11(f)(6), HRS, is for "other state and county employees in Hawaii and does not require that employees perform similar services. The requirement of comparing with "other persons performing similar services" is to external comparability. Second, public health and safety functions are also performed by members of other bargaining units. Third, the funding sources are different. Finally, the contracts for BU 11 and BU 12 are four-year contracts that were entered into in 2007 before the recession.

Messina conceded that some BU 3 employees, such as sheriffs, lifeguards and game wardens also perform public safety and welfare functions. HGEA agreed to the 5% wage reduction for BU 3 and all of its bargaining units except BU 9.

Messina did not acknowledge that the sources of funding for BU 11 and BU 12 are funded by the counties, not the State General Fund.

BU 10 through Interest Arbitration was recently awarded a wage increase of 3.2% over a six-month period starting January 16, 2013 through June 30, 2013, the award is equivalent to 0.73% over the two-year contract period. This is substantially less than the 22% that BU 9 is proposing in this arbitration. The financial situation of HHSC clearly shows that it has the inability to pay any wage increase to BU 9 employees at this time.

External Comparability. The Employer's external wage and benefits comparison was testified to by Joy Inouye of the Department of Human Resources Development ("DHRD"). Inouye is the Manager of the Compensation Branch of DHRD and has been with the same division for 20 years. One of her primary responsibilities is to conduct pay research and studies to determine wage and benefit competitiveness. Inouye performed a total comparison analysis of BU 9 wages and benefits compared with "other persons performing similar services" in different markets. She used appropriate methodologies recognized in the field and concluded that BU 9 total compensation is competitive. Inouye's total compensation analysis concludes:

- Bu 9 total compensation (wages and benefits) as a percent of Hawaii private sector is 99% or 103% using U.S. registered nurse benefit rate;
- BU 9 total compensation (wages and benefits) as a percent of State government is 156%;
- Number of BU 9 employees hired in fiscal year 2012 is at the highest its been in the past 5 years;
- BU 9 turnover is lower than turnover in Hawaii and U.S. state and local governments;
- BU 9 length of service is higher that U.S. private sector and U.S. state governments; and
- Public sector employers have implemented cost-cutting measures including layoffs.

BU 9 vs. Private Sector. Comparing BU 9 to the private sector, Inouye relied on the 2011 Health Care Pay Rate Survey by the Hawaii Employers Council (HEC). HEC has been conducting salary and benefit surveys in Hawaii for over 60 years; their surveys are reliable. The 2011 survey includes union and non-union private sector and public sector wage data from 70 different facilities and pay-rate information from 124 health care jobs. Inouye conducted a position by position analysis by matching the job descriptions ant titles of 13 jobs surveyed by the HEC to the BU 9 positions. Inouye matched 1,170 employees or 78% of BU 9 employees using actual wages. The wage analysis shows that BU 9 average wage as a percent of private sector is 97% and the weighted average as a percent of the private sector is 83%.

The BU 9 benefits as a percent of payroll is 61.11% of payroll. BU 9 employees receive a defined benefits retirement plan at a cost to the Employer of 15% of payroll. BU 9 employees receive health benefits after retirement at a current cost of 8% to the Employer. The Employer pays a specific dollar amount for the medical, drug, dental and life insurance of approximately 7.02% of payroll. BU 9 employees receive 21 days of annual vacation, which represents 8.1% payroll annually. BU 9 employees also receive 21 days sick leave, which represents another 8.1% per year of payroll. The unused accumulated sick leave can be used as a credit toward the length of service for retirement. Holiday for BU 9 employees consists of 13.5 days per year, which equals to 5.2% of payroll.

Collectively the above benefits represent 61.11% of employee wages. These benefits as a percentage of payroll are significantly higher when compared to the Hawaii private sector labor market percentage of 36.7% of payroll and the Hawaii health care industry percentage of 35.8% of payroll.

Based on the wage and benefits analysis, Inouye calculated that the BU 9 total compensation using the HEC wage and benefits survey to be 99% of the Hawaii private sector market. However, when comparing the benefits of similar employees nationwide using the BLS benefit rate for U.S. Registered Nurses, the total compensation of BU 9 employees is 103% of the private sector market or 3% above the private market.

