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IMPASSE ARBITRATION PROCEEDINGS

STATE OF HAWAII

In the Matter of the Interest Arbitration Between UNITED PUBLIC WORKERS, AFSCME, *LOCAL 646, AFL-CIO,* Union, and LINDA LINGLE, Governor, State of Hawaii; RONALD T.Y. MOON, Chief Justice, Judiciary, State of Hawaii; JEREMY HARRIS, Mayor of the City and County of Honolulu; and HAWAII HEALTH SYSTEMS CORPORATION BOARD, Employer.	RE: Impasse Proceedings HLRB Case No. I-10-95 INTEREST ARBITRATION DECISION AND AWARD Russell T. Higa, Esq. Neutral Chairperson Lawrence Ishimi, Union Panel Member Roy Yamamoto, Employer Panel Member

INTEREST ARBITRATION DECISION AND AWARD

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HAWAII LABOR RELATIONS BOARD

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INTEREST ARBITRATION DECISION AND AWARD

PRELIMINARY STATEMENT

Bargaining Unit 10 is comprised of institutional, health, and correctional workers, as defined in Section 89-6(a), Hawaii Revised Statutes ("HRS"). There are approximately 2,882 employees in the bargaining unit. Employer Exhibit ("EX") 3. The United Public Workers, AFSCME, Local 646, AFL-CIO, ("UPW" or "Union") is the duly certified exclusive representative of employees in Unit 10, and is authorized to negotiate a collective bargaining agreement on their behalf with the public employer, pursuant to §89-8(a), HRS.

For purposes of negotiating a collective bargaining agreement with the exclusive representative of Unit 10 employees, §89-6(d)(1), HRS, defines the public employer as Linda Lingle, Governor, State of Hawaii ("State"), together with those public employers that have bargaining unit 10 members which includes Ronald T.Y. Moon, Chief Justice, Judiciary, State of Hawaii; Jeremy Harris, Mayor of the City and County of Honolulu; and the Hawaii Health Systems Corporation Board, hereinafter collectively referred to as "Employer." The Hawaii Health Systems Corporation ("HHSC") was established in 1996, pursuant to Chapter 323F, HRS, and is placed within the state Department of Health for administrative purposes only, pursuant to §26-35(6), HRS. The corporation is governed by an eleven-member board of directors, pursuant to §323F-3, HRS.

During negotiations over a successor agreement, Peter L. Trask served as Union spokesperson, and was later succeeded by Dayton Nakanelua. Keith Odachi served as Employer spokesperson. Where an impasse exists between the parties, the impasse is resolved, with the assistance of the Hawaii Labor Relations Board ("HLRB"), through a procedure involving mediation and culminating in final and binding arbitration, pursuant to §89-11(e), HRS, or an alternate impasse procedure, as authorized under §89-11(a), HRS.

On or about January 31, 2003, the HLRB issued Order No. 2157 declaring an impasse and appointing Federal Mediator Kenneth Kawamoto to mediate the instant dispute. EX 4. By joint letter to the HLRB, dated February 14, 2003, the parties mutually agreed to extend the mediation period to March 14, 2003. Mediation efforts to resolve remaining issues were unsuccessful. By joint letter, dated August 28, 2003, the HLRB was informed that the parties had mutually agreed to the selection of Russell T. Higa as neutral arbitrator in the present matter. Joint Exhibit ("JX") 2. On or about August 29, 2003, the HLRB issued Order No. 2211 appointing and certifying members of the arbitration panel. Russell T. Higa was appointed the impartial member and chair of the arbitration panel; Roy Yamamoto and Lawrence Ishimi were appointed to the arbitration panel as members representing the Employer and Union, respectively. JX 5.

Hearings were convened in Honolulu, Hawaii on September 23 and 24, 2003 at the Hawaii Labor Relations Board, and September 25 and 26, 2003, at the headquarters of the UPW.

A certified court reporter from the firm of Ralph Rosenberg & Associates recorded these proceedings and prepared a written set of transcripts, which consisted of 403 pages. The Employer submitted a pre-hearing brief. Evidence was presented through 16 Joint Exhibits, 22 Employer Exhibits[1], 8 Union Exhibits[2], and the testimony of five witnesses who were subject to cross-examination. On or about November 19, 2003, the arbitration panel received post-hearing briefs submitted by the parties.

APPEARANCES AND WITNESSES

For The Employer

James E. Halvorson	Supervising Deputy Attorney General, Honolulu, HI
Maria C. Cook	Deputy Attorney General, Honolulu, HI
Gary Hynds	Associate Counsel, HHSC, Honolulu, HI
Paul K.W. Au	Deputy Corporation Counsel, City and County of Honolulu
Stanley Shiraki	Chief Operating Officer, Department of Budget & Finance, State of Hawaii

[1]Employer Exhibits 6 through 11 were not admitted into evidence; however, the arbitration panel reserved the right to take judicial notice as appropriate. Transcript of Arbitration Hearings ("Tr.") at 393. The Employer reserved Employer Exhibit 22 for terms of the settlement achieved in the Honolulu bus strike. Tr. at 395. At the time the present decision was rendered, information regarding the terms of the settlement were not received by the arbitration panel.

[2]During arbitration proceedings, Mr. Davis, counsel for the Union, requested that the Unit 12 arbitration award, when it becomes available, be marked, identified, and admitted into evidence by the panel as Union Exhibit 7. Tr. at 21, 395. On September 26, 2003, the arbitration panel ruled that the Unit 12 award is admissible. On or about October 22, 2003, Mr. Davis transmitted copies of the Unit 12 award to arbitration panel members. The Union also reserved Union Exhibit 8 for a possible tentative agreement on Section 62 of a successor agreement. Tr. at 395.

Edward Chu	Corporate Comptroller, HHSC
Joy N. Inouye	Compensation Section, Work Force Planning Division, Department of Human Resources Development, State of Hawaii

For The Union

Alan C. Davis	Counsel, Davis-Reno, San Francisco, CA
Gerald W. Bachecki	Certified Public Accountant, Consultant
Michael Messina	Senior Labor Economist, AFSCME

CRITERIA

The arbitration panel is required to take into consideration the statutory criteria contained in §89-11(f), HRS, in reaching a decision. That section provides, in pertinent part, as follows:

> (f) An arbitrator or 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 country 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 premises 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 conditions of the counties and the State;

(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 Hawai'i;

(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.

THE ISSUES

There are three issues for resolution:

1. An across-the-board increase to the salary schedule;

2. Step movement adjustments to the salary schedule; and

3. An increase in the night differential rate.

FINAL OFFERS OF THE PARTIES

The parties submitted their final position statements on September 17, 2003. The Employer's final wage offer contained a one percent (1.0%) across-the-board increase to the salary schedule, plus a seven-dollar ($7.00) per month across-the-board salary increase, effective July 1, 2003. The Employer's wage offer also contained an additional one percent (1.0%) across-the-board increase, effective July 1, 2004. JX 6.

The Union's final wage offer contained a proposed seven percent (7.0%) across-the-board increase to the salary schedule, plus a seven-dollar ($7.00) per month across-the-board salary increase, effective July 1, 2003. JX 5. The Union's wage offer also contained an additional seven percent (7.0%) across-the-board increase, effective July 1, 2004. Id. The Union further proposed a new salary step movement plan in which employees on the Emergency Medical Services ("AM"); Adult Correction Officer, Youth Correction Officer, and Juvenile Detention Worker ("CO"); and Health Employees ("HE") salary schedules would move to the next higher step of the applicable salary schedule, effective July 1, 2003, and again on July 1, 2004. Id.

For those employees covered by Section 32.03, the Union also proposed an increase in the night differential rate from fifty-five cents ($.55) to seventy-five cents ($.75) for each hour or fraction of thirty (30) minutes or more of work and thirty-eight cents ($.38) for less than thirty (30) minutes of work as provided in Section 32.01 and Section 32.02. The Union's final offer also contained proposed language with respect to Section 22, Uniforms, which was subsequently withdrawn.[3] With regard to all other proposals contained in the final position statements submitted by the parties, those proposals were either resolved by mutual agreement or withdrawn. Id.

