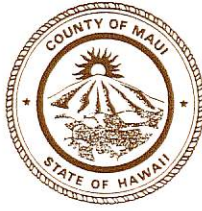


MICHAEL P. VICTORINO  
Mayor

SANDY K. BAZ  
Managing Director



COUNTY OF MAUI  
**OFFICE OF THE MAYOR**  
200 SOUTH HIGH STREET  
WAILUKU, HI 96793

April 24, 2020

Honorable Alice Lee, Chair  
and Members of the Council  
Maui County Council  
County of Maui  
200 South High Street  
Wailuku, HI 96793

Dear Council Chair Lee and Council Members:

SUBJECT: APPROVAL OF COST ITEMS FOR EMPLOYEES INCLUDED IN  
BARGAINING UNIT 14

In accordance with HRS Section 89-11(g), I am herewith transmitting the cost items for the two-year contract covering HGEA Bargaining Unit 14. The law requires that all cost items shall be subject to appropriations by the appropriate legislative bodies.

These computations reflect the implementation cost for employees included in Bargaining Unit 14 for fiscal years 2019-2020 and 2020-2021. A summary of the pay adjustments is also transmitted for your information.

Also transmitted is the necessary resolution prepared by the Corporation Counsel for approval of the cost items.

We would appreciate your expediting approval of the cost items in order to implement the pay adjustments. If you have any questions or require additional information on this matter, please call on Mr. David J. Underwood, Director of Personnel Services.

Very truly yours,

A handwritten signature in black ink that reads "Michael P. Victorino".

Michael P. Victorino  
Mayor, County of Maui

DJU:ceb  
Attachments  
cc: Director of Finance  
Director of Personnel Services



RECEIVED  
2020 APR 24 AM 9:36  
OFFICE OF THE  
COUNTY CLERK

# Resolution

No. \_\_\_\_\_

## APPROVING COST ITEMS FOR UNIT 14, OCEAN SAFETY OFFICERS

WHEREAS, the Mayor, by letter dated April 24, 2020 to the Honorable Alice Lee, Chair, and Members of the Maui County Council, submitted cost items for Ocean Safety Officers included in Bargaining Unit 14 and represented by the Hawaii Government Employees Association, AFSCME Local 152 AFL-CIO, pursuant to an arbitration decision and award dated April 15, 2020; and

WHEREAS, pursuant to § 89-11(g), Hawaii Revised Statutes, the April 15, 2020 arbitration decision and award shall be final and binding upon the parties, all items requiring any moneys for implementation shall be subject to appropriation by the appropriate legislative body, and the employer shall submit all such items within ten days after the date on which the arbitration decision and award is issued; and

WHEREAS, a Summary of Cost Items is attached hereto as Exhibit "1"; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it does hereby approve the Summary of Cost Items as specified in Exhibit "1"; and

Resolution No. \_\_\_\_\_

2. That certified copies of this resolution be transmitted to the Mayor, the Director of Personnel Services, the Budget Director, and the Director of Finance.

APPROVED AS TO  
FORM AND LEGALITY:



GARY V. MURAI  
Deputy Corporation Counsel  
County of Maui

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COUNTY OF MAUI  
UNIT 14 (INCLUDED)  
SUMMARY OF COST ITEMS  
FY 2019-2020; FY 2020-2021

**1. Wages and Compensation Adjustments**

Summary includes the following increases:

*A. Effective July 1, 2019:*

- 1) 4.5% across-the-board wage increase.
- 2) Continuation of the step movement plan.

*B. Effective July 1, 2020:*

- 1) 4.5% across-the-board wage increase.
- 2) Continuation of the step movement plan.

Wage costs include fringe benefit costs representing expenses which automatically increase when base salaries increase (e.g., premium pay, overtime, Medicare, unemployment compensation, and leave benefits). All subsequent year costs include the roll-over cost from previous years.

Additional Cost FY 2020	Additional Cost FY 2021
\$ 280,116	\$ 587,042

**TOTAL ADDITIONAL COST:**

FY 2020	<u>\$ 280,116</u>	FY 2021	<u>\$ 587,042</u>
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In the Matter of the Interest Arbitration )  
between )

HAWAII GOVERNMENT EMPLOYEES )  
ASSOCIATION, AFSCME, LOCAL )  
152, AFL-CIO )  
(Union,) )

and )

DAVID Y. IGE, Governor, State of )  
Hawaii; KIRK CALDWELL, Mayor, City )  
and County of Honolulu; HARRY KIM, )  
Mayor, County of Hawaii; MICHAEL C. )  
VICTORINO, Mayor, County of Maui; )  
DEREK KAWAKAMI, Mayor, County of )  
Kauai, )  
(Employers.) )

STATE OF HAWAII  
INTEREST ARBITRATION  
BARGAINING UNIT 14  
HLRB CASE NO. 18-I-14-177  
DECISION AND AWARD

BEFORE:

Kathryn T. Whalen, Arbitrator  
Stacy Moniz, Union Panel Member  
William V. Brilhante, Jr., Employer Panel  
Member

REPRESENTATIVES:

For the Union:

Alan C. Davis, Esq.  
Sylvia Courtney, Esq.  
Davis & Reno  
22 Battery Street, Suite 1000  
San Francisco, CA 94111-5524

For the Employers:

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Department of the Attorney General  
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Andrew S. Michaels, Esq.  
Deputy County Attorney  
County of Kauai  
Office of the County Attorney  
444 Rice Street, Suite 220  
Lihue, Hawaii 96766-1300

HEARING:	January 13-17, 2020 and January 21-24, 2020
REPORTED BY:	Donna N. Baba, CSR #103 Certified Shorthand Reporter
RECORD CLOSED:	March 16, 2020
AWARD ISSUED:	April 15, 2020

## **I. INTRODUCTION**

This interest arbitration is between the State of Hawaii (State), City and County of Honolulu (City), County of Hawaii, County of Maui, and County of Kauai (Counties),<sup>1</sup> and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (Union) for Bargaining Unit 14. Bargaining Unit 14 (BU 14) consists of state law enforcement officers and county ocean safety and water safety officers.

In accordance with Hawaii Revised Statutes (HRS) §89-11, the parties requested, and the Hawaii Labor Relations Board certified, the appointment of Kathryn T. Whalen as neutral chair, Stacy Moniz as Union Representative, and William Brilhante Jr., as Employer Representative for the three-person interest arbitration panel.

The parties submitted the following remaining issues for their 2019-2021 Collective Bargaining Agreement (CBA) to the arbitration panel for resolution: Article 31 – Differentials (Union proposal); Article 32 – Uniforms and Equipment (Union Proposal); Article 45 – Other Leaves of Absence (Union Proposal); Article 50 – Salaries (Employer and Union Proposals); Administrative Investigations (New Article, Union Proposal); and Maintenance of Facilities (New Article, Union Proposal).

A hearing was held at Union offices in Honolulu, Hawaii over the course of nine days; January 13-17 and January 21-25, 2020. The parties had a full opportunity to make opening statements, examine and cross-examine witnesses, introduce

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<sup>1</sup> The State, City and Counties are sometimes referred to collectively as “Employers” or “Employer Group.”

documents, and make arguments for their respective positions. Closing briefs were filed in writing on March 16, 2020. The Chair closed the record on that date.

## II. **STATUTORY CRITERIA**

HRS §89-11(f) provides:

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;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public;
- (4) The financial ability of the employer to meet these costs; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues;
- (5) The present and future general economic condition of the counties and the State;
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii;
- (7) The average consumer prices for goods or services, commonly known as the cost of living;
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.



(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; 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.

### **III. BARGAINING UNIT 14**

BU 14 has between 750 to 782 full-time equivalent (FTE) positions for ocean safety and water safety classifications and state law enforcement officer classifications. State Exhibit (Ex.) - 22, p. 8; Union Exhibit (U) - 42.

Prior to 2013, the employees in this unit were in BU 3 (White collar workers) and BU 4 (White collar supervisors.) As public safety employees and first responders, BU 14 employees perform functions and duties distinct from employees in BU 3 and BU 4. As a result, in 2013, the Legislature passed legislation that created BU 14 as a separate unit. U-3.

BU 14's first CBA took effect in 2016 after an interest arbitration that resolved remaining disputes between the parties. That CBA remained in effect until June 30, 2017. U-4. For their 2017-2019 CBA, the parties again submitted remaining disputes to interest arbitration. That award was issued on April 6, 2018. U-6.

For their 2019-2021 CBA, despite tentative agreements on most issues, the parties are at odds over proposals concerning six subjects. Their primary dispute concerns salaries for BU 14 employees.

### **A. Ocean Safety and Water Safety Officers**

Ocean safety officers and water safety officers are the same position. Those employed for the City and County of Honolulu on Oahu and Hawaii County (Big Island) are classified as Water Safety Officers (WSOs). Those employed by the counties of Maui and Kauai are classified as Ocean Safety Officers (OSOs). For ease, they are sometimes collectively referred to as WSOs.

Bryan Phillips has been a WSO II on Oahu for 15 years. He works on the North Shore. He is the current Union President. Bradley Young has been a WSO II on the east side of the Big Island of Hawaii for nine years. Both are jet ski operators. Phillips and Young described their jobs in detail in this proceeding. Information from their testimony is summarized below.

Additional testimony was provided by James D. Howe, Director for the Honolulu Emergency Services Department which includes the Division of Ocean Safety and Lifeguard Services; and by Jeffrey Giese, Battalion Chief of Ocean Safety in the County of Maui's Department of Fire.

As explained by Phillips, WSOs are commonly referred to as ocean lifeguards, but they want to get away from the stigma of the title of "lifeguard." They are not the same as pool, water park, or lake lifeguards. Across the State of Hawaii, they are specialists; highly trained and skilled first responders who are often called upon to work in uniquely hazardous conditions.

WSO I's are typically part-time employees (entry level, trainee position). WSO II's are full-time staff and the bulk of the WSO workforce (268 employees). WSO III's are lieutenants and WSO IV's are captains. WSOs follow a chain of

command system and report up that command. They are trained in the incident command system (ICS).

WSOs have radio communication in every tower and mobile response unit. On Oahu, they can communicate from lifeguard tower to tower within their district or to their main dispatch center. They can change channels and communicate with other agencies as needed: for example, the fire department, Coast Guard, EMS and police department. On the Big Island, radio communication is mostly the same but ocean safety operates under fire dispatch.

On Oahu, water safety officers patrol 180 miles of coastline out to a mile at sea, occasionally more as needed for search and rescue. There are 42 lifeguard towers and eight jet ski teams.

On the other islands, ocean safety officers have similar jurisdiction around island coastlines and into waters. On Maui, they patrol 120 miles of coastline and have 12 towers and seven tower-based jet ski units. On the Big Island, WSOs patrol 266 miles of coastline and have 16 lifeguard towers and two jet ski units. On Kauai, ocean safety officers patrol 113 miles of coastline and have 11 towers, three jet ski teams and a roving team.

Because they are first responders, WSOs must have certifications from the American Red Cross and United States Lifesaving Association (USLA) for first responders, and first aid and CPR training that involve advanced lifesaving measures.

Under the CBA, WSOs receive a \$1.00 per hour premium for certification as an Emergency Medical Technician (EMT), although it is not a required

certification. Some WSOs, like Phillips and Young, hold and maintain that certification for a better understanding of how to give advanced medical care in the course of their duties. On Oahu, currently there are 28 WSOs who are EMT certified out of 200-plus positions.

As a recruit, in addition to medical training, WSOs receive 160 hours of training for all types of rescue situations. These requirements are much more rigorous than those of the USLA. Phillips reported that when he began in 2004, he did some cross-over training with the Fire Department and the Coast Guard.

WSO's also must meet rigorous physical standards and maintain that level of fitness throughout their career. They have an initial physical tryout that involves a timed, three event run, swim and paddle board course. Every year, WSOs must recertify in order to keep their jobs. No other fire, police or public safety responder has such a strict physical fitness requirement.

In terms of equipment, WSOs usually have a tower (or assigned station) where they have medical kits filled with first aid items, including a bag valve mask (BVM) to administer oxygen.

They also have personal protective equipment, such as gloves, masks, binoculars, sunglasses, sunscreen and hats. Some carry knives, snorkels and masks for searches under water. At the towers, they have all terrain vehicles (ATVs) for their patrols, which have a medical kit similar to that at the towers.

In addition to the above equipment, some WSOs are trained to perform patrol, search and rescue on personal watercraft (PWC), commonly referred to as jet skis. In the early 1990's five WSOs in Hawaii developed the use of jet skis to

perform their duties and innovated the use of an attached board (rescue sled) to perform rescues. The use of the jet ski in this way allows for quicker response times and rescues. Its use as a rescue method has been adopted world-wide and the training is provided for in Hawaii.

Jet ski training involves an additional 200 hours of training. A WSO must have served as a full-time WSO for two years to qualify. There are additional physical fitness standards that require deadlifts and the ability to push the jet ski on sand and kick it into the water in a certain amount of time. There also is a maneuverability course.

Operation of the jet ski also involves in-depth learning of the coast-line, how to launch from the beach (in addition to a harbor) and to perform all types of rescue of conscious and unconscious persons. As developed in Hawaii, the jet ski with rescue board includes a crew that consists of a driver and a partner standing next to them. A crew is important to manage a victim rescue and to get them onto the board, hold them down, transport and perform lifesaving measures. There are occasions, however, where an operator will go out with the rescue sled on their own.

Young is a Rescue Water Craft (jet ski) Operator on Hawaii island. On the Big Island, the jet ski program began in 2015. Jet ski operators typically are assigned to a certain beach for the day and are semi-mobile; depending on surf conditions or search and rescue, they transit through other districts. There are five districts on the Big Island.