<u>BU 9 vs. Public Sector Nurses</u>. The second total comparison analysis by Inouye was based on a survey conducted by AFT Public Employees Union of government employees in all 50 States and the District of Columbia. The study covers 1,021 or 68% of BU 9 employees and

is based on the AFT salary survey as of March 2011. Inouye compared BU 9 wages with registered nurses from the State governments and it shows that BU9 wages are 139% of the State government nurses weighted average. After adjusting for differences in the cost of labor in Hawaii using data from BLS (Hawaii is 5% higher than the national average). The BU 9 wages are 133% of the State government weighted average. BU 9 employees are better off compared with benefits of registered nurses in U.S. State and local governments. BU 9 benefits as a percentage of payroll is 61.1% compared with 36.9% for health and social assistance workers in State and local governments.

Inouye concludes that when wages and benefits are combined, BU 9 total compensation as a percent of State governments is 156% or 56% above the total compensation for registered nurses in State governments nationwide.

Inouye's analysis and findings support that BU 9 employees total compensation is on par with the Hawaii private sector and substantially above the national public sector.

Recruitment - the number of BU 9 employees hired in fiscal year 2012 is at the highest it has been in the past 5 years.

Turnover rate is the number of employee terminations divided by the average number of employees per year, both voluntary and involuntary terminations, including retirements. The turnover for BU 9 employees is significantly lower at only 10% compared to the turnover rate of 13.1% in Hawaii and 16.1% in the U.S. state and local governments.

Tenure is the average years of service the employees have worked for the employer. The tenure of BU 9 employees is 9.4 years, which is higher than other U.S. state governments at 6.4 years and the U.S. private sector at 4 years.

The State asserts that these three measures (recruitment, turnover rate and tenure) signal that the BU 9 compensation is above the market. The statistics by themselves demonstrate that the BU 9 employees' overall total compensation is competitive with or exceeds the market.

D. CONSUMER PRICE INDEX

The HRS § 89-11 (f)(7) requires the arbitration panel to give weight to the average consumer prices of goods and services, commonly known as the cost-of-living.

Mr. Messina testified for the Union regarding the cost of living. The Honolulu Consumer Price Index for all urban consumers (CPI-U), as determined by the Bureau of Labor Statistics of the U.S. Department of Labor, posted a 2.5% increase as of July 1, 2009, and a 3% increase as of July 1, 2010. Since the Nurses are being paid at the June 30, 2009 rate, the purchasing power or standard of living for the Registered Professional Nurses in Unit 9 has declined by 6.2% over this period. (RT 403-406; Union Ex. 30, p 29)

Honolulu is the third most expensive place to live in the U.S., exceeded only by Manhattan and Brooklyn. It was pointed out that the cost-of-living in Hawaii on the average is about 28% higher than the cost of living in Washington D.C.

The Federal government recognizes that the cost of living is higher in Hawaii than the mainland. Those government employees in Hawaii receive a cost-of-living allowance and local pay differential of 22.75% for employees assigned to the island of Hawaii and 28.76% for employees assigned to Oahu and Maui.

Mr. Messina testified from his data that the salaries of registered nurses who work in Hawaii, California, Alaska, Washington and Oregon are adjusted to reflect the differences in cost-of-living among these states. The minimum and maximum salaries of the Registered

Professional Nurses in BU 9 no longer rank first among these five states but instead only rank fourth. (Union Ex. 30)

The State's counsel points out that the cost-of-living index or CPI is not an infallible measurement and is merely another factor to be taken into account by the arbitration panel. It has been said that the cost-of-living criterion is "rarely" dispositive of anything in interest proceedings. (*Interest Criteria in Fact-finding and Arbitration: Evidentiary and Substantive Considerations*, MF Hill Jr., E. DeLancenserie, 74 Marq. L. Rev. 399, 436-438 (1991) [citations omitted])

The Employer states the "proposed wage reductions, in view of the low inflationary rate that exists in Hawaii and nationally (between 2% and 3%) and the relative compensation of the Unit 9 wages, that this criteria is not dispositive. Nonetheless, it should be noted that the wages of BU 9 members will not be eroded by inflation even with the wage reduction proposed by the Employer."