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[3] By letter, dated October 22, 2003, from Union spokesperson Dayton Nakanelua to Ted H.S. Hong, Chief Negotiator, State of Hawaii, the Union proposed to withdraw from its final offer position its proposal concerning Section 22, Uniforms. Mr. Hong indicated in writing his concurrence with the withdrawal. A copy of the letter is attached hereto and incorporated by reference herein as Arbitration Panel Exhibit ("AX") 1.

EMPLOYER'S POSITION

The following is a summary of the Employer's position:

A. Ability to Pay

The Employer's position is that it does not have the ability to pay what the Union proposes in its final wage offer, but can afford to pay the wage increases contained in the Employer's final wage offer. The Employer further maintains that, based on a review of the Employer's financial condition, its wage proposal is more reasonable than the Union's proposal.

With respect to the arbitration panel's assessment of the Employer's ability to pay, there are limitations imposed on the State in its development of long-term funding commitments by constitutional and statutory guidelines. The Employer notes that the growth in government spending is limited to a level that can be supported by the economy. ("Expenditure Limit, Haw. Const., Article VII §§ 8 and 9; §37-92(b), HRS.) Moreover, General Fund expenditures for any fiscal year cannot exceed the State's General Fund resources. ("Balanced Budget, "Expenditure Controls," Haw. Const., Article VII §§5 and 8; §§5-37-69 and 37-71, HRS; EX's 13, 14, and 15.) In addition, revenue estimates provided 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.) (EX's 16 and 17.)

To assist in the development of a budget for the State of Hawaii, the Department of Budget and Finance ("B&F") prepares a six-year General Fund Financial Plan, which covers the current biennium and two subsequent bienniums. EX 15, Charts 31 - 33. Revenue estimates provided by the Council on Revenues must be taken into consideration in budget preparation, funding authorization, and expenditure controls. The current General Fund Financial Plan makes the following assumptions:

1. No growth in fiscal year ("FY") 06-09 expenditures except for anticipated cost increase for fringe benefits, debt service, welfare entitlements.

2. No additional collective bargaining increases beyond amounts appropriated for FY 04 and FY 05 (Employee health benefit increases and Unit 09 arbitration award).

3. Emergency appropriations of about $5 million each year.

4. $45 million lapse each year during FY 03 - 09.

5. Specific appropriations for FY's 03, 04, and 05 include collective bargaining amounts of $198 million, $23.7 million and $49.1 million, respectively.

EX 15, Chart 32.

In addition to these assumptions, the following extraordinary steps have been taken by the State to balance its budget:

1. Transferred excess non-general fund balances to General Fund of approximately $669 million from FY 97 through FY 04.

2. Placed spending restrictions on the departments of $116 million from FY 97 through FY 03.

3. Debt service restructuring and refinancing of about $333 million for FY 97 through 05, resulting in savings Transcript of Arbitration Hearing ("Tr.") at 36.

4. Employees Retirement System ("ERS") savings of $440 million for FY 97 through FY 02.

5. Redirected funds from lower to higher priority areas.

6. Eliminated tax credits (Medical Services Excise resulting in a tax savings of $20 million per year and Food Tax savings of $25 million per year).

EX 15, Chart 5.

Despite these measures, the State is still currently operating at an annual deficit. The current General Fund Financial Plan shows $3.788 billion in general fund revenues, and $3.805 billion in general fund expenditures, resulting in a $ 16.8 million deficit for FY 2003. EX 15, Chart 33. For FY 2004, revenues are estimated at $3.807 billion, and expenditures at $3.835 billion, and thus a projected $17.8 million deficit. Id. While revenue estimates are expected to exceed expenditures by $26 million for FY 2005, a $39 million deficit is projected for FY 2006. Id.

The State also anticipates increases in fixed charges and entitlements. The State's contributions to the ERS were $250 million in FY 2002, and $306 million in FY 2003. These costs are projected to rise to $333 million and $408 million for FY's 2004 and2005, respectively. Id., Chart 4. The State's health fund contributions have also increased reflecting rising health care costs and the sheer number of retirees. EX 15, Chart 26. Contributions to the health fund were $260 million in FY 2002, $280 million in FY 2003, and are projected to reach $300 million and $330 million for FY's 2004 and 2005, respectively. Id.

The Employer also cited anticipated increases in expenditures by major state departments. These include an additional $105 million in General Fund appropriations for the DOE for fiscal 2004 over what was expended in fiscal 2003 for DOE/DOH Special Education programs attributable to the court-ordered Felix Consent Decree. Id., Chart 20. The Special Education General Fund appropriation is expected to increase by $26 million in fiscal 2004 over fiscal 2003. Id., Chart 21. The Department of Human Services' General Fund operating appropriation is expected to increase by $13 million from fiscal 2003 to fiscal 2004. Id., Chart 23. The Department of Public Safety anticipates a $13 million increase in appropriations in fiscal 2004 beyond what it received in fiscal 2003. Id., Chart 24. The HHSC's General Fund operating appropriation has increased from $13 million in FY 2002 to $26 million in fiscal 2003, and is expected to increase to $34 million in fiscal 2004. Id., Chart 28.

Collective bargaining increases have also placed a strain on the State's budget and the General Fund. Specific appropriations for FY's 2003, 2004, and 2005 include collective bargaining amounts of $198 million, $23.7 million, and $49.1 million, respectively Id., Chart 32.

The cost of the Union's proposal is between $28 million and $30 million over the proposed two-year contract period. Id., Chart 38 and Attachment 2. Assuming the arbitration panel were to award Unit 10 members everything that is contained in the Union's proposal, the projected deficit for FY 2004 would increase from $18 million to $27 million. Id., Chart 41. Moreover, if such an award were extended to all other bargaining units, with the exception of Unit 09, the impact on the General Fund would be as follows: a negative balance of $56.8 million for fiscal 2004, a negative balance of $383.3 million for fiscal 2005, a negative balance of $775.9 million for fiscal 2006, and a negative balance of $1 billion for fiscal 2007. Id., Chart 39. History has demonstrated that if a bargaining unit obtains wage increases, remaining units will demand and in all likelihood receive similar wage increases. While the Employer is not required to extend the terms of an arbitrated award to other bargaining units, the reality is that such awards do in fact have an impact on subsequent negotiations involving other units.

The Employer asserts that the Union's expert witness, Mr. Bachecki, did not know the Union's proposal until the eve of his testimony and developed an impact analysis based on a one percent (1.0%) wage proposal. Tr. at 208-209; UX 4 at 133, 170, and 171. The Employer submits that Mr. Bachecki's use of Comprehensive Annual Financial Reports ("CAFR's") is misplaced. Inasmuch as CAFR's prepared by the Department of Accounting and General Services ("DAGS") are based on the State's finances in prior years, and does not reflect the State's current and projected fiscal and budgetary situation, it is not utilized by B&F in preparing the State's budget and is therefore irrelevant.

The Employer submits that Mr. Bachecki distorted information obtained from the CAFR. He testified that the State had a balance of $959.2 million in its restricted assets as of June 30, 2002, that could be used for any purpose, implying that such monies could be used to fund the Union's wage proposal. UX 4, at 21; Tr. at 207. On cross-examination, Mr. Bachecki conceded that the $959.2 million figure included the Airports Fund, Harbors Fund, and Emergency and Budget Reserve ("EBR") Fund or "Rainy Day" fund, all of which are restricted funds that are set aside for special purposes. Tr. at 207-208.