There are unique geographical challenges on Hawaii island; for example,

lava flow events which have changed, and continue to change, coastlines. All coastlines are dangerous. There are remote locations around the island and rescue resources are stretched out. There are minimal launch and recovery points for rescue boats, but the jet skis are able to launch and recover from a multitude of access points.

There are emergency recovery locations that have been predetermined around the island where, through fire dispatch, jet ski operators can meet EMS ambulances. Ambulance functions are under the fire department as well. On the Big Island, WSOs work hand in hand with fire rescue in their search and rescue operations.

Even in mild weather, surf and ocean conditions can be extreme. On Oahu, during winter months, the north and west coastlines have some of the biggest surf in the world; all islands will see increases in wave size and activity. During summer months, things calm down a bit, but weather patterns from the south produce bigger wave and coastal events on the southern shores. Nearly all year, eastern shores on all islands receive trade winds and they produce wind swell and strong near-shore ocean rip currents.

As a result, WSOs patrol and perform searches and rescues in all sorts of weather conditions, in calm waters and hazardous surf zones; where there are few people or many.

In addition to the above duties, WSOs are first responders to incidents on nearby land; in front of and behind them and in parks, such as car accidents or medical emergencies. On a daily basis, WSOs also perform preventative

measures. These duties have evolved and increased. They warn people verbally, one-on-one, or by megaphone or PA system. They walk and talk to people and post signs of dangers. WSOs maintain station logs (three times a day) where they track beach patrons, water and ocean conditions along with what happens throughout the day.<sup>2</sup>

In 2018, Honolulu alone had 22 million visitors. According to WSO logs, WSO's had 1.4 million contacts with visitors on Honolulu beaches that year. U-49.

Phillips contrasted federal lifeguards who work on Oahu with WSOs. As explained by Phillips, federal lifeguards work in a very controlled environment; namely military bases. There is limited access, so those lifeguards are not dealing with, for example, the 22 million visitors as WSOs did in 2018 on Oahu. Unlike WSOs, federal lifeguards also have the ability to close military beaches based on conditions. Further, not all of the beaches controlled by the military experience the same conditions that WSOs experience on their beaches.

In addition to the above, Phillips reported there is de-staffing going on with the military beaches so that there are fewer staff; the days the beaches are open have been reduced. Some beaches are open only on weekends.

Phillips further noted that a lot of the federal lifeguards do not have the same accreditation, and WSO training and recertification exceeds what is required of federal lifeguards. On some occasions, WSOs have responded into military beach

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<sup>2</sup> The Union made an offer of proof, which the Employers accepted, that if called to testify Howard MacPherson would confirm that the duties, responsibilities and hazards for OSOs on Maui are the same as those for WSOs on Oahu and the Big Island.

areas with their jet skis, because they have an exemption that allows them to do so.

Phillips described a recent rescue that he and his partner responded to that involved an overturned Navy vessel in Kaneohe Bay. U-50. When they arrived, the Honolulu Fire Department was there, waiting, with their truck and rescue craft. The Fire Department had no assets in the water at that location and had some limitations on the size of surf they could launch in. As a result, Phillips and his partner launched their jet ski and responded to the incident.

Phillips further explained that the Fire Department does have a water rescue department with water craft and fireboats. They do not, however, go out into the size of surf that WSOs do; nor do they operate near shore or in the conditions WSOs do. The Fire Department does aid in some rescues, and Phillips has co-responded on a number of calls with them.

WSOs also have aided, and do aid, in searches and rescues of missing persons; as well as recovery operations in conjunction with the Fire Department and Coast Guard. Phillips described one such rescue operation in a storm near a Marine Corps Base that involved Navy personnel and civilians. Phillips and his partner put three victims on their jet ski, and the Fire Department also helped manage the victims.

On Maui, OSOs moved from the Parks Department to the Fire Department in 2016. When there are incidents at beach parks or in the ocean, calls go through dispatch and the Fire Department co-responds. OSOs typically will be in the water searching for victims and bringing them to shore. Fire fighters work with them to



supplement the search effort. The Fire Department has vessels and a helicopter, which OSOs do not. OSOs and fire fighters often work as a team. If anything happens in the ocean after OSOs go home for the day or before they come to work, the Fire Department is the first responder to the emergency.

John Silberstein, currently a Conservation & Resources Enforcement Officer (CREO) II, formerly managed federal lifeguards and also was ocean safety chief and administrator for the counties of Maui and Oahu. Silberstein has knowledge of both federal lifeguards and WSOs because of the various jobs he has held over his long working career.

Silberstein confirmed the information provided by Philips concerning the decline in services provided by federal lifeguards. Federal funding was changed and cut from what it used to be, so that today, for example, the Marine Corps Base has stopped providing lifeguard services seven days a week. Services are provided only on weekends and holidays.

Silberstein explained that the overall number of federal lifeguards has been reduced. Now, when the surf is big at military beaches, they use a flag system or close beaches as needed. WSOs are the ones to respond on federal lifeguard beaches if there is an emergency in this situation.

Silberstein further reported that most federal lifeguards have lost accreditation from USLA; and federal lifeguards are only required to have American Red Cross lifeguard training for swimming pool lifeguards.

Silberstein summarized his comments about WSOs by stating that they are not the stereotypical lifeguard sitting by a pool with zinc oxide on their nose. Their

positions have evolved over time. They also focus on prevention and risk management. Every day presents a dynamic environment. The equipment and technology have changed as well. Silberstein described WSOs as a true profession – and WSOs in Hawaii are “the best of the best.”

#### **B. State Law Enforcement Officers**

Employees in BU 14 that hold state law enforcement positions are Deputy Sheriffs, Conservation and Resources Enforcement Officers (CREOs), and Harbor Enforcement Officers. They work, respectively, under the Department of Public Safety (DPS), the Department of Land and Natural Resources (DLNR; or commonly referred to as DOCARE), and the Department of Transportation (DOT), Harbors Division.

In these proceedings, the day-to-day work of these employees was detailed by Lanikoa Dobrowolsky, Commander (Lieutenant) for the Special Operations Unit for the Sheriff's Department and Silberstein for DOCARE. Additional testimony about deputies' jobs and training was provided by Blair Wulfert, Sergeant for Training and Staff Development and by Michael Oakland, Commander (Lieutenant) for the Kapolei Court Section.

Further information and responsive testimony were provided by DPS Director Nolan Espinda, DPS State Sheriff Albert Cummings, and Division Administrator and Enforcement Chief of DOCARE Jason Redulla.

#### ***Deputy Sheriffs***

The Sheriffs Division, although small in staff, is a statewide, full-service law enforcement department for any matters that fall within State jurisdiction. Its

jurisdiction includes, for example, courthouses and the Hawaii International Airport. It has patrol divisions, court sections, and specialized units and investigators, who are deputies largely assigned to federal task forces. The majority of BU 14 law enforcement employees are in the classification series of deputy sheriff, primarily Deputy Sheriff II (250 employees).

When calls come into the County 911 system, anything that falls within State jurisdiction or within the duties and responsibilities of deputy sheriffs is routed to deputies who respond to the call. They provide initial case investigations. Deputies assigned to patrol handle everything from traffic enforcement to any call for assistance - assaults, vehicle accidents, injuries, unattended deaths, and kidnappings. Deputies also enforce court orders, warrants and execute temporary restraining orders (TROs). U-67, U-68.

Deputy patrol at the airport is full service. There are 65 to 70 deputies assigned to that location. They respond, for example, to injuries, stolen cars, assaults, drugs, and gunfire. Securitas, a private security firm, has officers at the airport and they have the ability to intervene in a case, but they cannot prosecute it. They must call a sheriff's deputy to take a case over for prosecution.

Each courthouse also has a patrol section that is responsible for the ground area and roads circling it. In the courthouse, deputies are assigned to cellblocks to manage arrestees and inmates. Deputies run the cellblocks and escort inmates to courtrooms. On the outer islands, deputy sheriffs currently staff only the courthouses. The current administration has made the decision to limit their responsibilities, but in the past, they have performed other duties.

On Oahu, deputies are assigned to the Capitol area where they patrol and protect the Capitol. Some provide round-the-clock protection to the Governor, his family, and the Lieutenant Governor and his family.

Oakland submitted two Department Incident Activity Reports for 2018 and 2019. These reports show the different investigations DPS initiated, or calls for service. The reports are for events reported, whether unfounded or actual, arrests or an exception. Total events reported for 2018 was 12,767; for 2019 that total was 13,490. U-67, U-68.

There are unique services that deputies provide that other police departments on the islands do not. The Special Operations Unit (SWAT) has a Fugitive Unit that takes on hunts for escapees and high-risk felons. It also has a REACT Unit (Rapid Enforcement and Counterterrorism Team) which has specialized capabilities that surpass normal patrol. There is a K-9 section with five dogs and their handlers; some do narcotic detection and patrol, and other dogs detect explosives.

As needed, deputies in these specialized units receive particularized assignments, such as evictions (Fugitive Unit) or provide special protective services, for example, for presidential visits or other visiting dignitaries. They also provide services for major conferences where there is a large gathering of people.

The Special Ops Unit has worked with the Honolulu Police Department in providing such services. Dobrowolsky described a number of incidents which involved coordinated response. One of the longest incidents spanned six months on the Big Island for the County of Hawaii where there were demonstrations

concerning the new telescope on the Mauna Kea volcano. In addition, deputies are tasked to work with the federal Drug Enforcement Agency (DEA), Federal Bureau of Investigation (FBI), Homeland Security Investigations and the U.S. Marshalls Service.

With respect to training, recruits attend a wide variety of classes over six and one-half months (1024 hours.) Deputies also participate in annual, in-service training of 80 to 120 hours.

In terms of equipment, deputy sheriffs are issued standard equipment for law enforcement: firearms, magazines, ammunition, radios, batons, some kind of chemical deterrent (OC), and handcuffs. Depending on their assignment, they may have less lethal capabilities; for example, bean bag munitions, pepper ball munitions, and, perhaps soon, tasers.

Patrol officers also have a patrol rifle with high-powered ammunition for special situations. They have marked patrol cars with red and blue lights and sirens. Their Class A uniform is a brown-on-brown uniform which is readily identifiable as a law enforcement officer to the public. Patrol officers wear soft armor.

Ballistic shields are available and may be used by deputies. The Special Operations Unit uses them quite often; they also use protective masks. Special Ops deputies also have hard armor, helmets and chemical masks.

#### *Conservation and Resources Enforcement Officers (CREOs)*

CREOs wear many hats as the enforcement arm of DOCARE. DOCARE is the largest land owner in the State, covering approximately 1.3 million acres of

land, water and beaches. There are nine divisions within DOCARE for which officers provide enforcement services.

Their jurisdiction extends to the northwest Hawaiian Islands; to get there, officers must piggyback on a U.S. Coast Guard cutter or NOAA vessel. According to Silberstein, current staffing is at a low of about 110 officers, with somewhere near 50 vacancies (about 35 actual vacancies; 15 others on injury leave). U-56, [36 vacancies for CREO IIIs.]

DOCARE officers' largest responsibility right now is fisheries; that is, the Division of Aquatic Resources that manages Hawaii's marine resources, salt and fresh water. They also are the enforcement arm for Forestry & Wildlife, which encompasses all state parks, forested lands, hiking trail systems, and wildlife - both terrestrial and marine.

DOCARE officers provide enforcement services to the Historic Preservation Division. Historic preservation includes historic buildings such as Iolani Palace. DOCARE officers also provide services to protect and investigate crimes on Native Hawaiian burial sites (iwi kupuna) and protect Native Hawaiian religious altars. They protect cave artifacts, as people commit thefts of artifacts found in caves.

DOCARE officers also provide enforcement services for the Division of Boating & Ocean Recreation (DOBOR.) It is their second busiest job now. That division manages all state waters out to 3 nautical miles, including the majority of small boat harbors. DOCARE officers are the State's only marine police, with the exception of Harbor Enforcement Officers whose primary focus is on commercial boat harbors.

DOCARE is the only law enforcement arm (other than the U.S. Coast Guard) that has vessels, and because Hawaii is an island state surrounded by water, DOCARE officers carry a tremendous responsibility. County police do not touch anything below the highwater mark, so it is all the responsibility of DOCARE officers.

DOCARE officers also provide enforcement services for the Land Division and the Bureau of Conveyances which deal with land titles. The Land Division holds all the lands that are unencumbered in trust. These are tracts of land that are not a State park or a natural area reserve; that is, they have an unspecific designation. Such lands are often leased, but if the land is fallow and no lessee is on it, DOCARE officers have enforcement responsibilities. For example, if there are trespassers, or someone dumps on or vandalizes the land.

The Division of Office of Conservation & Coastal Lands (OCCL's) primary mandate is to deal with such things as shoreline projects; such as, illegal sea walls along the coastline. DOCARE officers investigate matters relating to whether projects are properly permitted and pollution cases.

DOCARE officers also patrol the waters around the Island of Kahoolawe for the Kahoolawe Island Reserve Commission. There are specialized rules for fisheries there that officers enforce.

DOCARE works with ocean safety as they are mandated by law to enter into agreements for both land and ocean rescue, through designated marine patrol or otherwise. When President Obama visited, DOCARE officers teamed with ocean safety and the U.S. Secret Service's rescue swimmers to provide security

when POTUS or his family went to the water. They also provide such services for other visiting dignitaries.

DOCARE has a water craft program and officers have personal watercraft (jet skis) that are retrofitted for patrol and rescue work. A lot of officers also are trained in scuba and in underwater surveillance and recovery. They have used those capabilities to catch offenders, for example, that use chlorine gas to catch fish.

DOCARE officers carry equipment on their person as do any other police officers: sidearm, ammunition, handcuffs, OC or pepper spray, ASP baton, and flashlight. They are assigned body armor, but are not required to wear it all of the time. Some officers have night vision goggles, for night work in illegal hunting cases. There are many poachers that poach wildlife. Additionally, officers investigate persons diving illegally at night. Most officers drive four-wheel drive trucks that are equipped with a computer and have been assigned a long gun, AR-15 and/or a 12-gauge shot gun. They must carry at least one of those weapons.