The Panel majority believes that the figures from this data provides greater support for a wage increase for the BU 9 Nurses than it does for any wage decrease. The Panel majority also notes the State's comments and agrees the CPI factor rarely viewed as being dispositive by this arbitrator or other arbitrators in interest arbitration matters. The Panel majority believes that the CPI has significantly less weight than the comparability data which addresses the cost of labor in the State of Hawaii.

E. STIPULATIONS OF THE PARTIES

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

There were no stipulations presented to the Panel.

F. INTEREST 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 the statutory criteria in the decision.

The State argues that "the arbitration panel must not make an award in a vacuum by merely considering the interests of BU 9 employees, but above all must consider the demands of all Hawaii residents on the State's limited resources."

The HHSC is unique. Few, if any, public organizations are the principal provider of primary medical care for the entire State. The HHSC's mission is to "provide and enhance accessible and comprehensive health care services that are quality driven and cost-effective." According to HHSC, this mission is being challenged by the exorbitant wage increase demands of BU 9 employees who already receive competitive compensation. "Consideration must be given to the many demands on the limited State resources. It is only appropriate that the welfare of the public requires the equal distribution of its financial burden among all State employees."

There were no direct comments by the Union on these criteria.

The Panel viewed the "welfare of the public" to include the millions of tourists that come to the Islands each year. They must have health care facilities that are staffed with well trained professional nurses. The staffing and retention of the medical facilities is a critical matter for everyone who resides or visits the Islands.

The majority of the Panel is of the opinion that the retention and staffing required to provide medical services in great part goes to adequate compensation of the medical personnel. Interest arbitrators have recognized the negative and detrimental impact that wage reductions and low wages have on employees' morale, and how the low morale of employees impact the rendering of services to the public. Staff wages have an impact on the "interests and welfare of the public."

G. CHANGES DURING PENDENCY OF PROCEEDINGS

Section 89-11(f)(9) requires the panel to consider "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings."

The Panel was provided with information received by Mr. Reilly on or about February 7, 2013, regarding the 2012 CAFR/change in the fund balance of the State (see p. 18 herein).

The January 3, 2013, revised forecasts of the COR on State General Fund tax revenues for fiscal year 2013 through fiscal year 2019 are shown in a table (see p. 18 herein).

The following "Governor, Teachers Reach Contract Accord" was received by email on March 27, 2013, which informed the Panel of the Hawaiian State Teachers Association tentative agreement:

Governor, Teachers Reach Contract Accord

The union and the state tentatively agree on a pact that restores a 5% pay cut and includes annual raises

Honolulu Star-Advertiser (www.staradvertiser.com)
By Michael Tsai

POSTED: 01:30 a.m. HST, Mar 25, 2013 LAST UPDATED: 09:47 a.m. HST, Mar 25, 2013
The state and the Hawaii State Teachers Association have reached a tentative agreement on a new four-year pact that provides for pay increases, restoration of previous medical coverage premium percentages, and HSTA input on teaching evaluation policies.

"This contract establishes a solid foundation for our teachers and students," said Gov. Neil Abercrombie. "Bargaining was a challenging task, but Hawaii has a tradition of working together so these challenges can be resolved. As a result, the negotiating teams kept at it, and we have a contract that is right and fair and just."

The proposed contract now goes to the HSTA membership for review. The HSTA has scheduled a ratification vote for April 17.

Under the terms of the new agreement, the state will restore the 5 percent pay cut teachers took when the state imposed the current "last, best and final" contract in 2011. The restoration, plus a 3 percent increase, would take effect in the first year of the contract; those already at the top of the HSTA pay scale would receive a $1,500 bonus.

Teachers would then receive a 3.2 percent pay increase in the second year, another 3 percent increase in the third year (with another $1,500 bonus for top-scale employees) and a 3.2 percent increase in the final year.