The Employer disputes the Union's contention that the State experienced favorable variances between budgeted and actual revenues and expenses. Mr. Bachecki testified that the State's General Fund balances are healthy and well above the five percent (5.0%) benchmark that is generally recommended by bond rating agencies. Id., at 12; Tr. at 183. On the contrary, according to the Overview of State Finances document which was prepared by B&F, fund balances are below five percent (5.0%) for FY's 2002, 2003, 2004 and 2005. EX 15, Chart 41. To bolster the credibility of the State's figures, the Employer notes that the fund balance of $134 million for FY 2002 million represents a 3.9 percent variance, which is close to what Moody's Investor Services and Standard & Poor's bond rating agencies had determined, and far below the 10.76% or 10.85% calculation made by Mr. Bachecki. Id.; UX 4, at 75, 102, 111.

The HHSC is the second largest employer of Unit 10 employees with approximately 1,014 employees. EX 3. For the year ended June 30, 2001, HHSC's operating expenses exceeded its operating revenues by approximately $26 million and increased to $30.3 million for the year ended June 30, 2002. UX 4, at 157.

HHSC relies heavily on reimbursement from government agencies (Medicaid, Medicare, and MedQuest) as a revenue source, which is insufficient to meet the costs of the services it provides. EX 16, at 11; Tr. at 104, 215. Moreover, HHSC is not permitted to seek reimbursement from patients who are unable to pay for these services. As the "safety-net" provider of health care in Hawaii, HHSC must admit those patients that cannot afford to pay. Tr. at 108. During fiscal years 1998 through 2002, HHSC has provided more than $62 million in free medical services. EX 16, at 10.

With respect to the funding of collective bargaining increases, the HHSC has absorbed $20 million cumulatively over four years with no offsets to fund these costs. Id., at 12. In order to meet the expanding costs of providing medical services as well as wage increases, the HHSC has relied on funding from the State to cover these costs. This traditional source of funding, however, can no longer be deemed reliable. During the 2003 Legislature, the HHSC requested $14 million for fiscal 2003, $39 million for fiscal 2004, and $44 million for fiscal 2005. Id., at 14. The Legislature appropriated $31 million of the requested $39 million for fiscal 2004, and failed to appropriate any monies for fiscal 2003 and 2005. Id.

In response to the Union's criticism of HHSC's collection efforts, the Employer submits that Mr. Bachecki's statements should be disregarded. Although he referred to an "industry average" for purposes of assessing rates of collection, he failed to compare HHSC's collection rate with that of other hospitals, nor did he make a distinction between private and public hospitals which must admit patients without regard to an ability to pay. Tr. at 214. He also assumed that if Medicaid did not cover all of the costs of hospitalization, the HHSC could recover the difference from the patient, which is contrary to law. Tr. at 215; 42 U.S.C. §1396a(25)(C); HAR §17-1736-14.

The Employer cautions the arbitration panel against looking at the potential transfer of monies from special funds as a means of funding collective bargaining increases. §89-11(f)(1), HRS, expressly precludes the arbitration panel from considering "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." These special funds include the EBR Fund, the Hawaii Tobacco Settlement Special Fund, and Hurricane Relief Fund ("HRF"). Moreover, §328L(3)(e)(3), HRS, specifically prohibits the appropriation of monies from the EBR Fund to fund collective bargaining cost items.

B. Cost of Living

The Employer cites Hawaii's Consumer Price Index ("CPI") which is projected to remain low. The projected CPI for Hawaii for fiscal 2004 and 2005 are 1.9% and 2.0% for fiscal 2006. EX 17. The Union's proposed seven percent (7.0%) wage increase for each year of the two-year contract period clearly exceeds the 1.9% cost of living growth projected. Moreover, a review of Unit 10's previous salary increases adjusted for cost of living shows growth above the inflation rate of 11.2% over the past ten years. EX 18(a), Exhibit 4; Tr. at 357.

C. Comparability

With respect to comparability, the Employer submits that §89-11(f)(6), HRS, prohibits the arbitration panel from considering mainland wage comparisons and restricts the application of this criteria to local wage comparisons. The 1984 Legislature passed Act 219 which amended §89-11(f)(6), HRS, by replacing the word "generally" with the phrase "in Hawaii." EX 7.[4] The Employer maintains that the purpose of the Act was to extend interest arbitration to police officers and to clarify that only local wage comparisons are to be used in interest arbitration.

On March 30, 1984, the House Committee on Finance, in Standing Committee Report No. 671-84, recommended passage of the bill, and stated:

> Your Committee is also concerned that arbitrators have been misinterpreting factor 6 of HRS 89-11(d) to include mainland jurisdictions as the primary basis for measuring the reasonableness of final offers. In order to make it clear that local state and county circumstances should be the controlling consideration in factor 6, your Committee has amended line 10 on page 5 of this bill by replacing the world "generally" with the phrase "in Hawaii."

EX 7.

On or about April 16, 1984, the Conference Committee of the House and Senate met and agreed to changes in the bill, and issued Conference Committee Report No. 77-84, recommended passage of the bill, and stated:

> The bill also amends item number (6) of the factors to be considered by the arbitrators in reaching their decision by clarifying that wages of State and county employees employed in this State are to be utilized for comparison purposes.

EX 7.

Accordingly, the Employer submits that the arbitration panel must confine its assessment of comparability to local comparisons.

After having carefully considered the arguments of counsel for the Employer and Union with regard to the propriety of taking judicial notice of the written testimony of James Yasuda,

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[4]The arbitration panel takes judicial notice of the legislative documents contained in EX 7. as they pertain to the amendment to §89-11(f)(6), HRS, adopted by the 1984 Hawaii State Legislature.

then Chief Negotiator of the state Office of Collective Bargaining, which was attached to the Employer's Post-Hearing Brief, the arbitration panel elects not to do so.[5] Rule 202(b) of the Hawaii Rules of Evidence ("HRE") provides for mandatory notice of constitutional provisions, laws, rules, or ordinances. The panel finds that the testimony of Mr. Yasuda clearly does not merit the same degree of recognition. Arguably, the testimony may fall within the purview of the catch-all provision contained in Rule 202(c) of the HRE, which permits the taking of judicial notice upon request to the court and reasonable notice to the adverse party. Neither of these requirements were met.

In any event, while the panel acknowledges that testimony submitted on matters that come before the Legislature constitute an important part of the legislative process, the panel is satisfied that the legislative committee reports which have been duly noticed do provide sufficient information to assist the panel in ascertaining legislative intent on this matter.

The Employer maintains that Unit 10 salary ranges are competitive with the local labor market. Ms. Joy N. Inouye, employed by the Department of Human Resources Development, Classification and Compensation Division, testified that market data for comparable positions exists for three occupational groups: (1) Mobile Emergency Care Specialist I and II (AM Schedule) (129 employees or 5% of Unit 10); (2) Certified Nurse's Aide ("CNA"), entry and full-performance (HE Schedule) (612 employees or 22% of Unit 10); and Licensed Practical Nurse ("LPN"), entry and full-performance (HE Schedule) (260 employees or 9% of Unit 10). Tr. at 339.

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[5]By letter, dated November 20, 2003, to the arbitration panel, Mr. Davis, counsel for the Union, objected to the propriety of permitting the Employer to submit certain attachments to the Employer's *Post-Hearing Brief*. By letter, dated November 21, 2003, Ms. Cook, lead counsel for the Employer, responded to the arguments raised in Mr. Davis' letter. By letter, dated November 26, 2003, Mr. Davis submitted a further response. By letter, dated November 29, 2003, Ms. Cook informed the panel that the Employer would not be submitting any additional responses on this issue.

Ms. Inouye further testified that salary ranges for Mobile Emergency Care Specialist I and II are competitive with the private sector in Hawaii. At the Step 4 rate, both classes are 4% behind, but 1% ahead of the private maximum. The Employer notes that 38% of the employees in level I and 63% of the employees in level II are in fact earning more than the Step 4 rate, or 4% and 9% more than the private sector maximum rate, respectively. Tr. at 341-343; EX 18(a), at Exhibit 1.