Silberstein has been in government service for 35 years and has served in a variety of jobs, including as a DOCARE officer and supervisor. As described by Silberstein, DOCARE officers have full police power and because they have statewide jurisdiction, they can enforce any laws of the State including county ordinances; but they focus on particular matters within their purview.

Silberstein explained that gone is the day when DOCARE officers only focus was fish and game. Now, Silberstein describes DOCARE officers as police; and they do a lot of police work.



DOCARE officers train with Honolulu Police Department's SSD (SWAT) team. HPD has trained with and used DOCARE officers and their boats if the Fire Department is unavailable. In addition, DOCARE has done active shooter training with HPD.

Silberstein acknowledged that there is some tension with HPD over jurisdictional grievances. As he explained, HPD does not want to respond to complaints in State harbors and parks; they want DOCARE to do it. Because of DOCARE's small staff, however – 17 active officers as compared to HPD's 2,400 – HPD must respond. Often DOCARE and HPD co-respond

#### **IV. PARTIES' FINAL OFFERS ON SALARIES**

Article 50 is the salary provision of the parties' CBA. For the 2019-2021 CBA, the Employers propose no increase in salaries and no step movements. The Employers propose that the June 30, 2019 salary schedule remain in effect for the term of the CBA. State Ex.12.

In its post-hearing brief, however, the State mentioned the testimony of Deputy Director of Finance Robert Yu. Yu reported that the State's General Fund Financial Plan includes BU 14 wage increases similar to settlements and awards of other bargaining units: 2.0% across the board increase (ATB) on July 1, 2019, and 2.0% ATB on July 1, 2020, and the continuation of the step movement plan throughout the two-year duration.

The Union proposes language to replace the existing Article 50. Among its proposals are that the salary schedule be modified as follows: Effective July 1, 2019, a 15% ATB increase; and effective July 1, 2020 another 15% ATB increase.

These increases are proposed for those employees on the salary schedule and also for those who are not administratively assigned to the salary schedule and employed on a personal services contract. The Union further proposes that eligible employees receive step movements on their step movement dates for both years of the CBA. U-12.

Further, the Union proposes that step movement provisions shall continue in successor agreements, unless modified or terminated by mutual consent of the parties; that they are to be included as costs in collective bargaining and submitted to legislative bodies for approval as required by law. U-12, p. 2.

Finally, the Union proposes that the Union and Employer “shall engage in discussions to restructure the salary schedule to recognize this unit as a public safety unit” and “to move towards compressing the salary schedule.” U-12, pp. 2, 3.)

## **V. SUMMARY OF EVIDENCE ON SALARY**

### **A. Financial Condition and Ability to Pay**

#### **1. State of Hawaii**

##### *State's Presentation*

As mentioned above, Robert Yu is the Deputy Director of Finance for the State's Department of Budget & Finance. Budget and Finance develops and monitors the State's budget. Yu testified and provided a presentation about the State's financial condition, particularly its general fund, because 80% of State employees are funded by the general fund. For BU 14, there are 406 full-time

State employees.<sup>3</sup> The general fund pays for 84% of their wages and benefits. State Ex. 21.

There are certain things the State is responsible for that are unique to the State of Hawaii. The State is responsible for many functions that are performed by or shared by local governments in most other parts of the United States.

In Hawaii, the counties' major area of responsibility, and expenditure, are police, fire protection, waste disposal, water and sewer, secondary streets and highways. The State pays all costs in connection with the public school system, libraries, public welfare, and the judiciary. It operates statewide elementary, intermediate and high schools as well as community colleges and the university system.

For budgeting and planning purposes, the State's financial plan and budget is on a cash basis. The forecast on general fund tax revenue is for a 6-year period.

Hawaii's Constitution requires that public funds be spent only pursuant to appropriations made by law. General fund expenditures for any fiscal year must not exceed the State's current general fund revenues and prior year's unencumbered cash balances.

Hawaii's Constitution also mandates the creation of a Council of Revenues (COR), by law, to prepare revenue estimates to be used for preparing and executing budgets, appropriating funds, and enacting revenue measures. COR's revenue estimates are public documents and prepared quarterly for each fiscal

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<sup>3</sup> The counties employ the remainder of BU 14 employees.

year of a 6-year financial plan. COR's forecasts are inexact and subject to frequent changes as new information becomes available.

In terms of revenue, the State receives most of its revenues from taxes. Taxes constitute 50% of total revenue. Estimated total revenues for Fiscal Year (FY) 2020 are \$16.9 billion and for FY 2021 \$17.3 billion. Total Expenditures for FY 2020 are estimated to be \$15.7 billion and for FY 2021 \$16.2 billion. The State spends about 41% of its budgeted funds on personal services; that is, wages and fringe benefits. About 25% of funds are for welfare and debt service costs. This means that 61% of the budgeted funds are nondiscretionary costs.

With respect to the general fund in particular, general excise and individual income taxes account for about 77% of its revenues. The State does not collect property taxes in Hawaii. Rather, the City and Counties do.

For FY 2020 estimated general fund revenues are \$8.2 billion; for FY 2021 \$8.5 billion. Estimated expenditures for those same years are estimated as \$8.1 billion and \$8.4 billion respectively; 58% of which is for personal services and fringe benefits.

As of January 10, 2020, COR's projections were for 4.1% increase in State revenues for FY 2020 and 4.0% for FY 2021. News reports have recently indicated an additional \$74 million in revenue from tax collection. As explained by Yu, this report was due to the change in the COR revenue forecast for FY 2021 from 3% to 4%. For other years in the 6-year financial plan, forecasts were: 3% (FY 2022), 3% (FY 2023), 4% (FY 2024) and 4% (FY 2025).

With estimated expenditures that include set-asides for collective bargaining, the updated budget and financial plan projects ending general fund balances that decrease between FY 2020 to FY 2024. For example, it is estimated in FY 2023 it will be at a low of \$227 million, the lowest of the 6-year plan. This amount represents about a week and a half of total State general fund expenditures.

Yu acknowledged that the State's current economic and fiscal conditions are stable and economic conditions have improved. The construction industry is holding up well and visitor arrivals continue to grow, heading for a record. The outlook from the University of Hawaii's UHERO (research arm) is for Hawaii to edge back into a restrained growth path for the next few years. Yu explained, however, that significant risks still exist. There is a need to be cautious with State spending.

The cyclical nature of the economic cycle, nationally and globally, requires a cautious approach to increases in recurring expenditures. Risks of a negative downturn have grown, including global weakening, ongoing trade disputes and political uncertainty. In Hawaii, there has been a decline in population in recent years. Job creation is somewhat flat with a minor increase projected in the next few years. There is a decrease in actual visitor spending.

Also, there are a number of factors that contribute to uncertainty in federal funding levels: for example, projected increases in federal debt; re-emergence of budget deficit issues; suspension of the debt limit until after the 2020 election; and decreases in federal aid programs.

In addition, the State has unfunded pension and retiree health benefit liabilities. The State has seen a significant ramp up in funding these liabilities and will face significant future increases.

Further, the last round of settlements and arbitration awards (2017-2019) significantly increased recurring expenditures. And, as mentioned above, it is projected that fiscal end general fund balances will decrease in the near term.

Besides collective bargaining, there are many competing demands for revenue. For example, budget requests for FY 2019-21 exceed what the Legislature has approved and there is unmet deferred maintenance on State facilities. The State also needs to build reserves to weather an unfavorable economic cycle. Finally, there are unanticipated emergencies. Recently, there was the Big Island lava flow and flooding in Kauai and East Honolulu.

#### *Union's Presentation*

The Union submitted the expert testimony and reports of CPA Timothy Reilly regarding the financial condition of each of the Employers in this proceeding. Reilly has been a CPA for more than 30 years and has prepared over 600 financial analyses of public employers, mainly of state and local governments. He has been involved in interest arbitrations with the State and Counties of Hawaii since 1995, including recent arbitrations for other HGEA bargaining units. U-70, U-71.

Reilly's financial analysis for the State is lengthy and detailed. His narratives and exhibits were taken from Comprehensive Annual Financial Reports (CAFRs) of the State for fiscal years ended June 30, 2013 through June 30, 2018. In addition, he analyzed other financial information: rating agency reports, COR

forecasts, Department of Business, Economic Development and Tourism (DBEDT) reports, as well as other information such as visitor statistics. At the onset of his report, he provided an explanation and analysis of Government Accounting.

Below is a brief overview and summary of Reilly's testimony and reported findings and conclusions about the State's financial condition.

Reilly explained why he used the CAFRs, and prefers those over budgets, to assess the financial health of the State.

As described by Reilly, the budget is a spending plan; it makes assumptions about what revenues and expenditures are going to be. There is no planning for the future or information about what cash or assets the government has. Basically, the budget states nothing about the financial health of a government. Rather, the budget helps the governing body determine if their spending plan is being followed by the government itself.

In contrast, the CAFR is the audited financial statements of the government. Based upon an outside, independent CPA audit, these statements report on the financial health of the government using accounting standards for state and local governments that are influenced by non-government agencies: The Government Accounting Standards Board (GASB) and Financial Accounting Standards Board (FASB).

Reilly acknowledged that CAFRs have no forward-looking schedules. He explained that CAFRs report what the finances are; and governmental agencies do not use CAFRs exclusively to manage finances. CAFRs are, in essence, a

snapshot in time. Here, Reilly used seven different snapshots over time, which show a trend. Reilly also relied upon bond ratings because they determine economic health by using a multifaceted analysis.

In Reilly's report for the State, he first discussed government-wide financial statements in order to show net position changes each year, and to discuss changes due to restatements of Generally Accepted Accounting Principles (GAAP.)

Reilly then discussed revenues and provided an analysis of the budgets versus what actually occurred. He prepared an analysis of transfers, of the General Funds balance sheet, and net ratios (restricted fund balance to revenue ratio; unrestricted fund balance to expenditure ratios.) Finally, Reilly provided a report of other governmental funds and proprietary funds to show their health; and other information from DBEDT.

Reilly spelled out an important change in accounting principles which is reflected in the State's governmental activities net position. In 2015 and 2018, two GASB principles were adopted that caused an extensive increase in the recognition of the State's pension liability; the State began to accrue that expense year to year and so expenses grew. As a result, there is an increase in noncurrent liabilities and a decrease in its net position. Reilly explained, however, that the State has a plan to pay off that long-term debt over 30 years.<sup>4</sup>

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<sup>4</sup>As explained by Reilly, past policies of the State and Counties affected the liabilities of the pension fund. For a period of 37 years, through 2005, State and county governments projected investment returns at a certain percentage. If the investment returns exceeded that percentage, they reduced the pension contribution made by the Employers by an equal amount. That practice ceased in 2005. Vol. VII, Tr. 1093,1094.



From his detailed review and analysis, Reilly arrived at certain conclusions about the following items concerning the General Fund and other related funds. These conclusions are taken from his report, U-72, pp. 77, 78.

From 2013 through 2019, the State of Hawaii's Government Activities net position decreased. Net position fell from \$1.33 billion at July 1, 2012 to a negative \$7.282 billion at June 30, 2019, a decline of \$8.612 billion. U-72, p.7. Most of the noncurrent liabilities' growth is because of the recognition of a \$6.662 billion net pension liability due to the adoption of GASB 68 and \$3.669 billion increase in the State's OPEB liability/Net OPEB Liability.

The State's tax revenues, after declining in 2009 and 2010, showed strong growth in 2011, 2012, 2013, 2015, 2016, 2018 and 2019. Growth rates exceeded 5.5%. The decline in 2014 was due to the transfer of the State's GET revenues to the Hawaii Hurricane Relief Fund. The State's non-tax revenues experienced strong growth from 2008 through 2019, declining only once in 2012. The State's total revenues declined once, in 2009. For the first two months of this fiscal year, total tax revenue increased 6.16% over the last fiscal year's comparable period.

The COR and DBEDT both project healthy growth during the next several years. The COR forecasts 2020 tax revenues to increase 4.1%; in 2021 and 2022 tax revenues will increase by 3%; annual growth rates return to 4% from 2023 through 2026. For September 2019, the actual growth rate for General Fund tax revenues was 5.1%. That rate exceeded the March forecast of 3% and June forecast of 4.7%.

COR and DBEDT also project continued growth in the tourism industry.

The State's budgets, both the adopted and final budgets, have not accurately projected actual results. In the seven years presented, the adopted budget experienced five favorable variances and two unfavorable variances. The adopted budget planned two surpluses and five deficits. The final budget experienced seven large favorable variances. Under the GAAP basis of accounting, the General Fund performed better from 2013 through 2015 and 2019, but was worse beginning in 2016 and ending in 2018.

Under the GAAP method of accounting, the General Fund received transfers from other funds and made significant transfers to both funds.

The General Fund's unrestricted fund balance maintained healthy cash and investments, and unrestricted fund balance ratios to both revenues and expenditures all 6 years.

The State's other Government Funds and Enterprise Funds are healthy. The Hawaii Hurricane Relief Fund cash and investment improved from \$21 million to \$186.6 million.

The State's long-term debt and short-term debt have both maintained high ratings from Moody's Investments, Standard & Poors, and Fitch. Moody's and Standard & Poors upgraded the State's bond rating to its highest rating ever.

Reilly's ultimate conclusion concerning the State's General Fund and other related funds is that the State of Hawaii is in excellent financial health. The General Fund's cash and investments balance is strong. So is its unrestricted fund balance. In addition, Reilly opined that the other governmental funds have significant unrestricted fund balances that are available to the General Fund in an emergency.