Abercrombie said pay increases and other provisions of the contract are possible in part because of improved fiscal conditions.
"We have righted the fiscal ship of this state," he said. "The Council of Revenues has projected a positive balance to accompany the good fiscal management of the state, so we're confident that the proposals embodied in the proposal can be funded and the state will continue on the positive-balance path that it's been on since our administration came into office."
The new contract, which grew out of a week of mediated discussions between the two sides, also restores member health insurance premiums, which were raised in the 2011 contract, to their previous levels; provides for HSTA representatives to participate in Board of Education discussions on teacher evaluation policies; covers the cost of teaching licenses; and allows for teachers to donate sick leave to other teachers for additional maternity leave.
Abercrombie declined to discuss specific provisions of the agreement but hailed the new pact as "the most progressive contract in the United States."
According to BOE member Jim Williams, negotiators worked through the night Friday before arriving at an agreement early Saturday morning.

HSTA President Wil Okabe said his negotiating committee voted unanimously to take the contract back to HSTA members.
"We will make every effort over the next two weeks to get information out there so our members can make a decision," Okabe said by telephone. "It's their contract and it's their decision."
Okabe said restoring health insurance premiums was a key concern for HSTA negotiators. When the state imposed the current contract, it changed the teachers' share of health insurance premiums to 50 percent from 40 percent.
"We've had members forgo coverage because otherwise they wouldn't be able to pay their rent or mortgage," he said. "For us that was a big concern."
The sick-leave provision was also a victory for HSTA, given the demographics of its membership, Okabe said.

"Eighty percent of our members are women, and 60 percent are part of the millennial generation," he said. "We don't want them to have to take a leave without pay when they go on maternity leave, so this was a huge thing for us to address."

The information recently provided supports a wage increase for the BU 9 Nurses. None of the new data supports the State's position.

H. OTHER FACTORS

Section 89-11(f)(10) requires the panel to consider "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."

Not applicable. This section was not addressed by either party and therefore not addressed by the Panel.

XI. INTEREST ARBITRATION DECISION

WAGES

The Panel notes that the statistics presented by the parties on comparable salaries and benefits is a major area of conflict. The Union presented numerous letters from Nurses that had left employment because of the low wages. These Nurses had found employment in the four mainland states and private hospitals in Hawaii at substantially higher wages. Union Ex. 34, was a report by the HHSC (Management Discussion and Analysis) which addressed the shortage of medical staff.

Mr. Chu, on behalf of HHSC, testified that there was a shortage of Nurses and that they had a difficult time retaining and recruiting qualified Nurses. This led the HHSC to hire agency Nurses to cover essential positions which increased the cost to the HHSC in the range of 9 million dollars in 2010 and over 5 million dollars for fiscal year 2011.

Reviewing the State data closely, it shows that the compensation paid monthly is below the Wages (Total compensation BU 9 v Hawaii Private Sector, Ex. T-Chart 8, using Hawaii Health Care Industry Benefit Rate). The BU 9, wages are $16,245, 20% less than the private sector. The Benefits (as a percent of wages) are $14,578 greater than the private sector, 42% more. The gross difference is $1,667 less for the BU 9 employees than it is for the private sector, a difference of 0.02%.

T-Chart 10, using the U.S. Registered Nurse Benefit Rate, show wages of the BU 9 employees at $80,607 and the private sector at $96,852, a difference of $16,245, 20% less for the BU 9 employees. BU 9 benefits is at $49,251 and the private sector at $29,346, a difference of $19, 905, 40% more for the BU 9 employees.

It appears to the Panel that the Nurses are concerned about the amount of money that they take home to support themselves and their families. The benefits are great, but they do not pay the rent or buy food and clothing.

The Panel majority finds that the comparable data favors the State as to the overall compensation (wages and benefits) being paid. The national private data is not consistent with the data presented regarding the Tripler and private hospital nurses in Hawaii. The local data supports the BU 9 Nurses in their request for a salary increase. The data does not support the State position of a 5% pay reduction for the BU 9 employees.

The Panel majority is of the opinion that any wage increase recommended for the Nurses, as employees of the State, is a matter for the Legislature of the State of Hawaii to fund no matter which Agency or Department the Nurses are identified with or may work for. The HHSC Nurses were identified as State employees.