According to Ms. Inouye, while CNA salaries are slightly behind the private sector, the salary range minimums are ahead of federal government salary range minimums, which include the 25% federal cost of living adjustment, by 17% and 11% respectively. Tr. at 343-345. At the Step 4 rate, entry and full performance level positions are 6% ahead and 3% behind the federal government salary range maximums, respectively. Id., at Exhibit 3. However, some employees are earning 4% higher than the federal maximum rate. Tr. at 345-346.

The Employer concedes that salaries of Unit 10 LPN's lag behind their counterparts in the private sector by approximately 8%. However, when compared with their federal counterparts, LPN's are 8% ahead of the federal salary range minimum at the entry level and 3% ahead at the full performance level. Id. At the Step 4 rate, LPN's are behind the federal salary range maximum at the entry and full performance level by 7% and 11%, respectively, although 53% of LPN's are paid above the Step 4 rate at Z1 and Z2 rates. Id.

With respect to Adult Correction Officers ("ACO's") and Youth Correction Officers ("YCO's"), Ms. Inouye testified that she attempted to compare these salaries with counterparts in the federal sector, but was unable to do so due to differences in duties and educational requirements. Tr. at 353-354.

The Employer notes that §89-11(f)(8), HRS, requires the arbitration panel to consider the overall compensation packages received by employees, including holidays, sick leave, vacation leave, medical insurance, and pension benefits. Unit 10 employees receive 13.5 days of holiday leave per year compared with an average of 10.7 days in the private sector. Id., at Exhibit 5. Eighty-one percent if Unit 10 employees also accrue 21 days of vacation leave within one year compared to private sector employees who receive 4 weeks of vacation leave after 10 to 15 years of service. Id., at Exhibit 6. After one year of service, most Unit 10 employees accrue 21 days of sick leave while the prevailing practice in the private sector is 12 to 15 days. Id., at Exhibits 5 & 6.

In comparing medical insurance premiums, the Employer pays the equivalent of 80% to 85% of an employee's monthly medical insurance premiums, while the private sector typically pays 100%. EX 19(a), Exhibit 7. Upon retirement from service, however, the State's Health Fund pays 50% to 100% of the monthly medical insurance premiums, while 79% of private sector employers typically provide no coverage for medical insurance premiums. Id.

With respect to other benefits, Unit 10 employees receive 15 days of annual paid leave for military duty while private sector employees receive no paid leave allowance. EX 18(a), at Exhibit 8. When summoned for jury duty, Unit 10 employees receive their jury stipend in addition to regular pay while private sector employees receive the difference between the jury stipend and regular pay. Id.

The total compensation package of Unit 10 employees is roughly equivalent to what is received by employees performing similar services in Hawaii. Moreover, pay raises received by Unit 10 employees over the past ten years has outpaced the 11.2% rate of inflation over the same period. Finally, the Union failed to present evidence to support increased efficiency or productivity to justify the requested wage increases.

D. Present and Future General Economic Conditions

According to the Quarterly Forecast issued by the state Department of Business and Economic Development ("DBEDT"), issued on September 5, 2003, Hawaii's future growth is expected to be primarily related to the growth in U.S. mainland and Japanese economies, the sources of Hawaii tourism demand and the main export markets for Hawaii's goods and services." EX 17, at 1. While the consensus projections of U.S. economic performance in 2003 have stabilized, slow growth is still being projected for Japan's economy. Id. The Employer notes that Moody's Investor Services projects that the weakness of both the U.S. and Japanese economies will continue to generate fiscal stress for the state in the near term. UX 4, at 105. Given all of the above, it is essential that the Employer take every prudent measure to ensure a balanced budget.

UNION'S POSITION

The following is a summary of the Union's position:

1. Ability to Pay

The Union maintains that the Employer can afford to pay what the Union has proposed in its final wage offer. The Union submits that it is a general rule that an employer asserting an inability to pay a wage increase has the burden of proving such incapacity with competent evidence. Elkouri & Elkouri, How Arbitration Works (5th ed. 1997), pp. 1126-1131.

With regard to the Employer's presentation of its case on an inability to pay, the Employer relied on budgetary documents which portrayed the State's present financial condition and future outlook as dismal. The Union urges the arbitration panel to rely instead on CAFR's, which are audited and give a more precise depiction of the State's actual finances. The Union cited the arbitration decision in Cuyahoga County Sheriff's Dept. 103 LA 143, 145, where the arbitrator determined that evidence from audited reports should be given more probative value than budget figures in reaching a determination that the employer did not provide sufficient evidence of an inability to pay.

In the present case, the Union submits that the Employer failed to present sufficient evidence to demonstrate an inability to pay, and notes that none of the Employer's witnesses testified expressly that the Employer was unable to pay for the Union's proposed wage increases.

Gerald Bachecki, a certified public accountant, who has spent the past thirty years analyzing the financial conditions of various public jurisdictions, testified as an expert witness for the Union. Mr. Bachecki has performed financial analyses and testified in arbitrations over the past seven years in Hawaii for the Hawaii Government Employees Association, the Hawaii Fire Fighters Association, and the State of Hawaii Organization of Police Officers. UX 6, at 6-9. While budgetary analyses, such as those presented by the Employer in these proceedings, are prepared on a modified cash accrual basis, Mr. Bachecki uses the full accrual basis which is the most valid and accurate form of accounting reporting and is also currently required by the Government Accounting Standards Board ("GASB") for governmental financial reporting. Tr. at 137-138.

Rather than rely solely on budgetary projections, Mr. Bachecki and his Associate, Tim Reilly, review the CAFR's. Tr. at 133. Using the CAFR's alongside proposed and final budgets as well as other supplemental data, Mr. Bachecki tries to establish trends in areas that could be used for funding of collective bargaining wage increases. Tr. at 133.

Based on his review, Mr. Bachecki determined that the financial condition of the Employer is improving. While State tax revenues showed a modest decline in 2002, non-tax revenues increased by 6.12% from the previous fiscal year. UX 4, III-A, at 33; III-B, at 35. For the fiscal year ending June 30, 2003, total tax revenues increased by 5.9% Id., Exhibit IV-A, at 37. General Fund revenues increased by 4.38%. Id., at 36.

For the fiscal year ending June 30, 2003, the Council on Revenues reported a 4.4% increase in General Fund revenues. Id., Table 1, at 45. For the 2004-2005 fiscal year, the Council on Revenues projects a 6.9% increase in revenues. Id. The DBEDT has projected a gross state product increase of 4.7%, an increase from 4.1% that was previously estimated in June of 2003. Id., at 52.

Mr. Bachecki further testified that new projects will contribute to positive economic forecasts. The U.S. Army has awarded contracts totaling $1.1 billion for military housing that is scheduled to commence in November of 2004. Id., at 55-57; Tr. at 172 . In a news article printed in the Honolulu Advertiser on September 17, 2003, State Budget Director Georgina Kawamura stated that monies withheld during the first quarter of the current fiscal year will be restored. UX 4, at 64. Kawamura also reportedly stated that, based on the Council on Revenues' revised estimated, the State anticipates an increase of $200 million in revenues during the two-year cycle. Id. The Union also notes that Statewide hotel occupancy rates have risen compared with the previous year. Id., at 69.

Mr. Bachecki's review of the General Fund asset to liability ratio shows a ratio of 3.91 in 2002. UX 4, at 71; Tr. at 182. The 10.76% ratio between total "GAAP" expenditures and the unrestricted adjusted General Fund balance is still above the recommended balance of 5% and does not include the EBR fund balances. Id., at 74-75; Tr. at 183.

In assessing special funds, Mr. Bachecki notes that Hawaii continues to receive substantial revenues from the Tobacco litigation settlement. For fiscal 2003, revenues received from payments totaled $50.5 million. Id., at 87-88. The State will continue to receive amounts of $42 million for each of the fiscal years through 2007 and larger amounts thereafter. Id. According to Mr. Bachecki, the unrestricted balances in the HRF total more than $222 million based on information provided through the CAFR's. Despite the current administration's decision not to tap into the HRF to cover anticipated shortfalls, the fact remains that these funds are unrestricted. Id., at 94; Tr. at 192.