Reilly's report includes a costing of the Union's BU 14 proposal as it applies to the State. Ralph Schultz, a State employee, prepared the costing as he has done for many years for all of the bargaining units. Schultz concluded that the total cost of the Union's wage proposal over the two years of the CBA was \$17.9 million. In Reilly's opinion, based upon his analysis of the State's financial health, it has the ability to pay the Union's proposal. U-72 (Tab 3.)

## **2. County of Kauai**

### *County's Presentation*

Reiko Matsuyama is the Finance Director for the County of Kauai. She testified about its financial condition. Kauai Exhibits 1-3; U-46, U-47. The following is a summary of the information Matsuyama provided.

Among the State's four counties, the island of Kauai is the fourth largest island and the smallest in size in terms of population and operating budget. Real property taxes account for about 83.4% of Kauai's general fund revenues. The next biggest source of revenue is the Transit Accommodations Tax (TAT) which is 9.1% of revenue. The TAT is State administered and funded annually. Since 2015, the State has capped how much it will provide to counties at \$103 million.

These two revenue streams, property taxes and the TAT, constitute 92.5% of general fund revenue. There are 47 ocean safety officers who are funded from the General Fund. Three others are partially funded by the General Fund and one is funded by the State.

General Fund revenues have increased since 2014. Currently, Kauai carries a strong fund balance of \$75 million. After the recession, in 2014, Kauai

changed its tax structure from zoning to a tax on use structure. It has increased tax revenues. Assessed values also are kept at a strong rate in order to maintain revenue during any future recessionary years.

After a downgrade in bond rating in 2014, Kauai now has a Fitch bond rating of AA, which reflects the County's strong revenue framework, moderate long-term liability burden and robust operating performance.

This favorable picture is offset somewhat by large and growing carrying costs for debt service and retiree benefits. The County fully funds actuarially required pension contributions, but has no ability to reduce accrued benefits. In addition, with respect to expenditures, Fitch noted that the County's ability to control personnel expenses is somewhat limited by negotiation of contracts at the state level and relatively strong labor protections.

In 2019, Moody's Investor Service also gave Kauai County a high Aa2 bond rating. The key factors for that rating included a robust financial position; extensive tax base with a strong wealth and income profile; a manageable debt burden; and an inflated pension liability.

The Government Finance Officers Association (GFOA) recommended a target reserve in the range of 27 to 40%. As a result, the County Council adopted a reserve policy to have reserves for emergencies. Currently, Kauai is at the low end of recommended reserves.

Matsuyama explained Kauai is slowly integrating resiliency for climate change and sea level rise into projects as it is becoming more important. In 2016, the Kaloko Dam broke due to heavy rains, and there was flooding in April 2018 on

the North Shore of Kauai. More severe storms are predicted and the County needs to be prepared.

In that context, Matsuyama provided a cost analysis of the Union's wage proposals for BU 14, both salary increases and hazard pay. Without benefits, that calculation was a 37.2% overall increase for the term of the 2019-2021 contract. Specifically, an increase from an average gross salary of \$55,887 to \$76,661. With benefits, the proposed increases would nearly double to \$1.3 million in FY 2021.

Matsuyama explained that although those amounts may not seem large, it would have a huge impact on Kauai's budget due to its comparatively small size as compared to other counties. In her opinion, the Union's proposed increases are unreasonable.

Matsuyama described upcoming expenditures for the County. It must move its Ma'Alo Landfill with a total estimated cost of \$104,000,000. Also, there are State ERS (pension) increases coupled with continued State ERS excess pension costs which have been unpredictable but substantial.

Matsuyama believes that growth in Kauai's economy in the near term will be moderate for both the visitor industry and overall economy. Matsuyama explained, however, that even though fund balances have improved, Kauai's infrastructure can't handle more tourists; for example, there are major traffic problems.

The County recently enacted a .5% surcharge on the State general excise tax to be used for roads and buses. The County is trying to diversify its economy

with a focus on agriculture, renewable energy sources and film, video and movie productions.

#### *Union's Presentation*

Reilly provided a detailed analysis of the County of Kauai's financial condition using the same methodology as he used for his report for the State. U-73. His conclusions for the County are set forth below. U-73, pp. 59, 60.

The County of Kauai's Government Activities net position is strong with large cash and investment balances that ranged from a low of \$127.9 million in 2014 to \$188.9 million in 2018. In 2019, cash investment declined due to the paydown of \$189 million of current liabilities.

Government activities net position decline were the result of restatements to the beginning net position in 2014, 2015, 2016 and 2018. These restatements were due to changes in accounting principles, principally GASB 68 in 2015 recognizing the Net Pension Liability and GASB 75 in 2018 reporting the Net OPEB Liability.

Growth in property tax revenues was interrupted in 2010 through 2013 due to the effects of the great recession and the decline in assessed values. Assessed values declined from \$19.3 billion at June 30, 2009 to \$15.3 billion in 2013. Since 2013, however, assessed values have increased to \$21.2 billion for the fiscal year ending June 30, 2020.

Besides assessed values increasing from 2015 through 2020, the County significantly increased its direct tax rate by more than 20% since 2012. The increase in assessed value and direct tax rates increased the County's most

important revenue sources, property taxes, from its low of \$80.9 million in 2012 to \$127.5 million in 2018.

The County of Kauai will receive significant new tax revenues from its 0.05% surcharge on the State's GET tax revenues. Though restricted to transportation, these new revenues allow unrestricted revenues that would have been spent on roads and transportation to be spent on general expenditures.

Except for interest, all components of the government fund revenues have showed strong growth since 2009.

The General Fund experienced large favorable total variances for both the adopted and final budget for each year presented (2013-2019). It has maintained a strong cash and investments balance; and a strong fund balance.

The General Fund also has maintained a very strong unrestricted fund balance to revenues ratio, and a very strong fund balance to expenditures ratio for the past five years.

The County's Other Governmental Funds are healthy, too. Reilly acknowledged, however, that the asset to liability ratio had decreased; that is, the amount of assets declined relative to liabilities for these funds from 2013 to 2019.

Kauai County has an Enterprise Fund Group consisting of the Public Housing Fund, the Sewer Fund and the Golf Fund. These enterprise funds are relatively small when compared to other governmental funds. Two of the Funds, Public Housing and Sewer, are healthy. The Golf Fund receives transfers from the General Fund, but due to its small size, should not have a material negative impact on the General Fund.

The Board of Water Supply is very strong. In addition, the tourism industry is still healthy despite the reported recent declines in November of 2019. Moody's assigned an Aa2 rating to the County of Kauai indicating a strong credit rating and low risk.

The County received significant grants from FEMA and the State to repair damage from Hurricane Lane. In June of 2019, Governor Ige extended the sunset on appropriations spending to June 30, 2020, to spend \$125 million of disaster aid on future flooding mitigation.

To summarize Reilly's conclusions: The County of Kauai has accumulated significant cash and investments, net position and fund balances to its General Fund. The County's property tax revenues and assessed values are strong and growing stronger. Though its tourism sector has experienced a small decline, its economy is healthy. The County of Kauai's financial position is strong.

Ralph Schultz's costing of the Union's wage proposal for the two years was \$1,855,408. In Reilly's opinion, County of Kauai has the ability to pay the Union's proposal.

### **3. County of Hawaii**

#### *County's Presentation*

Deanna Sako is the Director of Finance for the County of Hawaii. The County budget for the current fiscal year is \$585.4 million, which includes funding for police, fire, highways and streets, parks and community facilities, solid waste, sewer, mass transit, short-term vacation rental enforcement and housing and community development.



As a budget overview, the major changes from FY 2019 to FY 2020 were: \$11 million in salary and wages for those bargaining units that have settled; post - employment and health benefits increased by \$5 million; and retirement contributions increased by \$12.9 million. In addition, debt service increased by \$3.7 million (including landfill closure and sewer system costs.)

The County's highway maintenance increased by \$2.5 million and use of the fund balance was increased from the previous year by \$6.5 million; this was a revenue item to help the County balance its budget. In addition, General Fund overtime was moved to Finance and there are two new funds which have their own revenue sources: General Excise Tax and short-term vacation rental enforcement funds (STVRE). GET funds can only be used for certain transportation-related items. The Planning Department is in charge of the STVRE Fund.

Of the total budget, most revenues come from taxes, primarily real property taxes. There also is a fuel tax but its use is restricted. About 10% of the County's budget is from federal and state grants; it also gets a fixed TAT amount that is 3.3% of its revenues. The remainder is from licenses, permits, charges for services, and miscellaneous revenues.

The biggest portion of the County's expenditures is public safety: police, fire, prosecutors, and civil defense along with fringe benefits. This is followed by expenditures for debt service, parks and environmental management.

All BU 14 employees are paid from the General Fund (\$445 million) which is largely funded by taxes (76.3%.) Regular salaries and wages make up 35.8% of the General Fund expenditures and fringe benefits account for 27.3%. Overtime

expenditures are 2.7%. Other expenditures are debt service (10.1%), which has gone down a bit because of the GET fund; and Operations and Equipment which constitute 24.1% of the expenditure budget.

Sako described some of the increases the County has experienced in recent years: retirement (ERS) and other post-retirement benefits (OPEB - medical); debt service and medical premiums (EUTF). These alone have increased over the last five years by \$55 million. There are also collective bargaining salary and wage increases.

For FY 2021, the current forecast for real property tax collections is a 1.5% increase, but due to salaries, wages, overtime, post-retirement benefits and fringe benefits a General Fund shortfall of \$14.3 million is projected. Hawaii Ex. 1.

#### *Union's Presentation*

As he did for the State and County of Kauai, Reilly submitted a report for the County of Hawaii. He summarized his findings and conclusions in the same manner and detail as he did for the County of Kauai. U-74, p. 63.

In terms of the County's budget process, one of Reilly's findings was that the County's budgets, both adopted and final, are not predictive of actual results, with the final budget less accurate than the adopted budget. He noted that using the GAAP basis of accounting, the County performed better in 2013, 2014, 2016, 2017, 2018 and 2019. He concluded that the GAAP basis of surpluses and deficits are more indicative of the financial health of the County than the budget basis. U-74, pp. 31, 32.

From his review and analysis, Reilly concluded that County of Hawaii's finances are healthy. It has accumulated significant cash and investments. The General Fund's cash and investments balance and fund balances at June 30, 2019 were healthy. The County's tourism industry is experiencing a strong recovery from the Kilauea volcano eruption and lava event. The County's assessed values and property tax revenues are still strong. U-74, p. 64

In his testimony, Reilly highlighted that the County has healthy ratios in terms of unrestricted General Fund balances as a percentage of total revenues and unrestricted General Fund balances as a percentage of total expenditures. The ratios are much stronger than the historic 5% benchmark.

Reilly acknowledged that tax levies did go down as a result of the 2018 Kilauea eruption and lava flows, and he believes that some of the lost assessed value of properties is permanent. Moody's, however, issued a July 2018 report as well as a later report which indicated the effect would not be long term; that is, there was enough resilience for the County to overcome the impacts of the eruption and that there would be little impact on the County's financial health.

Schultz's costing of the Union's final wage proposal for Hawaii County was a total of \$1,582,873. Reilly concluded that the County had the ability to pay the Union's proposal.

#### **4. City and County of Honolulu**

The City and County of Honolulu did not submit testimony or exhibits about its financial condition. Reilly submitted a report on behalf of the Union. U-75.

In his testimony, Reilly highlighted his conclusion that City and County of Honolulu is healthy. He noted that the assessed values of the City and County have shown strong growth. Since 2014, their growth rate has been 5.98% or better. In 2020, the assessed values grew 6.89%.

In Reilly's report, his ultimate conclusions were that the City and County has accumulated significant cash and investments and net position in the governmental activities section of the government-wide financial statements. The City's financial position is strong, and continues to grow stronger due to: its healthy and diversified economy; accumulation of reserves; large increase in assessed property values; and continued growth in residential values. U-75, p. 71.

Schultz's total costing for the Union's wage proposal for the two years of the CBA is \$7,116,664. Reilly concluded the City and County have the ability to pay the Union's proposal. U-75, Tab 2.

## **5. County of Maui**

The County of Maui did not submit testimony or exhibits concerning its financial condition. On behalf of the Union, Reilly submitted a report. U-76.

In his report, Reilly noted that in August of 2018, Hurricane Lane also struck the County of Maui causing widespread flooding and downing of trees and power lines. In late September, President Trump approved a Major Disaster Declaration for Hawaii which made federal funding available to the State and local governments, among others. Reilly explained that the federal disaster relief Maui County will receive will mitigate County losses. In 2018/2019, Moody, Fitch and

S&P Global gave the County strong ratings due to its significant reserves and strong financial position. U-76, pp. 62, 63; also, Tabs 3 and 4.

Reilly found in his report that: The County of Maui has accumulated significant cash and investments, net position, and General Fund funds balances; property tax revenues and assessed values are strong and growing stronger; and its financial position is strong. Further, its economy is healthy according to the DEBDT fourth quarter QSSR and Hawaii Tourism Authority's November 2019 report. U-76, p. 63.

Schultz costed the Union's wage proposal at \$2,452,159 for the two-year CBA. Reilly concluded that the County has the ability to pay that amount. U-76, Tab 2.

**B. CPI, Compensation and Comparability**

The Employer Group submitted the expert testimony and report of Patrick Kilbourne regarding the statutory factors of cost of living (CPI), wage comparisons and overall compensation for BU 14. Kilbourne is the managing director of the Berkeley Research Group (BRG). BRG is an expert services consulting firm that has professionals (generally accountants, economists, finance people) who provide independent testimony, consulting and litigation services.

Kilbourne first testified in interest arbitration proceedings in the State of Hawaii in 2005. He has done so 10 to 20 times for many bargaining units, including two times previously for BU 14 after that unit was created.