The Panel majority determined that the Panel should rely on the revenue data and forecasts of the Council on Revenues rather than any other data that may be contradictory. Other data was reviewed and considered, but the primary source is the COR reported revenue data.

The Panel majority notes the State's comments and agrees the CPI factor is rarely viewed as being dispositive by this arbitrator or other arbitrators in interest arbitration matters. The Panel majority believes that the CPI has significantly less weight than the comparability data which addresses the cost of labor in the State of Hawaii.

Interest arbitrators have recognized the negative and detrimental impact that wage reductions and low wages have on employees' morale, and how the low morale of employees impact the rendering of services to the public. Staff wages have an impact on the interests and welfare of the public.

The Panel majority sees the future projection of the State's economy to be positive.

The Panel majority finds that the State has the ability to pay a salary increase to the BU 9 Nurses.

WORKING CONDITION DIFFERENTIAL

The Union proposed that a Working Condition Differential for each hour be increased from fifty cents ($0.50) to One Dollar ($1.00) per hour. Daylena Odom testified on behalf of the Union on this proposal. Ms. Odom has been a Clinical Nursing Supervisor for the past year at Hawaii State Hospital. She worked as a Staff Nurse for 11 years previous to her supervisory assignment. She gave the following reasons for the proposal as:

- The Hawaii State Hospital is the only psychiatric facility ran by the State. The Hospital is licensed for 176-beds, with a waiver to 202. The extremely ill psychiatric patients are cared for there.
- It is a very dangerous facility, assaults are frequent. The patients usually have committed some sort of crime, and have been referred by the courts to the facility.
- We get patients form Halawa, Hawaii, Kauai, Maui Correctional facilities, Women's corrections; the patients usually come to the Hospital because they have been so disruptive in the prison environment that they cannot be managed there.
- The facility has overcrowding which further increases the safety risks.

The State did not address this proposal during the hearings.

DURATION

The following represents the Union's position as to replacing the existing language of Article 60 – Duration:

> This Agreement shall become effective as of July 1, 2011 and shall remain in effect to and including June 30, 2013. It shall be renewed thereafter with respect to the subject matter covered, in accordance with statutes unless either party gives written notice to the other party of its desire to amend, modify or terminate the Agreement, and such written notice is given no later than May 15, 2013. After such written notice is given, the parties shall exchange their specific written proposals, if any, no later than June 17, 2013. Negotiations for a new Agreement shall commence on a mutually agreeable date following the exchange of written proposals, as applicable. In the event that agreement cannot be reached on a new Agreement, the current language of the Agreement shall continue in force and effect until the collective bargaining process is resolved as provided by law.

MAJORITY PANEL DECISION

The majority of the Panel agrees that the information presented by the parties regarding the statutory criteria provides greater support for a wage increase as opposed to a wage decrease for BU9 nurses. While the award granted can be viewed as recognition of the longstanding disparity between the BU9 nurses and their counterparts in the private sector, it should not be interpreted to mean that the disparity no longer exists. Under different circumstances and perhaps more favorable economic conditions, the Panel could have justified greater wage increases than have been awarded.

STEP MOVEMENTS/WAGES

Step Movements *(January 1, 2013 effective date)*

Effective *January 1, 2013*, employees who were eligible for step movements from July 1, 2009 through *December 31, 2012* in accordance with the bargaining unit 9 step movement plan (Article 56 – Salaries, 2007-2009 collective bargaining agreement) shall receive their step movement(s) and be placed on their appropriate step as though step movements were granted for the entire period from July 1, 2009 through December 31, 2012. Eligible employees shall be compensated at their new salary rate effective *January 1, 2013*. There shall be no retroactive compensation for step movements prior to *January 1, 2013*. Retroactive payments due to employees shall be without interest.

Effective *January 1, 2013* through June 30, 2013, employees who are eligible for step movements shall receive their step movement and compensation for step movement on their step movement date as though step movements were granted for the entire period from July 1, 2009 through *December 31, 2012*. Retroactive payments due to employees shall be without interest.