Mr. Bachecki also reviewed the State's general obligation ("GO") bond ratings. Moody's Investor Services has given the state's GO bonds an Aa3 rating, while Standard and Poor's and Fitch have assigned AA- ratings, all of which are the second highest ratings of the respective bond rating agencies. UX 4, at 96 - 130. Collectively, these agencies have noted that tax revenue growth has resumed, visitor arrivals from the West Coast have returned and are offsetting weak foreign visitor arrivals, and other sectors of the economy are showing strong trends. Id.

To summarize, Mr. Bachecki and Mr. Reilly concluded that the State had a net unrestricted balance of $952 million for FY 2002; the State experienced favorable revenue variances for four of the seven years presented and favorable expenditure variances for all of the years presented; that on a budgetary basis the State has a cumulative positive variance of over $ 1 billion; that in September of 2003, the Council on Revenues forecasted strong revenue growth; that the State's General Fund has maintained a strong asset to liability ratio; that the State's General Fund has maintained its unreserved fund balances well in excess of the 5% benchmark for both revenues and expenditures; and that the State has maintained strong investment bond ratings. UX 4, at 131 -

133. Based on the above, the Union concludes that the Employer does have the financial resources necessary to fund the Union's final wage proposal in its entirety.

B. Cost of Living

The Union maintains that the cost of living in Hawaii is much higher than in most West Coast states and cities. In a cost of living comparison between ten west coast cities (Honolulu, San Francisco, Los Angeles, San Diego, San Jose, Long Beach, Anchorage, Seattle, Portland, and Eugene), Honolulu (161.6) ranks second only to San Francisco (162.0) among those cities used in the Union's comparability analysis. UX 5, at 5. Federal employees working in Hawaii are also granted cost of living allowances as follows: City and County of Honolulu, 25.00%; County of Hawaii, 16.50%; County of Kauai, 23.25%; and County of Maui and Kalawao, 23.75%. Id., at 13.

C. Comparability

The Union submits that the arbitration panel is not prohibited from considering wages and other benefits paid to employees performing similar services in mainland jurisdictions based on the language and legislative history of §89-11(f)(6), HRS. Notwithstanding the Employer's argument that consideration of comparables for purposes of this provision has been limited to other State and county employees since 1984, when the statute was amended, the Union asserts that arbitration panels have consistently considered comparisons with mainland jurisdictions in subsequent interest arbitration proceedings. The Union does note, however, that arbitration panels were no longer permitted to compare employees performing dissimilar services unless they were employees of the State of Hawaii or other local jurisdictions within the state.

Moreover, in the Unit 09 (nurses) interest arbitration proceedings held earlier this year, both the Union and Employer utilized mainland and federal comparisons. UX 2, at 29-30. The

Employer argued that mainland comparables were relevant because recruiting efforts were being conducted on a "nationwide" basis. Id. The Employer further argued that comparables involving federal nurses should be considered. Id., at 13. In the more recent interest arbitration proceedings involving Unit 12 (police officers), mainland comparisons were considered by the arbitration panel despite the Employer's argument that the statute limits comparisons to comparables within the State of Hawaii. UX 7.

The panel, in reviewing the subject statutory provision, opined:

> HRS §89-11(f)(1) requires comparisons with both other state and county employees and with other persons performing similar services. The panel does not accept Honolulu's interpretation of the statutory language, i.e., that any comparisons of compensation should be limited to public employees in the State of Hawaii, because the unambiguous language of the statute does not impose this geographical limitation.

UX 7, at 12.

Finally, the Union notes that since 1984, no further amendments have been made to §89-11(f), HRS, that addresses comparability criteria. In 2000, the Legislature did amend statutory language with regard to the arbitration panel's assessment of the Employer's ability to pay; however, comparability criteria was not addressed. JX 4, at 170. Accordingly, the Union submits that the arbitration panel should find mainland comparisons of salary, benefits and working conditions should be utilized where appropriate, and are both reasonable and essential for a fair determination of the issues.

The Union's wage proposal is designed to narrow the widening gap between the classifications that are represented by the Union in bargaining Unit 10 with employees performing similar services in Hawaii and on the mainland, as well as other State and county employees in the

State of Hawaii. The primary classifications that make up Unit 10 include ACO's (1,190), CNA's (393), LPN's (206), Para Medical Assistants ("PMA's") (129), Mobile Emergency Care Specialists (124), Psychiatric Technicians (115), and Emergency Medical Technicians (60). UX 5; Tr. at 250. The maximum salary step used in these comparisons is Step 4. Tr. at 260.[6]

Mr. Michael Messina, employed by the American Federation of State, County and Municipal Employees ("AFSCME") in the department of research and collective bargaining services for more than 17 years, testified on behalf of the Union with regard to local and mainland comparables. Tr. at 246-249.

In comparing Unit 10 salaries with private sector employees in Hawaii who perform similar services, Mr. Messina noted that Unit 10 LPN's trailed their counterparts in the private sector. UX 5, at 15; Tr.at 279-280. State LPN's trailed their counterparts at Kaiser Foundation Hospital by 24%; Kapiolani Medical Center by 22.5%; Queen's Medical Center and St. Francis Medical Center by 20.7%; and Kuakini Medical center by 19.4% Id.

In comparing Unit 10 salaries with federal workers in Hawaii who perform similar services, Mr. Messina noted that top level salaries for federal employees were significantly higher than the top salaries for their Unit 10 counterparts. UX 5, at 14A. Federal CNA's receive 15.9% more than their Unit 10 counterparts; federal ACO's receive 36.7% more; federal Psychiatric Technicians receive 35.6% more; and the federal Para Medical Assistant and Para Medical Assistant (1) classifications receive 25.3% and 15.9% more, respectively. Id.

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[6]The Employer's witness, Joy N. Inouye, testified that she had been informed by the Employer group that the rates at Step 4, and not the Z steps, should be used in determining the maximum salary range for purposes of comparison. Tr. at 372-273.

With regard to mainland comparables, Mr. Messina testified that the maximum rate for ACO's is ranked fourth in a comparison of adult correction officers in five western states (Alaska, California, Hawaii, Oregon and Washington). UX 5, at 2; Tr. at 263. An ACO at the maximum step in Hawaii trails counterparts in California by 42.5%; Alaska by 20.1%; and Oregon by 14%. Factoring in the cost of living by adjusting salaries to reflect real dollars, in comparing wages with ACO's in the four other western states, Unit 10 ACO's are behind counterparts in Alaska by 62.9%, Oregon by 62%, California by 42.1%, and Washington by 30.9%. UX 5, at 7.

CNA's occupying the top step trail counterparts in Oregon by 28.5%; Washington by 21.3%; and California by 16.8%. Id., at 2. Psychiatric Technicians and the PMA's also fare similarly. Id. Insufficient data was available to compare the top steps of LPN's, Emergency Medical Technicians and Mobile Emergency Care Specialists to their counterparts in the western states. Id. After factoring in the cost of living, in comparing wages with CNA's in the four other western states, Unit 10 CNA's are behind counterparts in Alaska by 65.5%, Oregon by 82.6%, and California by 16.5%. Id.

Mr. Messina also reviewed government employee compensation comparisons on a nationwide basis, as compiled by the U.S. Bureau of Census. Tr. at 274. According to Mr. Messina, full time government employees in the State of Hawaii ranked 21st among the fifty states in 1993, dropped to 31st in 1998, and fell to 36th in 2001, behind all of the west coast states used in the presentation. UX 5, at 10-12; Tr. at 274-275.

With respect to other elements of the total compensation package, the Union notes that health insurance premiums have risen. As of July 2003, employees who elected to have Hawaii Medical Service Association ("HMSA") coverage were paying $587 per year more in insurance premiums, a 31.6% increase. Tr. at 293. Employees electing family coverage were paying $2,815 more per year, a 15.4% increase. Id. Mr. Messina testified that the impact on Unit 10 members is significant. A CNA at Step 1 would, assuming the Employer's one percent (1.0%) across-the-board wage hike were accepted, see the approximate $321 annual wage increase virtually wiped out by the health insurance premium rate increase. Tr. at 293.