For this proceeding, Kilbourne prepared a presentation that is a little more than 100 pages long, with attachments that include the underlying source

documents. State Exhibits 22, 22A, 22B, 22C, 22D. He prepared the presentation from information provided by the State of Hawaii, Department of Budget and Finance. The information included, among other things, a database (salary, salary level, jurisdiction, title, etc.) for all employees of BU 14.

For its expert on compensation and comparability, the Union submitted the report and testimony of Michael Messina. Messina is the Associate Director of AFSCME's Department of Research and Collective Bargaining Services. Messina has worked for AFSCME in that Department for 34 years, in various capacities, starting as a labor economist. This Department provides technical assistance with bargaining matters, including negotiating contracts, preparing exhibits and providing testimony in interest arbitrations.

Messina has participated in many interest arbitrations. He first became involved with the State of Hawaii interest arbitrations for the Union in 2000. He has been involved since in many of these proceedings across bargaining units. Messina prepared exhibits and testified at the first 2016 interest arbitration for BU 14, and again in 2018. Messina prepared Union Exhibit 53 which is a 28-page presentation of salary data and findings about BU 14.

Several other witnesses provided testimony bearing upon compensation and comparability. Their testimony also is summarized below.

**1. Consumer Price Index (CPI)**

Kilbourne first provided background about the CPI. As measured and reported by the United States Bureau of Labor Statistics (BLS), the CPI measures

the “average consumer prices for goods and services” in an area. It is a measure of change over time of consumer items.

Kilbourne noted that the CPI cannot be used to compare cost of living from one area to another. Kilbourne explained that this is important, because in the past the Union has made presentations that compared the cost of living in Hawaii with other locations. That is not appropriate because an individual area index measures price changes over a specific period for a particular area; and the BLS measures different items in different areas.

Kilbourne presented data that showed from 2012 to 2019, the increases in the Hawaii CPI-U had been relatively small based upon historic measures, ranging from 2.4% in 2012 to 1.9% in 2018. The actual inflation for 2019, through November, was 0.9%. State 22, p. 13.

Kilbourne also presented data for BU 14 wage increases as compared to the Hawaii CPI-U. Over the past five years, the compounded annual average wage increase for BU 14 was 4.86% and the average increase in the CPI was 1.76%. That is, BU 14 wages have increased substantially over the CPI. Kilbourne presented similar data showing BU 14 total wage increases over five years as compared to the Hawaii CPI. Over five years, wages increased by 27% and the CPI increased by 9%. State 22, pp. 14, 15.

In contrast, Messina provided a table that showed a 10-year comparison between BU 14 across-the-board increases and changes in the cost of living as measured by the CPI; namely, inflation. According to this table, BU 14 has received total compounded increases of 12.8%, while inflation for that same period

increased 23.3%. Messina concluded that BU 14's purchasing power based upon solely ATB increases shows they are behind by 10.5%. U-53, p. 2.

## **2. Overall Compensation and Comparability**

### *Employers' Presentation*

Kilbourne's report on BU 14 compensation is detailed and lengthy. It is tailored to the statutory criteria that the Panel is required to consider. Below is a brief summary which consists primarily of his ultimate findings and conclusions.

As a part of overall compensation, the Hawaii statute requires the Panel to consider continuity and stability of employment of employees. Kilbourne discussed this first in his compensation analysis. Kilbourne provided data on turnover, tenure, unemployment rates and demand for BU 14 jobs in recent years. He then made comparisons to employees of other employers.

Kilbourne found that BU 14 has a low voluntary turnover rate and unusually long tenure. On average, BU 14 employees' turnover rate over the past several years is 2.4%. The rate for other employees in Hawaii is 12.6%. For other U.S. state and local government employees it is 12.3%. On average, BU 14 employees have worked for the Employer Group for over 15 years; for other U.S. local governments it is 6.9 years; for U.S. state governments it is 5.9 years and for the U.S. private sector it is 3.8 years. State Ex. 22, pp. 19, 20.

Kilbourne explained that these statistics are remarkable because of Hawaii's low unemployment rate (currently 2.6%), which suggests there are other job opportunities. Also, the demand for BU 14 positions is high. Over the last



couple of years, the Employer has hired 95 people into BU 14 and in the process received 2,743 job applications.

Kilbourne reported that other arbitrators, as well as a well-regarded author/public sector representative (Will Aitchison), have indicated that low voluntary turnover and high demand are indicators of a satisfactory wage structure, a high degree of job and wage satisfaction, and are a reason not to look outside the state for comparable jurisdictions.

In his presentation, as a precursor to his wage comparison information, Kilbourne identified the sources he used for comparisons. Those sources are: the database of BU 14 employees provided by the Employer Group; Hawaii Employer Council (HEC) salary reports for the Hawaii labor market (public and private sector employers/unionized and non-unionized); collective bargaining and benefit related documents for Hawaii hospitals; collective bargaining and benefit related documents for west coast states; a database of civilian federal employees; federal government salary schedules, classifications and job descriptions; and information from the Bureau of Labor Statistics. State Ex. 22, p. 26.

As an overview of BU 14, Kilbourne provided the following information from the BU 14 database. In terms of full-time equivalent (FTE) there are: 351 WSO's, 300 Deputy Sheriffs, 84 CREOs, and 15 Harbor Enforcement officers for a total of 750 full-time positions.

The average salary of WSOs is \$55,622; with a minimum salary of \$42,840 and a maximum of \$101,544. For Deputy Sheriffs: the average salary is \$65,697; with a minimum of \$50,774 and a maximum of \$96,428. For CREOs, the average

salary is \$72,930; with a minimum of \$50,744 and maximum of \$89,396. For Harbor Enforcement Officers, the average is \$65,726; the minimum is \$50,744 and the maximum is \$89,396. State Ex. 22, p. 8.

Kilbourne also presented available across-the-board (ATB) wage increases for BU 14 and other bargaining units of the Employer Group for the period from 2018 to 2021. He further provided wage increase information for federal employees in Hawaii and for union and other employees in the Hawaii labor market.

To summarize that information: The weighted average<sup>5</sup> ATB wage increases for other bargaining units for FY 2020 and FY 2021 are 1.25% and 3.09%, respectively. The weighted average ATB for FY 2018 and FY 2019 were 2% and 3%, respectively. For federal employees in Hawaii, the January 1, 2019 wage increase was 1.55%; for January 1, 2018, it was 1.53%. The median FY 2020 wage increase for the Hawaii labor market for Union employees on a salary schedule is projected to be 2%. State Ex. 22, p. 33.

Finally, as mentioned before in the CPI section, the 5-year average annual wage growth for BU 14 employees is 4.86%, which is higher than the 5-year average growth for federal employees in Hawaii, private sector union wages and increase in the cost of living. State Ex. 22, p. 33.

Next, taking into account the language of the Hawaii statute, Kilbourne provided a comparison of benefits between BU 14 and other employees. He

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<sup>5</sup> Weighted means that if there was a small bargaining unit with very few employees, that unit does not carry as much weight as a large bargaining unit. A weighted average takes into account how many employees are in each bargaining unit.

selected three groups for that comparison: Hawaii private sector employees and hospital employees; federal government employees; and, of lesser relevance, employees on the mainland - state employees of Alaska, California, Oregon and Washington.

Kilbourne chose hospital employees because hospitals are one of the largest employers in the State of Hawaii and provide comparable statistics to the overall market. He used federal employees because he determined there are federal employees that are comparable to WSOs and Deputy Sheriffs. Kilbourne does not believe comparisons to mainland employees are relevant because there is available data in Hawaii, but included those comparisons to be complete and because he expected the Union to do so.

Kilbourne's benefit analysis is lengthy, and spans many pages of his presentation. He provided particular benefit comparisons for paid time off (holidays, vacation, sick time); health insurance; retiree healthcare benefits; and pension benefits. He summarized his findings by expressing benefits as a percentage of wages.

BU 14 employees have 84.4% of benefits in addition to their salary. That is, by way of example, if an employee earns \$100,000 in salary, the employer is paying an additional \$84,400 towards benefits for that employee. For federal employees in Hawaii that percentage is 53.2%. For private sector hospital employees in Hawaii it is 37.6% (private sector employees in general, 38.5%.) For the four west coast states, that percentage is 50.74%. State Ex. 22, pp. 40, 41.

Kilbourne's next comparison was wages, which he provided separately for WSOs and Deputy Sheriffs. At the onset of his presentation, Kilbourne explained why the local labor market in Hawaii provides the best comparisons. He cited a number of arbitrators and expert practitioners who have expressed the opinion that comparisons in Hawaii should be the primary source; carry greater inherent weight; or have a priority emphasis.

Kilbourne elaborated upon why geographic proximity is important. If there are two groups of employees that are in the same location, everything is similar for them, such as: same demographics, culture, weather, cost of living, labor market, housing options, school systems, government amenities, taxes, poverty rates, crime rates and transportation options. State Ex. 22, p. 65.

#### WSOs

For WSOs, Kilbourne provided a summary which described their position taken primarily from job classifications. He also set out the number of WSOs in each of the classifications in the series. WSOs constitute 47% of BU 14. Most WSOs are in the classification of WSO II – 239 FTEs out of 351 positions. Their pay ranges from \$46,296 to \$71,304 with an average of \$56,115.

With respect to training, WSOs receive less than EMTs and Fire Fighters of the Employer Group. He noted that even though they receive less training, their average salary is more than an EMTs; WSOs salary as a percentage of EMT is 103%. State Ex. 22, pp. 70, 71.

Kilbourne next provided wage comparisons between WSOs and federal ocean lifeguards in Hawaii. He explained that on Oahu, each of the armed services

have beaches where they employ lifeguards. They perform rescues on those beaches and have towers and patrol them. Kilbourne found federal lifeguards to be a remarkable comparison for WSOs because he concluded they work on some of the same beaches as well as provide the same services.

When federal lifeguard starting wages are compared to WSOs, however, WSO employees earn substantially more. Starting annual pay for federal lifeguards is: Army - \$32,864; Navy - \$31,200; Air Force - \$31,200; and Marines - \$37,560. For WSOs, starting annual pay is \$42,840. State Exhibit 22, p. 74.

Also, as set forth previously, WSOs' benefits are better which increases the disparity between the two groups. Some WSOs also receive hazard pay and other differential pay (jet ski) that sets them apart from federal ocean lifeguards, who receive no differential pay. State Ex. 22, pp. 74; 78, 79.

Although not advocating for their comparison to BU 14, Kilbourne also provided general lifeguard compensation data across the country and for the State of California, in particular. WSOs in BU 14 have a higher average salary than lifeguards in all 50 states. State Ex. 22, pp. 80, 81.

#### *Deputy Sheriffs*

Deputy sheriffs have 40% of the FTES in BU 14. They have 300 positions, most (259) fill the classification of Deputy Sheriff II. Kilbourne summarized their wide range of duties from DPS function statements, job classifications, salary schedules and other comparison documents. He concluded deputy sheriffs have responsibilities similar to correctional officers, security officers, bailiffs, parking & security officers and police officers. State Ex. 22, pp. 82-86.

Kilbourne expressed that none of these are perfect comparisons because some duties are different; but they do have some similar responsibilities. To provide better context for evaluating these comparisons, he provided summaries of duties and responsibilities for each of these groups as compared to the duties and responsibilities of deputy sheriffs. State Ex. 22, pp. 83 - 86.

To summarize Kilbourne's conclusion on wage comparisons, deputy sheriffs' minimum and maximum salaries are higher than all of the compared positions with exception of police officers. State Ex. 22, p. 87. As compared to police officers, deputy sheriffs' salary is 73% of that of police officers.

Kilbourne also performed comparisons between deputy sheriffs and federal police officers in Hawaii, who he concluded have similar duties, and private law enforcement officers (Securitas) at the airport. As compared to federal police officers, deputy sheriffs' salaries are 3% higher and total compensation (salaries and benefits) is 24% higher. State Ex. 22, p. 89.

With respect to Securitas law enforcement officers at the airport, deputy sheriffs who work at the airport receive a salary of 5% more than the starting salary of Securitas officers. State Ex. 22, p. 90.

Finally, Kilbourne made comparisons with mainland salaries for all states for bailiffs, correctional officers and police officers. BU 14 rankings in terms of average salary were: second, fifth and 17 (close to the middle), respectively. State Ex. 22, pp. 91, 92, 93.

### *Union's Presentation*

At the onset of his presentation Messina, stated his overall conclusion: There is a sizeable gap between BU 14 salaries and other first responder bargaining units.

Messina provided an overview to his approach in establishing comparability, and in particular for doing so in State of Hawaii interest arbitrations and for BU 14.

Messina explained that it is challenging to establish employer comparability in Hawaii. Typically, on the mainland, he can establish reasonable criteria that make sense for the particular jurisdiction. For example, for a county he can compare to contiguous counties with similar population; or with states, he can compare to ones nearby of comparable size in budgets and geography.

Messina reported that Hawaii, however, has always been difficult – there are no contiguous states and there are no other states really like Hawaii. As a result, historically, the Union has turned to west coast states: California, Oregon, Washington and Alaska. In the past, many arbitrators have rendered awards based on data from these employers.

Messina acknowledged that in the past, and to this date, if he can find workers doing comparable work in Hawaii, he will use that – but only if it is a good match. For example, in prior arbitrations with the Union and the State, he has been able to do so for corrections officers and nurses. BU 14 is different and it has been more difficult. Messina did not use federal employees as comparators here for the reasons stated by other witnesses. They are not a match to this Unit.

In his presentation, Messina provided a 10-year comparison of BU 14 across-the-board wage increases as compared to other first responder bargaining units of the Employer Group: BU 9 (Nurses)<sup>6</sup>, BU 10 (EMTs), BU 11 (Fire Fighters) and BU 12 (Police). Through 2019, BU 14 had received ATB compounded wage increases totaling 12.8%, which is less as compared to all but EMTs of BU 10. Through 2021, BU 9's total is 31.1%; BU 10's total increase is 12.0%; BU 11 is 28.3% and BU 12 is 28.1%. U-53, p. 3.