Wages/Salary Increase

Effective January 1, 2013, the bargaining unit 9 salary schedule shall be amended to reflect a 4% across-the-board increase. Retroactive payments due to employees shall be without interest.

Effective April 1, 2013, the bargaining unit 9 salary schedule shall be amended to reflect a 4% across-the-board increase. Retroactive payments due to employees shall be without interest.

WORKING CONDITION DIFFERENTIAL

The majority of the Panel agrees with the Union. A Work Differential increase shall be granted to the BU 9 members of $0.50 per hour, a total of $1.00 per hour effective January 1, 2013. Payments shall be made retroactive for the affected employees for the hours they worked from January 1, 2013 until payment is made. No interest is to be paid on any payments made.

DURATION

The majority of the Panel agrees with the Union. The existing language of Article 60 shall be replaced with the Union's proposal (as set forth above).

DATED: April 2, 2013

I concur with the Decision.

JOE H. HENDERSON
Neutral Arbitrator/Panel Chairperson

DATED: April _____, 2013

I concur / dissent with the Decision.

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HENRY KANDA
Employer Arbitration Panel Member

DATED: April 2, 2013

I concur / dissent with the Decision.

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SANFORD CHUN
Employee Arbitration Panel Member

DATED: April 5, 2013

I concur / dissent with the Decision.

Henry Kanda

HENRY KANDA
Employer Arbitration Panel Member

DATED: April _____, 2013

I concur / dissent with the Decision.

SANFORD CHUN
Employee Arbitration Panel Member

DISSENTING OPINION OF EMPLOYER REPRESENATIVE HENRY KANDA

With all due respect to my colleagues who comprise the majority on this arbitration panel, I am compelled to dissent from the Award inasmuch as I firmly believe that it defies all reasonable notions of fairness, logic and fiscal responsibility. I also believe the majority has failed to properly apply the statutory factors in formulating the Award.

In terms of fairness, I take heavy issue with the fact that, in rendering this "windfall" decision for Bargaining Unit 09 (hereinafter, "BU09"), the majority tacitly disregards the sacrifices of other bargaining units during the instant contract period that were made to help close the $1.2 billion budget shortfall experienced by the State at the *beginning* of FY12. While it is true that the State General Fund – which is the primary source of funding for all State employee wages and benefits – had a positive fund balance at the *end* of FY 2012, this positive fund balance was made possible primarily due to the 5% pay cuts and increased EUTF contributions borne by nearly all of the other government bargaining units.[1] Nevertheless, rather than treat BU09 as an equal to its brother and sister units, the majority – for reasons that I still cannot comprehend – has elected to not only award BU09 reinstated step movements, but also elevate BU09's current salary levels significantly higher than its brother and sister units with two separate pay raises of 4%. What makes this Award even more inequitable is that, pending resolution of these proceedings, BU09 already had the benefit of no pay cuts and materially smaller EUTF contributions.

With respect to logic, I recognize the majority's conclusions that: (1) the State has been steadily clawing its way out of the deep financial pit that it plummeted into in 2007; and (2) the

[1] In addition, this modest fund balance must be viewed in the context of the State's more than $20 billion unfunded liability, an unfunded liability owed to past, current and future public sector employers.

future projection of the State's economy is positive. Despite this recognition, however, it appears absolutely illogical to me that BU09 should not only be absolved of the sacrifices its brother and sister units made during thiscontract period to alleviate the State's financial difficulties, but also be rewarded for refusing to make such sacrifices simply because the economy happened to improve. I highly doubt that the majority would have been willing to impose a heavier financial burden on BU09 than that borne by the other bargaining units if the economy had deteriorated further since the beginning of FY 2012. As such, I believe the fairest and most logical resolution to the instant matter would have been to award BU09 no more than the status quo for the instant contract period. As this panel should be aware, the State and other government employers are currently in the process of negotiating collective bargaining agreements for the next contract period beginning July 1, 2013. If BU09 was awarded no more than the status quo in these proceedings, clearly, the State and other Employers would have been more well equipped to distribute the fruits of Hawaii's improving economy more equitably among all the bargaining units. Instead, the majority has illogically elected to give BU09 a windfall at the expense of those who sacrificed.