Significant wage increases received by Unit 09 (nurses), Unit 11 (fire fighters), and Unit 12 (police officers) during 2003 were cited by the Union as additional justification for accepting the Union's wage proposal. UX's 2, 3, 7. Using every rational and relevant measure, the Union asserts that the employees in the classifications represented by Unit 10 deserve the salary increases proposed by the Union.

The Union criticized the Employer's comparability analysis as lacking rational consistency. The Union submits that the Employer's own comparability witness, Ms. Inouye, testified that Unit 10 CNA's and LPN's are 2% and 8% behind their local private sector counterparts, respectively. Tr. at 343-344. With respect to ACO's, the largest single classification in Unit 10, the Employer failed to produce any comparables on grounds that: 1) it is inappropriate to utilize mainland comparisons; 2) there are no private sector comparables; and 3) the duties of federal adult correction officers are not comparable based on a review of the federal job descriptions and qualifications. EX 18, 18A; Tr. at 339, 350-354. With respect to the use of mainland comparisons, the Union notes that Ms. Inouye did testify earlier this year in interest arbitration proceedings involving Unit 09 (nurses), and used mainland comparables in her analyses. UX 2, at 3, 14. The Union further notes that the arbitrator in the Unit 09 interest arbitration determined that the Employer's analysis of mainland comparables in those proceedings was unreliable. Id., at 30.

Ms. Inouye testified that her decision not to use federal adult correction officers in her analyses was based on her determination that Unit 10 ACO duties did not include "...a substantial degree of responsibility for correctional treatment," in addition to the federal requirement of a bachelor's degree or a four-year course study leading to a bachelor's degree where no such educational qualification is required for Unit 10 ACO's. Tr. at 352-353. The Union argues that a fair reading of the ACO III classification provides for similar duties with regard to "correctional treatment" and that the educational requirements for the federal correction officer position does permit the substitution of experience for education EX 19, at 4; EX 20, at 1; Tr. at 387, 392.

With respect to the Union's proposed increase to the night differential rate for certain employees, Mr. Messina testified that an inequity exists in present night differential compensation rates among Unit 10 employees. Tr. at 295-296. Health-related employees, including LPN's and CNA's presently receive ninety cents ($.90) per hour for night shift work (6:00 p.m. to 6:00 a.m.), while emergency medical service employees, ACO's, YCO's and juvenile detention employees working the same hours receive only fifty-five cents ($.55) per hour for the same work shift. Id. Citing the Employer's failure to present any evidence or refutation of the Union's evidentiary presentation on this issue, the Union's proposed increase in night shift differential should be accepted in its entirety.

D. Present and Future General Economic Conditions

By letter, dated September 4, 2003, from Michael A. Sklarz, Chairman of the Council on Revenues, to Governor Linda Lingle, the Council submitted estimated general fund tax growth rates of 6.2% for FY 2004 and 6.9% for FY 2005. UX 4, at 44. He also noted that while the visitor industry expects moderate growth, construction industry output will increase at a rapid pace and cited the value of private building authorizations which increased by more than 40% in FY 2003. Id.

The Union also cited reports from the various independent analysts, as well as spoke with representatives from Fitch Reports and Moody's Investor Services, two of the three bond rating agencies which prepared the reports. In response to Mr. Bachecki's inquiry as to why Hawaii's GO bond ratings were not downgraded because of draw-downs in 2002, he was informed that Hawaii's draw-down was moderate compared with other states, and that Hawaii's economy rebounded much faster from the events of September 11, 2001 than was initially anticipated. UX 4, at 99. In addition, the state's economy is more resilient than it has been in the past. Id.

DISCUSSION

1. Overview and General Considerations

This is not a final offer arbitration where the arbitration panel must select the position of one party or the other. This is an open-ended arbitration where the arbitration panel has the discretion to fashion an award that is both reasonable and appropriate, using the criteria set forth in §89-11(f), HRS. While each of the ten factors are to be given weight, there is little guidance as to the appropriate weight to be accorded each factor. It is quite obvious that the Employer's ability to pay is of paramount importance in this matter. While much emphasis will be placed on criteria where the parties have focused their presentations, all of these factors are interrelated to some extent and have been given due consideration.

Section 89-11(e)(2)(C), HRS, encourages the arbitration panel to assist the parties through mediation efforts in order to achieve a voluntary resolution of the impasse. Towards that end, the arbitration panel assisted the parties through a series of mediation sessions both prior to and after the arbitration hearings had taken place. During the mediation process, both parties made good faith efforts to resolve the outstanding issues at impasse. While great strides were made and significant progress achieved during mediation, the parties were still unable to come to an agreement on the remaining issues that hindered a comprehensive voluntary settlement; however, at the conclusion of the mediation process, the Union withdrew its proposal regarding an increase in uniform allowances.

2. Ability to Pay

The Union submits that prior to addressing the issue of whether the Employer has the ability to pay, the arbitration panel must first determine whether the Union's proposals are reasonable. Union's Post-Hearing Brief at 11. Once a determination has been made with respect to reasonableness, the arbitration panel should proceed with a determination as to whether the Employer has the ability to pay. Id. The arbitration panel finds that the Union's approach to be both straightforward and logical, and chooses to adopt this analysis. Of course, if the arbitration panel determines that the Union's proposal is not reasonable, the panel has the discretionary authority to determine what is reasonable using the statutory criteria set forth in §89-11(f), HRS.

Based on a review of the final wage offers submitted by both parties, it is clear that the parties are in agreement that Unit 10 members are entitled to receive a seven-dollar ($7.00) per month across-the-board salary increase, effective July 1, 2003, in addition to an across-the-board percentage wage increase.

Gordon Chang, Program Budget Analysis Manager with the state Department of Budget of Finance, provided costing information to the arbitration panel.[7] Mr. Chang, who has been involved in costing collective bargaining proposals for many years, has established a sterling reputation for objectivity, precision and accuracy in his calculations.

Based on the information provided by Mr. Chang, the Union's final wage proposal provides for a seven percent (7.0%) across-the-board increase to the salary schedule for each year of the contract which will cost approximately $7.9 million for the first year and $16.2 million for the second year, totaling $24.1 million over the two-year period. The Union's proposed step movement would cost an additional $6.1 million, and the night differential another $500,000, for a total cost of $30.7 million over the two-year contract period.

The Employer's final wage proposal will cost the Employer approximately $1.38 million in the first year and $2.51 million in the second year, for a total of $3.89 million over the two-year contract period. Having considered all of the factors, such as cost of living, comparability, employee benefits, and other evidence that is normally or traditionally taken into consideration, the panel concludes that the Union's proposal would constitute a wage increase of more than 17.0% over the two-year period. Based on other factors, which shall be discussed later in this decision, such an increase appears to be excessive and therefore unreasonable.

[7]During the hearing held on September 26, 2003, the arbitration panel requested that Mr. Gordon K.G. Chang be available to provide information relative to the costing of the final wage offers, as well as other costing data pertinent to all other outstanding issues. Tr. at 395-396. By letter, dated September 30, 2003, Mr. Hong informed the panel that Mr. Chang would provide the information. The costing information obtained from Mr. Chang is discussed herein. It should also be noted that all of Mr. Chang's costing calculations include a seven-dollar ($7.00) per month salary increase per employee, effective July 1, 2003.

With respect to the HHSC, the arbitration panel concludes that notwithstanding what occurred in the previous legislative session with regard to funding, given its financial posture and relationship with the State the corporation will once again be relying on the State to pay for collective bargaining increases. The panel further concludes that the cost of any Unit 10 wage increase that may be awarded herein will be minimal for the City and County of Honolulu[8] and Judiciary; therefore, a determination of the Employer's ability to pay shall be based on an assessment of the financial condition of the largest employer of Unit 10 employees, the State of Hawaii.