Messina noted that pursuant to a 2016 arbitration award, BU 14's wages were restructured and it resulted in a 12.5% increase for BU members. They also received a lump sum bonus of \$500 in 2017 and again in 2018. In addition to their ATB increases, fire fighters and police officers received lump sum bonuses of \$1,800 to \$2,000, depending on their salary schedule step on July 1, 2019; and will again on July 1, 2020. U-53, p. 3.

Overall, Messina reported that unlike some other jurisdictions, there is no consistent pattern with settlements and arbitration awards in Hawaii. In terms of step movements, all of the above units will receive them for the two years that are at issue here. The value of a step movement equals 4%, across all of these units, including BU 14. U-53, p. 4.

### WSOs

With respect to particular comparators, Messina compared the minimum and maximum salaries of WSO IIs with journey-level fire fighters (Fire Fighter I) in Hawaii (BU 11.) Messina did so because, although there are differences, there is

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<sup>6</sup> Messina considers nurses a critical component to the first responder team although some people refer to nurses as second responders.



integration of WSOs with fire fighters. They can and do work side-by-side; fire fighters also have jet skis. U-53, p. 5.

The current minimum salary of WSO II is \$46,296; Fire Fighter I minimum salary is \$60,788 – a 31% difference. The current maximum salary for a WSO II is \$71,304; for Fighter I it is \$83,148 – a difference of 16.6%. WSOs have a pay scale that has 12 steps and it takes 33 years to reach the maximum salary. Fire Fighters' pay scale has nine steps and they reach the maximum at 25 years. U-53, p. 5. As concluded by Messina, the gap between the two is significant.

Messina selected one wage comparator for WSOs outside of Hawaii. He explained that in the past, because of the unique work of this group, his West Coast comparators were all in California: Los Angeles County, Long Beach and the City of San Diego. He received information about Long Beach and the City of San Diego, however, that caused him to withdraw them as comparators. For example, in Long Beach it was seasonal work; and in San Diego the comparators arrest people.

Messina was left with Los Angeles County ocean lifeguards. He became better informed about LA ocean lifeguards by receiving information that went beyond that provided by the usual job description. He made the following determinations.

In terms of job characteristics - namely, skills, responsibilities, knowledge and working conditions - WSOs and LA County ocean lifeguards have the same responsibilities and they are doing the same work. The working conditions in Hawaii are more intense; with WSOs perhaps having even higher skills. As far as

knowledge, ocean lifeguards for LA County are required to be an EMT and have scuba certifications, so that does not perfectly line up with WSOs.

Messina concluded that overall LA County is a solid match with WSOs despite some differences.

Messina compared current minimum and maximum salaries for WSO IIs and journey-level Ocean Lifeguards of LA County. The minimum salary for WSO IIs is \$46,296; for LA County it is \$65,270 – a 41% difference. The maximum salary for WSO IIs is \$71,304; for LA County it is \$85,599 – a 20% difference. LA County ocean lifeguards also are entitled to longevity pay at 5-year intervals beginning at 10 years through 20 years. The annual salary for their lifeguards with 20 years of service is \$92,722. U-53, p. 13.<sup>7</sup>

The Union also submitted a one-page summary of 2018 wage information for LA County ocean lifeguards which shows their monthly salaries and hourly rates at that time. Their first-year ocean lifeguard (without EMT) receives \$25.66 per hour as compared to BU 14 WSOs who start at \$20.80 per hour. Their full-time ocean lifeguard is referred to as an Ocean Lifeguard Specialist (OLS). Their OLS with an EMT certification starts at \$34.24 per hour compared to full-time WSOSs who start at \$22.00 per hour. OLSs for LA County also receive various bonuses, for example, for being an EMT, Paramedic, or on the dive team. U-51.

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<sup>7</sup> Messina also presented data adjusted for the high cost of living in Hawaii. The Panel has not relied upon that data for its findings and conclusions. Like others who have addressed this data, this Panel did not accept that adjustment for an evaluation of compensation and comparability purposes.

### *Deputy Sheriffs/CREOs*

For Deputy Sheriffs and CREOs, because of similarities in their jobs to police officers (BU 12) and corrections officers (BU 10), Messina provided wage comparisons between journey-level positions.

The current minimum salary for a Deputy Sheriff II is \$48,144, as compared to a police officer (PO 7) which is \$66,905. The current maximum salary is: Deputy Sheriff II - \$74,208; PO 7 - \$96,343. This is a percentage difference of 39% and 29.8%, respectively. Messina noted the difference in pay scale steps between the two: Deputy Sheriffs have 13 steps, with 33 years to the maximum while police officers have nine steps, with 24 years to reach maximum salary. U-53, p. 6.

Messina also noted that police officers received a \$1,800 to \$2,000 lump sum bonus on July 1, 2019. Both Deputy Sheriffs and police officers are subject to on and off-duty Standards of Conduct (SOC). Police officers, however, receive a Standard of Conduct differential of \$3.80 per hour (\$7,904 annually) while Deputy Sheriffs currently receive a SOC differential of \$1.25 per hour (\$2,600 annually.) U-53, p. 6.

Messina performed these same comparisons between Deputy Sheriff IIs and Adult Corrections Officer IIIs. The current minimum salary for Deputy Sheriff IIs is \$48,144 while Adult Corrections Officer IIIs is \$54,912 – a 14.1% difference. In terms of maximum salary, Deputy Sheriffs are in a better position: Deputy Sheriff IIs receive \$74,208 as compared to ACO IIIs who receive \$59,472 – a 19.9% difference in favor of Deputy Sheriffs. U-53, p. 7.

Messina noted the above salaries do not include the SOC differential. He also noted that ACOs have a 3-step pay scale and most are currently at the top step; as compared to deputy sheriffs who have the 12-step, with 33 years to maximum pay scale. U-53, p. 7.

In order to better illustrate what it means that ACOs top out after three years on their pay scale, Messina provided a chart comparing the progression in salaries between the two positions, starting at 3 years with benchmarks at 6, 9, 12, 15 and 18 years. This chart shows that Deputy Sheriffs receive more than ACOs when they reach 18 years of service, but not until then. U-53, p. 8.

Messina did similar salary comparisons for CREO IIIs and Police Officers; and CREO IIIs and ACO IIIs. CREO III's current minimum salary as compared to that of a PO 7 is \$52,092 to \$66,905 – a difference of 28.4%. CREO IIIs current maximum is \$80,220 as compared to PO 7s which is \$96,343 – a difference of 20.1%. Messina included the same notes in these comparisons as above with respect to lump sum bonuses, pay steps and the SOC differential. U-53, p. 9.

As compared to ACO IIIs, CREO IIIs receive a minimum salary of \$52,092 and a maximum salary of \$80,220 as compared to \$54,912 and \$59,472. The percentage difference is in ACO IIIs favor for the minimum – 5.4%. In terms of maximum salary, CREOS III are favored by 25.9%. Again, however, there is a significant difference in pay steps so that CREOs do not surpass ACOs in salary until 12 years of service on the benchmark years used by Messina. U-53, p. 11.

Messina also matched Deputy Sheriffs IIIs to corresponding deputy sheriffs in King County, Washington; Los Angeles County, California; Multnomah County,

Oregon; San Diego County, California; and San Francisco, California. Once again, Messina looked at minimum and maximum salaries, and steps on the salary scale.

The ultimate conclusion for this analysis was that BU 14 deputy sheriffs fall below the average salary of these jurisdictions by 38% at the minimum and 29.3% at the maximum salary. BU 14 deputy sheriffs also have many more steps on the salary schedule to reach the maximum than the other jurisdictions. U-53, p. 15.

Messina performed a similar analysis for BU 14 CREO IIIs as compared to their counterparts in the States of Alaska, California, Oregon and Washington. BU 14 CREO IIIs are 16.1% below the average minimum salary and 12% below the average maximum salary. They also have more steps to the maximum than all of the other jurisdictions. U-53, p. 17.

Messina submitted for the Panel's consideration a comparison concerning healthcare benefits. Specifically, information about what BU 14 members have to pay for healthcare coverage compared to comparable workers on the mainland.

As comparators, Messina chose: Los Angeles County, California; King County, Washington; Multnomah County, Oregon; State of Oregon; State of Alaska; State of California; San Francisco City and County, California and San Diego, California. BU 14 ranked 9 out of these jurisdictions. Employers in Hawaii pay 60% of the cost of healthcare coverage, employees pay 40% of the monthly premium. U-53, p. 27.

#### *Other Evidence: Compensation and Comparability*

With respect to turnover and retention of WSOs, Phillips reported that WSOs have a difficult time recruiting because the base pay is so low. He further

explained that a lot of WSOs use the job as a stepping stone to go to other places; most often the Fire Department. Many WSOs also have two jobs; Phillips has three. Some have difficulty paying for medical plans and have qualified for State-funded coverage.

Silberstein echoed Phillips' testimony on WSO retention. He said it is difficult to retain quality WSOs because of low pay and staffing shortages; they are fatigued. During his tenure, many went to the Fire Department or to other careers; and most WSOs have at least one other job.<sup>8</sup>

In terms of comparators, Phillips explained that based upon collected information and conversations, WSOs believe they most closely resemble LA County Ocean Lifeguards. Phillips has corresponded and spoken with their former union president, Steve Powell.

Powell testified in these proceedings. He is a rescue boat captain for the LA County Fire Department in its Lifeguard Division. He has been a lifeguard there since 1987; and became a full-time ocean lifeguard specialist in 1996. He became a rescue boat captain in 2001. He is a paramedic as well; and is assigned on Catalina Island. He served as president of LA County Lifeguard Association from 2008 to 2012, and was on its board from 2004 to 2016.

In his testimony, Powell first described the Division in which he works. The Lifeguard Division covers almost 65 miles of coastline including the waters and

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<sup>8</sup> Acting HR Director for Kauai County, Janine Rapozo, provided rebuttal testimony on OSO vacancies for the County of Kauai. They have 50 full-time OSOs and four part-time OSOs. One left in 2019 to go the Fire Department to become a firefighter. Kauai County has had no problem filling that vacancy. There were 37 applicants of which 30 were qualified and 14 passed the performance test and were put on the eligibility list.

beaches of Catalina Island. It extends from San Pedro on the south end of the county to Malibu on the north end. The Division has 103 ocean lifeguard specialists (OLS), approximately 35 captain ocean lifeguards and 20 rescue boat captains. The Division serves roughly 60 million visitors a year on the beaches, and performs 10,000 rescues per year and several thousand medical aids.

The Division maintains a rescue recovery unit. All full-time employees are EMTs. The Division is dialed in with the 911 system with LA County Fire Department. OLSs on Catalina Island are functioning paramedics that service the entire inland and waterways around the Island. The Division also has 600 to 700 part-time, seasonal employees.

In terms of training, OLSs have an annual examination (timed 500-meter swim and 500-meter pool swim.) New hires who pass an ocean swim (1,000 meters) are sent to an academy which is four weekends plus an evaluation day; approximately 120 hours. If successful, they become ocean lifeguards. To become full-time from the seasonal group they must serve enough time and sit for an exam. Ocean Lifeguard Specialists are hired from a hiring list in a civil-service like manner.

Once hired, OLSs are put through a training regimen tailored to needs at the time. They learn incident command, how to write reports, etc. If they work in an area that has seasonal lifeguards (summer months), they will act as the lead lifeguard. They are "kind of the lead overseer of the area."

All evaluations, however, are done by the captains. Captains may receive input from the OLSs. Discipline is handed out by chief officers, after meeting with

the captain. Scheduling for seasonal lifeguards also is done by the captain; full-time lifeguards are scheduled on an annual basis.

The minimum requirements to sit for the OLS exam are an EMT certificate and a scuba certificate; and probably at some point a Swift Water Certificate.

From his many years of experience, Powell offered a comparison between OLSs for LA County and WSOs. He explained that he had interacted a lot with WSOs over the years. In his opinion, OLS jobs are similar to WSOs in that conditions are rough, there are big crowds and a lot of people flock to beaches. In comparison, he also recognized that WSOs in Hawaii deal with “pretty incredible” situations involving surf, and they put their lives on the line.

With respect to State law enforcement officers, the State submitted portions of the transcript testimony from the 2015/2016 interest arbitration for BU 14. State Exs. 27A, 28. The testimony was from two HPD officers, Sergeant Ronald Taira and Captain Allen Nagata, who spoke about their department, how its communications operate, and duties of police officers. The State also submitted the 2018 HPD Annual Report and a description of HPD. State Ex. 25, 26.

HPD is comprised of 29 divisions. As of April 2019, the department had 1,889 sworn officers and 474 civilian personnel. State Ex. 26. Its jurisdiction encompasses the entire island of Oahu and area of approximately 596 miles and about 137 miles in circumference. The population of Oahu is about 900,700 which excludes the tourist population. In 2017, there were 5,187,485 visitors to just the island of Oahu. State Ex. 26.



Taira described the duties of HPD's Bomb Squad, which has five civilian bomb technicians, who provide unique services to the City and County of Honolulu, and as requested by the FBI or other federal or state agencies. Taira reported that they interface with Deputy Sheriffs and CREOs when they conduct training, or upon their request for assistance if it's the type of situation they are not capable of handling. State Ex. 27A.

In 2014, HPD's 911 call volume was 998,465. State Ex. 28, p. 284. The total number of 911 calls increased from 1,022,818 to 1,034,193 in 2017 and 2018, respectively. This was a 1.1% increase in the number of 911 calls. State Ex. 28; State Ex. 25, p.14. These latter totals included not only HPD, but also Honolulu Fire Department, EMS, Ocean Safety and Lifeguard Services and miscellaneous 911 calls. HPD, however, received more than the other agencies, with 87% of the 911 calls. State Ex. 25, p. 14.