As an additional matter, the Award strikes me as highly illogical in the way the majority dismisses the overall compensation actually enjoyed by BU09 and arbitrarily limits the basis of the Award to a direct comparison of wages. As the majority states, "It appears to the Panel that the Nurses are concerned about the amount of money that they take home to support themselves and their families. The benefits are great, but they do not pay the rent or buy food and clothing." *See* Award, at 35. My understanding of the law – to wit, Haw. Rev. Stat. §89-11(f)(8) – is that this arbitration panel *shall* consider the "*overall* compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time. . . and all other benefits received." Here, the Employers provided the arbitration panel with a detailed analysis demonstrating that the *overall* compensation of BU09 – which included wages *and benefits*– was on par with similarly situated nurses in the private sector and other comparable jurisdictions. According to the majority, however, the generous benefits bestowed upon BU09 apparently do not count because "they do not pay the rent or buy food or clothing." In my opinion, this reasoning is purely illogical because "compensation" in the context of collective bargaining is not just about wages, or what an employee gets to spend, but everything that an employer expends on its employees. While compensation in the form of extensive vacation/sick leave (21 days each), subsidized (partial or full) health care benefits upon retirement and defined benefits retirement plans may not directly pay the rent or buy food or clothing, it certainly provides a clear incentive for nurses to work with the Employers in this case.[2] Moreover, while an employee may not see the foregoing benefits in actual dollars and cents, it is indisputable that the Employers are, in fact, expending a significant amount of dollars and cents so that their employees may enjoy them. In light of the foregoing, I believe that the majority's arbitrary

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[2] In the Award, the majority appears to find that HHSC is experiencing both a shortage of nurses and difficulties in the retention and recruitment of nurses. *See* Award at 34. To support this finding, the majority cites to the testimony of HHSC's Chief Financial Officer, Edward Chu. *Id.* Based upon my memory and review of Mr. Chu's testimony, I believe that Mr. Chu actually testified directly contrary to the majority's finding.

Specifically, during cross-examination, BU09's attorney, Mr. Davis, asked Mr. Chu, "You really don't have enough nurses now, do you, to lay them off?" In response, Mr. Chu stated, "No, we – it's quite the opposite, in fact. We've been successful in retaining and hiring nurses." (Tr. 641).

Mr. Davis subsequently asked Mr. Chu the same question, stating, "Would it be fair to say that you all do have a problem with respect to recruitment and retention?" Again, Mr. Chu replied, "I think we've done pretty well with Bargaining Unit 9, in terms of retention. I think our turnover are – seem to be pretty low." (Tr. 643).

Additionally, it should be noted that, in a different section in the Award, the majority acknowledges the un-rebutted testimony of Ms. Joy Inouye that State nurse recruitment, retention and tenure data are all better than the overall state and U.S.recruitment, retention and tenure data.*See* Award, at 28-29.

dismissal of non-wage benefits as immaterial is simply illogical.Moreover, it is a clear violation of the statutory mandate that the panel consider total compensation.

Finally, I must dissent from the Award on the ground that it is beyond fiscally irresponsible; in fact, it has the potential to be fiscally disastrous for the State and the other Employers. As noted above, I believe the prudent resolution to this impasse should have been to treat BU09 similar to the other bargaining units such that *all* bargaining units would be able to share more equitably in the benefits of the State's improving economy during the *next* contract period (which is set to begin in just a few months). By awarding BU09 such extraordinary raises on top of full step movements during the instant contract period, the majority has significantly diminished the amount the State and other Employers will have to allocate to their respective workforces during the next round of contracts. This will likely be financially disastrous for two primary reasons.