Although the Employer does not rely on CAFR's, which are retrospective in nature, to calculate budgetary information prospectively, the arbitration panel finds that CAFR's are audited and give a more precise depiction of the State's actual finances and are therefore more useful than the budgetary tools relied upon by the Employer which are more reflective of budgeting priorities. CAFR's reflect the State's past utilization of resources and the use of such information to establish trends in order to ascertain how the State would utilize its resources in the future is accepted by the arbitration panel. Furthermore, use of the GAAP method, as required by the Government Accounting Standards Board ("GASB"), to make adjustments to the information contained in the CAFR's, is appropriate for purposes of assessing the Employer's financial condition.

As a general rule, jurisdictions almost universally utilize a conservative approach to budgeting. The State of Hawaii is certainly no exception. In four of the past seven years, the State's net revenues exceeded budgeted revenues, while actual expenditures were less than budgeted

[8]During the arbitration hearing held on September 24, 2003, Mr. Davis, counsel for the Union, made representations to the arbitration panel during his opening statement that the City and County of Honolulu is reimbursed by the State for expenditures related to the vast majority of its Unit 10 employees. Tr. at 25.

expenditures, thus experiencing favorable total variances. Moreover, the Council on Revenues projects a favorable economic outlook and continued growth in revenues is expected in the years ahead.

There is also need to assess the health of special funds. If these fund balances are healthy, there is no need for the General Fund to support them in meeting their designated obligations, thus freeing monies in the General Fund for other purposes, including the funding of collective bargaining increases. All of these special fund balances appear to be strong and healthy.

The evidence establishes that the General Fund is healthy and capable of funding a wage increase for Unit 10 members. Having considered the State's present general financial condition as well as projected future growth in tax and non-tax revenues, the arbitration panel must conclude that the Employer does have the ability to pay more than what the Employer has proposed.

With respect to the Employer's argument that the arbitration panel should take into consideration the impact this award may have on subsequent negotiations involving other bargaining units, there are a host of factors that may affect the bargaining posture of the parties including but not limited to the size of a particular unit, the ability to pay of a single employer versus multiple employers, the ability to tap outside sources to fund wage increases, and personnel shortages. Special consideration may also be given to units which are comprised of employees who are primarily engaged in providing essential services that are critical to ensuring public health and safety. In the case of Unit 10, employees provide a wide variety of services which impact public health and safety. Correction officers are responsible for ensuring that those individuals who are incarcerated can no longer pose a threat to public safety. PMA's and other emergency medical care personnel provide critical first responses to medical emergencies. LPN's and CNA's provide acute, long-term, and mental health care services to the residents of this state. In addition, Unit 10 members are prohibited from participating in a strike, pursuant to §89-12(a), HRS.

C. **Comparability**

The use of comparables from other jurisdictions and/or private entities is normally and traditionally taken into consideration in public interest arbitrations, unless expressly prohibited by law. The Employer typically makes a presentation citing other jurisdictions and entities where wages for similar services are comparatively lower than the wages being paid to the bargaining unit members involved in arbitration, while the Union does much the same but focuses its presentation on employers which provide higher wages. An examination of class specifications, duties and responsibilities and other factors serve to ensure some rational basis for purposes of comparison.

With respect to the Employer's contention that the arbitration panel is prohibited by §89-11(f)(6), HRS from considering mainland comparables, it should be noted that the statutory language contained therein does not expressly prohibit such considerations. An examination of the legislative history of the 1984 amendments to §89-11(f)(6), HRS, reveals that the Legislature expressed some concerns with regard to the use of mainland comparables by arbitration panels as the dominant or primary basis for measuring the reasonableness of final offers. The statute, as amended, essentially created an emphasis on local comparables, but did not constitute an outright prohibition on the panel's ability to consider mainland comparables.

Prohibiting the panel from giving any consideration to mainland comparables, as the Employer suggests, would preclude the panel from complying with the statutory requirement contained in §89-11(f)(10), HRS, that it consider "[s]uch 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."

Moreover, the Employer's own use of mainland comparables in interest arbitrations that have occurred subsequent to the 1984 legislative amendment calls into question the legitimacy of the Employer's argument. The Employer defended its use of mainland comparables in another interest arbitration conducted earlier this year as being relevant due to competition from mainland jurisdictions for the recruitment of bargaining unit employees. However, if the panel were to accept the Employer's contention that the statute contemplates a blanket prohibition on the use of mainland comparables, nowhere does the statutory language expressly provide for an exception to be made in such cases. Finally, in situations where local comparables do not exist, the inability of the panel to consider mainland comparables would result in the panel being unable to compare the wages, hours, and conditions of employment of bargaining unit employees with that of any other group of employees, thus effectively rendering §89-11(f)(6), HRS, and to a certain extent §89-11(f)(10), HRS, virtually meaningless.

A more reasonable interpretation, which the arbitration panel adopts, is that §89-11(f)(10), HRS, permits the use of comparables, including mainland comparables, as a factor that is normally or traditionally taken into consideration in interest arbitrations. §89-11(f)(6), HRS also permits the use of mainland comparables, but requires that comparables involving employees who perform similar services, and State and county employees in Hawaii be given primary consideration. In the absence of local comparables, appropriate weight should be given to comparables from outside the State of Hawaii.

The comparability analysis conducted by the Union's witness, Mr. Messina, reflects an overall disparity between Unit 10 institutional, health, and correctional workers and other groups. In comparing Unit 10 salaries with federal workers in Hawaii who perform similar services, federal CNA's receive 15.9% more than their Unit 10 counterparts; federal ACO's receive 36.7% more; federal Psychiatric Technicians receive 35.6% more; and the federal Para Medical Assistant and Para Medical Assistant (1) classifications receive 25.3% and 15.9% more, respectively. UX 5, at 14A.

In comparing Unit 10 salaries with private sector employees in Hawaii who perform similar services, Unit 10 LPN's trailed their counterparts at Kaiser Foundation Hospital by 24%, Kapiolani Medical Center by 22.5%, Queen's Medical Center and St. Francis Medical Center by 20.7%, and Kuakini Medical Center by 19.4%. Id., at 15; Tr. 279-280.

As discussed previously, the arbitration panel finds that mainland comparables may be considered, but emphasizes that local comparables shall be accorded primary consideration. According to Mr. Messina, the maximum rate for ACO's ranked fourth in a comparison of adult correction officers in five western states (Alaska, California, Hawaii, Oregon and Washington). UX 5, at 2; Tr. at 263. An ACO at the maximum step in Hawaii trailed counterparts in three of the western states. Factoring in the cost of living by adjusting salaries to reflect real dollars, in comparing wages with ACO's in the four other western states, Unit 10 ACO's are behind counterparts in all four western states by 30.9% to 62.9%. UX 5, at 7.

CNA's occupying the top step trailed counterparts in three western states by 16.8% to 28.5%. UX 5, at 2. Psychiatric Technicians and the PMA's also fare similarly. Id. After factoring in the cost of living, in comparing wages with CNA's in the four other western states, Unit 10 Nurse's Aides are behind counterparts in three western states by 16.5% to 65.5%.

With respect to other elements of the total compensation package, Unit 10 employees receive 2.5 more days of holiday leave per year than private sector counterparts. EX 18(a), at Exhibit 5. The majority of Unit 10 employees also accrue 21 days of vacation leave within one year compared to private sector employees who must render between 10 to 15 years of service in order to receive 4 weeks of vacation leave Id., at Exhibit 6. After one year of service, most Unit 10 employees accrue 21 days of sick leave while the prevailing practice in the private sector is 12 to 15 days. Id., at Exhibits 5 & 6.

In comparing medical insurance premiums, while the private sector typically pays 100% versus 80% to 85% in the public sector, upon service retirement the State's Health Fund pays 50% to 100% of the monthly medical insurance premiums depending on years of service, while 79% of private sector employers typically provide no coverage for medical insurance premiums. EX 19(a), Exhibit 7. Of course, as health insurance premiums rise and the Employer's contribution remains at a fixed percentage, the employee is left to absorb the rate increase. As of July 2003, employees who elected to have HMSA coverage were hit with a 15.4% to 31.6% increase in insurance premiums, depending on the type of coverage. Tr. at 293.