## **VI. PARTIES' POSITIONS: SALARIES**

### **A. Employers**

#### **1. State**

##### *Ability to Pay*

The Employer remains concerned about its ability to fund the Union's cost proposals due to an increase in recurring expenditures and growing liabilities, such as unfunded pension obligations, a slowing and uncertain U.S. and global economy, as well as unforeseen circumstances due to unanticipated emergencies.

The Employer's ability to pay is relative, not absolute. The two largest competing demands on State revenue that significantly impact the Employer's

ability to pay are unfunded liability for pension and retiree health benefits and collective bargaining wage increases that are prospectively awarded to Union members.

In addition, the recent world-wide coronavirus outbreak is expected to have a major impact on the Hawaii economy. Recent news and reports have forecast bad news for Hawaii's economy and it is only bound to get worse given that Hawaii's economic health depends on tourism.<sup>9</sup>

Further, the State's General Fund is responsible for significant deferred maintenance costs on decaying infrastructure.

The Union's wage increase proposal is irresponsible and would be a tremendous burden on the State. Reilly's opinion paints an overly optimistic picture of the State's financial condition. The reliance on CAFR to assess the State's financial health is not a useful tool for determining ability to pay; rather forward-looking tools like the State's 6-year financial plan (GFFP) and COR's projections are better tools and are constitutionally-mandated.

#### *Comparability/Compensation/CPI*

Based upon market wage and benefit information independently collected and data provided by the Employer and Hawaii Employer Council, and using appropriate methodologies recognized in the field, Kilbourne concluded that the wage and benefits of BU 14 employees exceeded both the local and mainland labor markets.

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<sup>9</sup>The Covid-19, coronavirus pandemic is addressed later in this decision in the Change in Circumstances section.

BU 14 turnover is low and they have long tenure. BU 14 wage increases have been substantially higher than CPI increases in the last 5 years. During the past five years, percentage wage growth for BU 14 employees was substantially higher than the wage growth of federal employees in Hawaii, union employees in Hawaii, and employees in the Hawaii labor market.

Deputy sheriffs' salaries are higher, or above average, as compared to security positions (excluding police officers) of the Employer group, federal police officers, private sector law enforcement officers at Hawaii airports, and security positions nationwide.

BU 14 employees receive benefits equal to 84% of their wages and their benefits are substantially better than workers in the Hawaii labor market (federal and private sector) and those in West Coast states.

In comparing BU 14 deputy sheriffs, any similarities that exist between BU 14 law enforcement officers and BU 12 police officers are slight, but their differences are substantial. Findings in prior BU 14 and BU 12 arbitration awards support this conclusion as does the testimonial evidence submitted from the 2016 interest arbitration between these parties.

BU 14 deputy sheriffs have limited patrol responsibility in the context of their overall responsibilities. HPD is a large police department and runs a sizeable operation. HPD is called upon more frequently than State law enforcement officers, and 911 calls for HPD have increased.

Although Deputy Sheriffs make less than HPD and other County police officers, evidence shows the jurisdictional authority of police officers are wider and

they perform more diverse, complex and dangerous tasks than the majority of the Deputy Sheriffs and CREOs. Further, State law enforcement officers are restricted to investigating misdemeanors, unlike HPD and other County police departments which investigate the full panoply of crimes, including misdemeanors and felonies.

The Union's compensation analysis is flawed. Messina's analysis focuses primarily on wages outside of Hawaii, primarily West Coast states and adjusted wages based upon difference in cost of living reported by C2ER. As noted by Kilbourne the cost of living in other locations is not relevant to wages in Hawaii and is inappropriate.

In conclusion, an award of wage increases to other similar bargaining units is more than fair because BU 14 wages compared with other similar employees performing the same services are substantially higher; and their overall compensation and conditions of employment are better than similarly situated employees.

## **2. City and County of Honolulu**

A wage comparison and evaluation of City and County WSOs overall benefit package shows that WSOs are justly compensated and support the Employer's proposal. The Bureau of Labor Statistics reports that compensation for BU 14 WSOs is higher than all 50 states. WSOs are fairly and substantially compensated when compared to other ocean lifeguards and other public safety positions in the State of Hawaii, the most relevant labor market for purposes of comparison.

WSOs exposed to unusually hazardous conditions receive temporary hazard pay at a rate of up to 25%. When compared to EMTs their salaries are 3%

higher. BU 14 positions experience low turnover, unusually long tenure and are in high demand.

The Union's selected comparisons are not comparable. The LA County OLS is a supervisory position, while WSO II is not. OLSs serve as leads, train and evaluate capability of subordinates. The WSO job description lists no supervisory duties or responsibilities.

OLSs also are scuba certified and certified EMTs which is a significant added skill set that WSO IIs do not possess.

Finally, the Union's wage increase proposal is far in excess of what other bargaining units, and particularly public safety bargaining units, are receiving and would not be justified or equal.

### **3. County of Maui**

For Maui County's 58 or so OSOs, the Union's proposed increase (including cost of fringe benefits), would cost \$763,260 in 2020 and \$1,688,889 in 2021.

Reilly pronounced Maui County "very healthy, and it too can afford the wage increase" proposed by the Union.

With 58 or so employees in the bargaining unit and its relative financial health, it is difficult for Maui County to say it lacks the ability to pay the increases sought by the Union.

Maui County, however, urges the panel to consider the concerns raised by the Employer group, who generally urged caution, citing concerns about an economy that is heavily reliant on tourism, the fragility of that industry, and the

increasing obligations the Employer Group has to the Employee Retirement System and Employer-Union Health Benefits Trust Fund.

As shown by the contrast between the comparisons suggested by Kilbourne and by Messina, the Employer Group and the Union have always differed on appropriate comparisons for WSOs.

In contrast to Kilbourne's more comprehensive approach primarily comparing WSOs to the local labor market, Messina compared WSOs only to one position in Hawaii, firefighters, and one jurisdiction in Los Angeles County that employs lifeguards.

With respect to the latter, despite declaring LA County to be a "solid match," Messina struggled to reconcile the difference in knowledge as an LA County OLS must be EMT and SCUBA certified, while WSOs do not. Without verification, he concludes these certifications are just basic, and not more in-depth.

Messina treats EMT and SCUBA certifications as if they were just pieces of paper, when in fact, they represent much more – being EMT and SCUBA certified means that OLSs can perform emergency medical services and don SCUBA gear to perform searches and rescues. As Powell testified, being EMT certified accounts for 13% of OLS's wages.

Messina also indicated that WSOs "essentially lead" similar to the OLS job description, although the WSO description does not say that they do. Further, on cross-examination, he acknowledged that in 2018 he used a different position in LA County (Ocean Lifeguard) to compare to WSO II; now, in this proceeding, he

does not because it is a seasonal position. That is, notwithstanding that Messina did not deem an LA County OLS comparable to WSO II in 2018, he does now.

Messina minimized the differences in qualifications between OLS and a WSO II, but the testimony of Powell was more enlightening. Powell described an ocean safety department that has significantly different duties, equipment and jurisdiction than Hawaii ocean safety departments, and which requires EMT and SCUBA certifications.

To summarize, Powell's department: operates 24 hours, their jurisdiction extends 5 miles from the coast to Catalina Island and the channel; operates a fleet of rescue boats; responds to marine emergencies and acts as the lead agency; conducts underwater rescue and recovery; and operates call cars that respond to marine emergencies and beach-related incidents at night.

These differences are not insignificant. They describe a department that has responsibilities that are far different than water safety departments in Hawaii, a broader range of duties, far more extensive jurisdiction, much different equipment and shift work. This is not meant to minimize the value of our water safety program or our OSOs. All this means is that LA County OLS is not a good comparison to WSO II. The Employer Group has offered better and more relevant comparisons.

#### **4. County of Kauai**

The County of Kauai urges the panel to issue an award consistent with the Employer Group's proposal of no wage increases or step movements. Based upon the testimony and information submitted by Matsuyama for Kauai County, the

Union's proposals for Articles 50 - Salaries and Article 31 - Differentials would dramatically increase expenses for Kauai.

The 15% ATB increase for FY 2020, when hazard pay is factored in, would constitute an 18.7% increase. The average BU 14 salary in Kauai would increase from \$55,887 to \$66,350. For FY 2021, another 15% ATB increase would result in an average BU 14 salary of \$76,661 – a more than \$20,000 increase from the current average salary.

For FY 2020, Kauai would incur \$637,000 in additional costs, consisting of \$394,000 in ATB costs, \$98,000 in hazard pay costs, and \$146,000 in benefits. For FY 2021, Kauai would incur almost \$1.3 million in additional costs, consisting of \$847,000 in ATB costs and \$98,000 in hazard pay costs, \$32,000 in step costs, and \$301,000 in benefits. These increases have “a huge impact on [Kauai's] budget overall due to [its] overall small size comparatively to other counties.”

Kauai has large looming expenditures as detailed by Matsuyama related to moving the landfill. In addition, it should be noted that Fitch ratings for Kauai mention that the County's ability to control personnel expenses is somewhat limited by negotiation of contracts at the state level as well as binding arbitration. Further, the rate of tourism growth on Kauai is expected to slow relative to recent years' rapid growth.

In spite of these constraints, the Union's proposal would increase the average BU 14 salary in Kauai by 37.2%, an amount Matsuyama has determined to be both exorbitant and unreasonable.



In summary, while Kauai's real property tax revenues have increased over the last several years, Kauai is at the mercy of the State for TAT revenues. Moreover, if accepted, the Union's proposals would impede Kauai's ability to implement a structurally balanced budget as required by its charter.

## **5. County of Hawaii**

The County of Hawaii like other Counties has seen growth of expenses and obligations but unlike other Counties, the County of Hawaii has responded to these increasing demands by increasing real property tax rates, increasing fees, and enacting the general excise tax surcharge. The result is that the County of Hawaii has the highest real property tax rates in the State.

Real property tax revenue amounts to 74.3% of the General Fund budget for FY 2020, as compared to 68.9% in FY 2008. In FY 2008, salaries, wages, and fringes amounted to 53.8% of the budget, now they are 65.8% of the budget for FY 2020. Over the last several years, all departments have trimmed nonessential cost items and deferred replacing equipment.

All costs continue to rise, including bargaining unit and Employee Retirement System increases, and the fiscal challenges are not over. The general excise tax surcharge can only be used for transportation related costs, which does not help to balance our General Fund budget. Nor can we raise additional revenues. For the County of Hawaii, there is nowhere else to trim without impacting services to the residents.

Union Exhibit 74, p. 41 summarizes information from the CAFR for the County of Hawaii. At June 30, 2019, there is only \$3,119,779 in unassigned fund

balance for the General Fund. These are the only funds to be used for salary increases or the payment of differentials for all bargaining units – not just BU 14. Contrary to certain findings of Reilly in his analysis, all other funds of the County of Hawaii are restricted, committed or assigned for various uses.

The County of Hawaii seeks a fair balance for our employees and the people of the County of Hawaii. We simply cannot afford excessive salary and wage increases or additional differentials.

**B. Union**

*Ability to Pay/ Economic Condition*

As established by arbitral precedent for these parties, the Employers have the burden of proof to establish an inability to pay.

The financial analysis presented by Reilly, which includes among other things the use of CAFRs, has been accepted and found credible by prior arbitration panels.

In this proceeding, Reilly reported and testified that the State of Hawaii and all of the Counties are in excellent, strong or sound financial health and all have the ability to pay the Union's proposal on salaries. Beyond argument, the State of Hawaii and its Counties have the ability to pay the increases proposed by the Union for its BU 14 members.

In addition, according to reliable sources such as the State of Hawaii, DBEDT and Hawaii Tourism Authority, the state of the State and Counties economy is strong.

### *Compensation/Comparability*

The salaries of BU 14 employees have lagged behind their counterparts for too long.

Like police officers, fire fighters, EMTs and nurses, WSOs and OSOs are first responders. The dangers and risks they face are sobering. Federal lifeguards are not good comparators as demonstrated by the testimony of Philips and Silberstein. Rather, evidence from Phillips, Powell and Messina showed that the best available comparisons for WSOs and OSOs are the ocean lifeguards of LA County.

Further, the disparity in wages and pay steps between WSOs/OSOs and journey level Fire Fighter I in Hawaii is too significant given that they work side-by-side on ocean rescues.

Hawaii WSO/OSOs deserve to close the wide gap in pay and to be recognized for their invaluable service to the public.

Law enforcement officers are equally distressed by the impact of their comparatively low wages. As demonstrated by Messina's comparisons, there is too great a disparity between the salaries of deputy sheriffs and BU 12 police officers. SOC differentials also are significantly more favorable for BU 12 police officers despite the fact that deputy sheriffs are subject to the same SOC standards.

Pay disparity in starting salary also exists to the detriment of deputy sheriffs as compared to the appropriate level ACOs; and ACOs have only three salary

steps. Deputy sheriffs make more money than ACOs but only after 18 years and then only 2.4% more.

Further, Messina compared deputy sheriffs to five appropriate mainland jurisdictions. The results showed that deputy sheriffs were 38% below the average minimum salary and 29.3% below the average maximum salary. These other jurisdictions also have fewer years to reach the maximum salary.

Comparisons between CREOs and BU 12 police officers, ACOs and appropriate mainland comparators yielded similar results that showed CREOs behind their comparators, except for ACOs at the twelfth year.

Messina further demonstrated that BU 14 first responders have received less in ATB increases than other first responders over the last ten years and far less in bonuses in recent years than police officers and fire fighters. This is all coupled with the high cost of living in Hawaii. Further, as demonstrated by Messina, the Employers here pay less of the monthly cost of health care than other compared mainland jurisdictions.