First, as this arbitration panel should be aware, although the Employers are not required to extend the terms of an arbitrated award to other bargaining units, the reality is that the economic awards to one bargaining unit undoubtedly shape the expectations of the other units. For this reason, the Employers explicitly requested that the arbitration panel "not make an award in a vacuum by merely considering the interests of BU 9 employees[.]" *See* Employers' Brief, at 69. Inasmuch as the majority clearly disregarded this request, the Employers must now face the imminent reality of the other bargaining units expecting comparable compensation for their upcoming contracts. This reality paints a dire picture for the Employers since BU09 only comprises three percent of the Employers' unionized workforce. In other words, while the "windfall" Award for BU09 – a small bargaining unit – already strikes a heavy blow to the

Employers' finances, having to provide comparable compensation to the remaining majority of bargaining units[3] would absolutely cripple the Employers' financial condition.

Second, as recognized by the majority, HHSC – which employs approximately 73 percent of the BU09 nurses – is "broke." *See* Award, at 13. Moreover, on top of this already dire financial state, HHSC is facing both decreases in Medicare and Medicaid revenues and extensive increases in expenditures for its EMRS and ICD-10 projects and completion of essential structural repairs. Yet, the majority somehow concludes that its "windfall" Award to BU09 is affordable to HHSC at the same time it concludes that HHSC has no ability to pay. In an attempt torationalize these diametrically opposed conclusions, the majority simply states that the Legislature has "the power to remedy the financial burden placed on [HHSC]." *Id.* I believe the majority's rationale unjustifiably assumes too much and that the Award, therefore, places HHSC's already struggling financial viability in serious jeopardy. Specifically, while the Legislature may be able to appropriate more money to HHSC to account for the amounts awarded to BU09, it is under no obligation to do so. As noted by Mr. Chu, HHSC's labor costs, wages and benefits, comprise over 80 percent of HHSC's revenues. The remaining amount and the State's appropriation – which has already been reduced twice for the instant contract period – is used for HHSC's operations. Thus, should the Legislature decline to perpetually appropriate the annual funds necessary to pay BU09's substantially increased wages – in addition to the increased wages that will certainly be demanded by the other bargaining units – HHSC will essentially have nothing left to maintain its operations. To me, given the devastating risks to

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[3] It should be noted that BU09 also does not yet have a CBA in place for the next contract period. In light of BU09's history in bargaining with the Employers, it appears likely that BU09 may still ask for more during upcoming negotiations.

HHSC's finances and ability to operate, the majority's assumption that the Legislature will pay is not only fiscally irresponsible, but potentially fiscally disastrous.[4]

The essence of collective bargaining is compromise and mutual benefit. In my opinion, this Award does nothing but encourage BU09 and the other bargaining units to shun compromise and good faith negotiations in favor of a dice roll with an arbitration panel that would hopefully be as unreasonably generous as the instant majority. Due to its inherent unfairness, illogicality and utter lack of fiscal responsibility, I simply cannot agree to the Award.

Accordingly, I respectfully dissent.

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[4] Also of concern is that, as noted earlier, the State has over $20 billion in unfunded liability. This, combined with the majority's recognition that HHSC has no ability to pay, signifies to me that the majority has not seriously considered the statutory criteria of "ability to pay."

IMPASSE ARBITRATION FOR BARGAINING UNIT 9

BEFORE JOE H. HENDERSON, HENRY KANDA AND SANFORD CHUN

STATE OF HAWAII

In the Matter of the Interest Arbitration between

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO.

Exclusive Representative,

and

NEIL ABERCROMBIE, Governor, State of Hawaii; PETER B CARLISLE, Mayor, City and County of Honolulu; WILLIAM KENOI, Mayor, County of Hawaii; ALAN M. ARAKAWA, Mayor, County of Maui; BERNARD P. CARVALHO, JR., Mayor, County of Kauai; MARK RECKTENWALD, Chief Justice, the Judiciary, State of Hawaii; HAWAII HEALTH SYSTEMS CORPORATION BOARD,

Employers.

_____________________________________/

CERTIFICATE OF SERVICE

HLRB Case No. 1-09-137

AAA# 74 390 L 00353-12
(Interest Arbitration)

CERTIFICATE OF SERVICE

I hereby certify April 5, 2013 a copy of the DECISION was duly served upon the following parties to their last known address by FedEx and to their email address:

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Dated: April 5, 2013, at Santa Rosa, California

Joe H. Henderson
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