With respect to other benefits, Unit 10 employees receive 15 days of paid leave for military duty while private sector employees receive no paid leave allowance. EX 18(a), Exhibit 8. When summoned for jury duty, Unit 10 employees receive their jury stipend in addition to regular pay while private sector employees receive the difference between their jury stipend and regular pay. Id.

Overall, the Union has presented a compelling case in its wage comparison between Unit 10 employees and other comparable groups. While Unit 10 employees are ahead in some areas, including benefits such as holiday leave, vacation leave, sick leave, military and jury leave, and retiree medical insurance premium coverage, they lag behind in salaries in many areas. This disparity is especially evident when comparing salaries of nurses with Hawaii private sector and federal nurses at the maximum salary range, and ACO's with their federal counterparts.

Section 89-11(f)(6), HRS, also requires the arbitration panel to take into consideration a 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 State and county employees in Hawaii. The arbitration panel is therefore compelled to review the arbitration decisions previously issued with respect to Units 09 (nurses), 11 (firefighters), and 12 (police officers). These decisions pertain to wage increases awarded to other State and county employees who provide services that are critical to public health and safety. Based on information received from Mr. Chang, overall wage increases for these units ranged between 10% and 11% over the first two years of the respective agreements.

In light of what has been received by these other units, and after having taken into consideration all of the criteria set forth in §89-11(f), HRS, the panel has determined that a five percent (5.0%) across-the-board increase to the salary schedule for each of the two years of the proposed contract, which constitutes a wage increase of slightly more than 10.0%, is both reasonable and consistent with what the three other units have received. In addition, the panel finds that a ten-cent ($.10) increase to the night differential rate for certain employees within the bargaining unit will constitute a positive step towards equalizing the treatment of all Unit 10 employees who work the night shift. Unit 10 employees should also receive an across-the-board wage increase of seven dollars

($7.00) per month, to which the parties apparently agreed upon as evidenced by its inclusion in the final wage proposals submitted by both the Employer and Union.

The Union's proposed step movement plan would entail an additional 2.62% which, when added to the across-the-board wage increase, would constitute more than a13.00% wage increase over the two-year period, which the panel concludes would be excessive in light of awards received by other units. With regard to the impact this award may have on the Employer's financial resources, the size of Unit 10 is relatively small and the panel is confident that the Employer does have the resources available and should be able to fund these wage increases with little difficulty.

D. Present and Future General Economic Conditions

Moody's Investors Service notes that General Fund tax revenues increased by 4.4% in 2003 primarily due to a strong rebound in general excise and use tax receipts, resulting from improvement in visitor arrivals. UX 4, at 105-106. There is continued strength in the construction industry, as residential and commercial markets remain strong. Id. Tourism is improving with overall visitor spending for both international and domestic tourist up 8.6% over the prior year. Id., at 107. Overall, Moody's Investors Service noted a stable outlook. Id. Standard & Poor's also noted a stable outlook, expecting the State to take measures to control expenditures during periods of slow revenue growth, and looks forward to a continued improving economy. Id., at 114-115. Fitch Ratings noted that the state's economy was adversely affected by conditions in California and Asia as well as the events of September 11, 2001. Id., at 129. Visitor arrivals for 2003 have been affected by the SARS outbreak in Asia and war in Iraq, however visitor days are up and hotel occupancy is again over 70%. Id. On September 4, 2003, the Council on Revenues submitted estimated general fund tax growth rates of 6.2% for FY 2004 and 6.9% for FY 2005. UX 4, at 44. The Council also reported that while the visitor industry expects moderate growth, construction industry output will increase at a rapid pace and cited the value of private building authorizations which increased by more than 40% in FY 2003. Id.

Therefore, the consensus appears to be a relatively stable outlook for Hawaii's economy. Increased tax revenues from a rebounding economy, resumption of visitor arrivals and a boom in the local construction industry should help to spur growth and improve the State's financial resources. Having taken all of these factors into consideration, the arbitration panel is satisfied that Hawaii's resilient economy will be able to weather adverse conditions that may lie ahead.

E. Interests and Welfare of the Public

In addressing the interests and welfare of the public, it is essential that there be a thorough understanding of the importance of the services provided by Unit 10 employees to the people of Hawaii.

ACO's and YCO's ensure that those individuals that have been placed in secured custody are no longer able to pose a threat to public safety. These officers also help to rehabilitate incarcerated individuals so they can become productive law-abiding members of society.

A large number of Unit 10 employees work for the HHSC, which serves as the "safety-net" provider of health care in the State of Hawaii, with emphasis on providing primary acute care and long-term care facilities on the neighbor islands. CNA's and LPN's work alongside registered professional nurses and have enormous responsibilities in staffing the various medical facilities owned and operated by the HHSC.

Emergency medical services personnel provide first response teams that handle medical emergencies and provide services that are vital to the health and welfare of the public. These individuals perform life-sustaining medical procedures where professional skills and response time can literally mean the difference between life and death.

Therefore, it is clearly in the interests and welfare of the public that the Employer be given the resources necessary to retain highly qualified correction officers, health care professionals, and medical emergency response personnel, all of whom provide essential services vital to the public health and safety interests and overall welfare of the public.

AWARD

For the reasons set forth above, the award is as follows:

1. Section 23 - Wages, shall be amended to incorporate the following:
   a. A five percent (5.0%) across-the-board increase to the salary schedule, plus a seven-dollar ($7.00) monthly across-the-board salary increase shall become effective July 1, 2003; and
   b. A five percent (5.0%) across-the-board increase to the salary schedule shall become effective July 1, 2003.
2. Section 32 - Differential, shall be amended to incorporate the following:
   a. For employees who are subject to Sections 55 and 61, a ten-cent ($.10) increase to the night differential rate for each hour or fraction of thirty (30) minutes or more of work and a five-cent ($.05) increase for less than

thirty (30) minutes of work as provided in Sections 32.01 and 32.02, shall become effective July 1, 2003.

The parties shall meet to draft appropriate language to effectuate the terms of this award and shall incorporate such language in the appropriate provisions of the July 1, 2003 to June 30, 2005 Unit 10 collective bargaining agreement. All other provisions contained in the July 1, 1999 to June 30, 2003 Unit 10 agreement shall remain in effect, with the exception of those provisions which have been deleted or modified by mutual agreement of the parties prior to, during, and after the impasse.

DATED: December 22, 2003, at Honolulu, Hawaii.

RUSSELL T. HIGA,
Neutral Chairperson

LAWRENCE ISHIMI,
Union Panel Member
☒ I concur
☐ I dissent

ROY YAMAMOTO,
Employer Panel Member
☒ I concur, in part
☐ I dissent

LINDA LINGLE
GOVERNOR OF HAWAII

TED H.S. HONG
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813

September 30, 2003

Russell T. Higa, Esq.
640 Hakaka Street
Honolulu, Hawaii 96816

Re: In the Matter of the Interest Arbitration By and Between Bargaining Unit 10, United Public Workers, AFSCME, Local 646, AFL-CIO and the State of Hawaii, the Hawaii Health System Corporation, the Department of Education and the Judiciary.

Dear Arbitrator Higa:

I have asked Mr. Gordon Chang from the State Department of Budget and Finance to provide BU 10 cost information as requested by the Arbitration Panel. Attached are the cost figures previously requested by the Panel.

Should you need further assistance or more information pertaining to the BU 10 Interest Arbitration, please feel free to call me, Mr. Gordon Chang or Mr. Keith Odachi.

Ted H.S. Hong, Chief Negotiator

Cc: Mr. Roy Yamamoto
Mr. Lawrence Ishimi

ARBITRATION PANEL EXHIBIT 1

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER