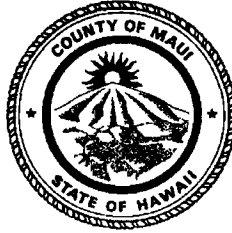


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October 6, 2016

MEMORANDUM

T O: Michael Victorino, Council Member

F R O M: Gary Y. Murai
Deputy Corporation Counsel

**SUBJECT: 2017 HAWAII STATE ASSOCIATION OF COUNTIES AND MAUI
COUNTY LEGISLATIVE PACKAGES (PIA-3(2), PIA-4(2))**

We respond to your memorandum dated September 22, 2016, regarding whether the confidentiality agreements executed by the employers' representatives and public employee unions prevents Councilmembers from being apprised of the status of collective bargaining negotiations, even in executive session.

Specifically, you ask:

1. Please provide the Committee with a sample copy of a confidentiality agreement.

The confidentiality of negotiations is included in the "Ground Rules" for a collective bargaining agreement negotiation. An example of the Ground Rules is enclosed. This is an unexecuted copy, and the union and employer may add to, omit, or modify the terms.

2. Do the confidentiality agreements prevent employer negotiators from apprising Councilmembers of the status of collective bargaining negotiations in executive session? If so, may the confidentiality agreements be revised to allow Councilmembers to receive such updates?

The Ground Rules do not explicitly prohibit an employer representative from disclosing the status of collective bargaining negotiations to Councilmembers in executive session.

However, the negotiators for the state and counties that comprise the members of the employer group have interpreted the confidentiality clause of the Ground Rules (No. 11 in the sample ground rules) to mean that confidentiality is absolute, and the negotiators generally agree that they report to the governor in the case of the state, and the mayors in the case of the counties. The employer group strives to maintain the confidentiality of collective bargaining negotiations to protect the integrity of the process and to avoid allegations of a breach of confidentiality and possible prohibited practices complaints.

Moreover, notwithstanding the confidentiality clause of the Ground Rules, §89-2, H.R.S. designates the mayors and governor as the “employer” or “public employer.”¹ We interpret this to mean that the mayor is vested with the authority to bargain with public employee unions, and has the discretion to share information within the limitations of any confidentiality agreement (for example, the Budget Director, consultants, and so on).

3. Prior to collective bargaining negotiations, how are negotiating rules agreed upon? Are those rules in writing? If so, please provide the Committee with a sample copy of negotiating rules.

Typically, other than the Ground Rules discussed above, there are no negotiating rules that the employers and union agree upon. Generally, §89, H.R.S. the Collective Bargaining in Public Employment Act provides the framework for collective bargaining with public employee unions.

¹Chapter 89-2, H.R.S. defines “employer” or “public employer” as the governor in the case of the state, and the mayor in the case of the counties.

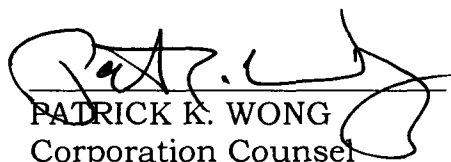
Michael Victorino, Council Member
October 6, 2016
Page 3

Please contact me if you have any questions.

GYM:tl

cc: Alan M. Arakawa, Mayor
David Underwood, Director of Personnel Services

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel
2014-2966
2016-10-05 response to RFLS Victorino

BARGAINING UNIT xx
UNION _____
EMPLOYER _____
DATE _____

GROUND RULES
Negotiations for CBA Effective July 1, 2017

1. Except as limited by statute, each party to the negotiations shall determine the size of their negotiation team.
2. Either party may, if it so desires, utilize the services of outside consultants and may call upon professional and lay representatives to assist in negotiations.
3. The parties to the negotiations shall meet at mutually agreed upon times and locations.
4. Cell phones and pagers shall be turned off or switched to a silent or vibrating feature.
5. When a complete set of proposals for negotiations is completed and accepted by both parties, no other proposals may be submitted except by mutual agreement of the parties.
6. The length of each meeting shall be set at the time the meeting is established; however, any meeting may be adjourned prior to or extended beyond the period allotted at the request of either party.
7. A caucus may be called by either party at any time.
8. There shall be no chairperson. The spokesperson for each side will keep order on his/her side and will serve as the liaison between the two groups.
9. No verbatim transcript shall be kept nor recording made of the meetings. Each side may keep notes of the proceedings.
10. The parties may come to an understanding of the concept and language in written form for a specific article, provided that changes are not binding on either party until the entire package is agreed to.
11. The content of negotiations shall be confidential. There shall not be any public announcement or news media release on the content of negotiation discussions prior to the conclusion of negotiations through impasse or settlement except by mutual agreement.