The testimony and exhibits on wages and benefits comparisons lead to one conclusion. BU 14 salaries must be brought into line with what they are – first responders - without further delay.

## **VII. DISCUSSION AND CONCLUSIONS: SALARIES**

The Employers do not claim inability to pay the Union's salary proposal, but they emphasize factors that cause concern about their ability to fund the Union's proposals. Overall, even taking into account reasons for caution, the evidence established that the Employers are in a sound financial condition. The Panel

credits Reilly's ultimate conclusion and finds that the Employers have the ability to pay the Union's salary proposal.

Still, that finding does not mean that the Union's proposal is appropriate and should be awarded based upon the current and projected financial condition of the Employers. Both the present and future general financial condition must be considered under the Hawaii statute.

To that end, the Panel agrees with Director Matsuyama's assessment that the Union's proposed increases are too much. A 15% ATB wage increase for each year is excessive, especially when balanced against the other financial obligations of the State and Counties. On the other hand, the Employer's proposal of 0% for both years of the CBA with no step movements is not supported by the evidence. Nor is the budgeted 2% for each year with step movements a fair adjustment given the record here.

The Panel has taken into account evidence concerning the cost of living and CPI; particularly evidence that BU 14 wage increases have exceeded the CPI-U but that the cost of living in Hawaii is very high. CPI, however, is not a crucial factor in deciding the issue of salaries in this proceeding.

The Panel also has taken into account evidence regarding recruitment and retention of BU 14 employees. There is tension between the numbers reported by Employer Group and the experience reported by BU 14 employees. The former shows low turnover and high retention; but the latter indicates that BU 14 employees, once trained, often leave their jobs to use their skills elsewhere. The

Panel has considered all of the evidence on this subject, but this factor, too, was not outcome determinative.

Rather, given the financial context that existed at the time this evidentiary record was created, the important evidence is: the specialized skills and duties of BU 14 employees and relevant wage comparators. As explained more below, when this evidence is considered, the Panel is convinced that BU 14 employees should receive a considerable wage increase.

Kilbourne provided the most comprehensive benefit information for BU 14. His analysis established that BU 14 employees have a better benefit package than other selected comparators. In fashioning an award, the Panel has taken that favorable benefit package into account. Their benefit package is one reason to look primarily to State and county government counterparts, who likely share the same or similar benefits, for wage comparisons.

Further, and in general, the Panel agrees with many arbitral authorities that to the extent possible, it is best to look to the local labor market given the geographic isolation and particular demographics of the Hawaiian Islands.

Kilbourne's comparability analysis was well-prepared and thorough, but the Panel is not convinced that the selected comparators for WSOs and State law enforcement officers were the more relevant and appropriate based upon the evidence here.

With respect to WSOs particularly, the Panel is not persuaded that federal lifeguards are proper comparators. As discussed in the evidence summary, there

are important differences between the jobs and training of WSOs and existing federal lifeguards on military beaches in Hawaii.

Similarly, the evidence was convincing that WSOs should not be compared to lifeguards in general who provide services at lakes and pools. WSOs duties, skills and training are substantially different from such lifeguards.

The Panel finds WSOs are most closely aligned with other first responders, and in particular fire fighters of the City and County Fire Departments. Despite differences in their jobs, training and skills, the evidence shows that WSOs have a direct relationship to fire fighters in their daily activities.

Some County WSOs are integrated into Fire Department operational structure, which makes sense given what they do. WSOs and fire fighters co-respond to emergencies and work side-by-side on many occasions. If WSOs are not on duty, and there is an incident normally within WSOs jurisdiction, fire fighters will likely be the first responders. Notably, the BU 11 contract provides for a 15% premium when they do so. This is on top of fire fighter regular wages. With respect to marine search and rescue, this means fire fighters are paid a lot more when performing the same or similar work as WSOs.

The question is, given their differences, where should WSOs' wages be in relation to fire fighters? WSOs are not the same as fire fighters. The Panel neither finds nor intends to imply that there should be wage parity between the two. Still, the work and operational relationship between WSOs and fire fighters is obvious and should not be ignored.

It is difficult to make a wage determination given there is no accepted formula or precise methodology for deciding exactly what constitutes a fair wage differential between WSOs and fire fighters. Based upon the evidence here, the Panel finds that the current wage difference is too much, and especially so at the low end of the salary schedule; notably a 31% difference in minimum salary. We also note that the record indicates currently there are few WSO IIs at the top steps of the salary schedule. It is undisputed that many WSOs hold two or more jobs in order to make ends meet.

Given the distinctive nature of WSOs' jobs, and the language of HRS §89-11(f)(6), the Panel also is persuaded that besides the relationship to local fire fighters, other employees with whom they most clearly share similar duties and services are the OLSs of LA County. Of the comparators offered here, they are the only other civilian comparators that are sufficiently close for comparison.

Yet, despite the similarities in duties and services, there are important distinctions between the two. Messina acknowledged LA County OLSs are not a perfect match. Among other things, OLSs are required to be EMTs and to be scuba certified.

Further, LA County has different geography, population and demographic characteristics than the Hawaiian Islands. The LA County department is different and those differences were well-articulated by the County of Maui. The Panel does



not minimize those differences. The Panel is not declaring here that there should be parity in wages between LA County OLSs and WSO IIs.<sup>10</sup>

Even recognizing the above differences, however, the base pay differential between the WSO IIs and OLSs is substantial. WSO IIs minimum salary is 41% less than OLSs. WSO IIs maximum salary is 20% less than OLSs.

The bottom line is: WSOs deserve a significant wage increase when compared to those locally with whom they are most closely aligned and when compared to others who perform similar duties and services most closely related to those of WSOs.

That same ultimate conclusion holds true for BU 14 law enforcement officers. They are highly-trained law enforcement professionals who perform a wide variety of functions where the State has jurisdiction – and that jurisdiction geographically is extensive which causes stress and burden on the relatively small number of departmental staff.

Based upon the evidence, the Panel is persuaded that law enforcement officers most direct counterpart locally is BU 12 police officers, despite acknowledged distinctions that exist between the two.

That being said, the Panel takes into account the distinctions made between these bargaining units in prior interest arbitrations. We recognize that the Legislature certified separate units for County police officers in BU 12 and for State law enforcement officers of BU 14.

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<sup>10</sup> The Panel, however, disagrees with county arguments that OLSs hold supervisory positions. The Panel relies upon the testimony of Powell. His clarification of the job failed to show that OLSs act as supervisors.

The Panel also has considered the differences in frequency of calls and the scope of jurisdiction between the two units as well as the differences in departmental size.

The evidence, however, also demonstrated a commonality of functions, training and duties between these two units. If deputy sheriffs/CREOs need help with an incident, County police officers respond as necessary. Police officers may co-respond to the incident unless and until deputy sheriffs indicate that they do not need help. There also is some inter-agency training between the two.

Deputy sheriffs also are aligned with others, such as ACOs, when assigned similar functions. Still they are trained and may provide a full range of law enforcement functions as assigned and needed.

Kilbourne concluded that deputy sheriffs receive 73% of police officers' salary. According to Messina's analysis, Deputy Sheriff II's are 39% behind comparator police officers at minimum salary and nearly 30% behind at maximum salary. That same comparison for CREOs and police officer shows CREOs are behind by 28.4 % at the minimum and 20.1% at the maximum salary.

Once again, there is no agreed upon methodology, or a precise guidance, for taking into account differences between BU 14 law enforcement officers and BU 12 police officers. The Panel is persuaded, however, that based upon similarities between the two, BU 14 deputy sheriffs lag too far behind BU 12 police officers. With respect to a comparison to ACOs, deputy sheriffs fare better, but they do not exceed ACO wages until after lengthy employment.

The Panel has placed lesser relevance on mainland comparisons, but has considered that in terms of salaries, BU 14 deputy sheriffs are behind deputy sheriffs in west coast counties by an average salary difference of 38% at the minimum and 29.3% at the maximum. CREOs are behind west coast conservation and resource officers by 16.1% and 12 %, respectively.

As explained below, the Panel also has taken into account the evidence of awards and settlements for ATB increases for other state and county BU employees, including those available for FY July 2019 to June 30, 2021.

### *Conclusion*

The Panel concludes that BU 14 employees should receive an ATB increase that exceeds the ATB increases of other first responders. The Panel has reached this conclusion because of their particular duties and skills, and because of the unique evolution of BU 14 employees and their bargaining unit. BU 14 also should receive their step movements, like other bargaining units.

The Panel has decided that the salary increase should take the form of ATB increases as opposed to a combination of ATB increase and lump sum bonuses. ATB increases are needed to enhance the BU 14 existing salary schedule instead of a temporary measure such as a one-time bonus. We recognize the recurring impact of ATB salary increases and have taken that factor into account in arriving at the amount of the increase.

The Panel determines that BU 14 employees shall receive a 4.5% ATB for FY 2019-2020; and another 4.5% ATB for FY 2020-2021 for a total of 9% ATB for the two-year agreement, together with continued step movements. These

increases are more than the State's 0% proposal for the biennium (and budgeted 4%) but far less than the 30% proposed by the Union. Based upon the record here, the Panel is convinced that the Employers have the ability to pay this award.

The Panel also is persuaded to award the Union's proposal that requires the Employer to "engage in discussions to restructure the salary schedule to recognize this unit as a public safety unit" and "to move towards compressing the salary schedule." The evidence supports the need to restructure the BU 14 salary schedule.

## **VIII. SOC DIFFERENTIAL**

### **A. Union's Proposal**

The Union proposes to amend Article 31 – Differentials for Law Enforcement concerning the Standard of Conduct Differential (SOCD.) The Employers oppose the Union's proposal; and seek to retain existing language. The Union's SOCD proposal is set forth below.

#### **ARTICLE 31 – DIFFERENTIALS (LAW ENFORCEMENT)**

Effective [July 1, 2016] **July 1, 2019**

~~I. [State Law Enforcement Differentials]~~

#### **A. Standard of Conduct Differential (SOCD)**

1. Law enforcement officers who are subject to departmental Standards of Conduct whether on or off duty, 24 hours per day shall be paid monthly (SOCD) due to these unique working conditions. ~~[All policies and/or practices of the Employer pertaining to Standards of Conduct existing on July 1, 2016 shall be continued. The Employer shall consult with the Union if the Employer desires to amend the current SOC policies and/or practices. During the consultation, the existing policies and/or procedures shall continue.]~~ **The amount of the SOCD shall be based on the salary range at which Employees receive their compensation.**

- a. Effective July 1, 2019, the SOC differential amount shall be as follows:
  - 1) For Employees who are paid at the SR-18 level and below - \$3.60 per hour.
  - 2) For Employees who are paid at the SR-20 level and above - \$3.80 per hour.
- b. Effective July 1, 2020, the SOC differential amount shall be as follows:
  - 1) For Employees who are paid at the SR-18 level and below - \$3.80 per hour.
  - 2) For Employees who are paid at the SR-20 level and above - \$4.00 per hour.
2. ~~[The amount of the SOCD shall be one dollar and twenty-five cents (\$1.25) per hour effective July 1, 2016.]~~

3. To facilitate the processing and payment of the SOCD the hourly rates are converted to monthly rates, to be paid semi-monthly with Employee salaries, according to the following conversion formula: ~~[SOCD hourly rate multiplied by 2080 hours (52 weeks x 40 hours) and divided by 12 months equals the monthly rate: (e.g. \$1.25 X 2080 hours/12 months = \$216.66/monthly)].~~

- a. The conversion formula is as follows: SOCD hourly rate multiplied by 2080 hours (52 weeks x 40 hours) and divided by 12 months equals the monthly rate.
- b. The following rates shall apply effective July 1, 2019:
  - 1) For Employees at the SR-18 level and below (\$3.60/hour x 2080 hours divided by 12 months) = \$624.00 per month.
  - 2) For Employees at the SR 20 level and above (\$3.80/hour x 2080 hours divided by 12 months) = \$658.66 month
- c. The following rates shall apply effective July 1, 2020:
  - 1) For Employees at the SR-18 level and below (\$3.80/hour x 2080 hours divided by 12 months) = \$658.66 per month.
  - 2) For Employees at the SR-20 level and above (\$4.00/hour x 2080 hours divided by 12 months) = \$693.34 per month.

~~[4]~~3. The hourly SOCD shall be paid for each hour an Employee is in paid status (excluding overtime hours), to a maximum of 2080 hours per year. The SOCD shall be in addition to the Employee's regular salary. SOCD shall be treated in the same manner as salary in computing adjustments involving less than a full

month's pay, but shall not be used for purposes of computing all types of premium pay and differentials, nor shall it be affected by such premiums and differentials. The SOCD differential shall cease during periods of suspension of five (5) days or more.

4. For law enforcement officers who are not subject to departmental standards of conduct the Union and respective Employer shall jointly develop and implement departmental standards of conduct for these Employees.

~~5. [The SOCD shall be in addition to the Employee's basic compensation and paid in the same manner as the Employee's regular salary. SOCD pay shall be treated in the same manner as salary in computing adjustments involving less than a full month's pay, but shall not be used for purposes of computing all types of premium pay and differentials nor shall it be affected by such premiums and differentials. The differential shall not be payable during periods of suspension of five (5) or more days or for periods when the Employee is on any leave of absence without pay. The SOCD shall not be payable should a department's SOC be modified to exclude off-duty conduct.~~

~~[7]~~6. Employees not subject to a departmental SOC that is inclusive of both on and off duty conduct, 24 hours per day, will not be eligible for SOCD pay.

B. through C. No change to existing language. U-12.

#### **B. Summary of Evidence**

Dobrowolsky explained the reasons for the Union's SOCD proposal. He reported that deputy sheriffs are held to the same SOC as their County police colleagues, yet City and County police officers receive a higher SOC differential. According to Dobrowolsky, even with the proposed increase deputy sheriffs would still fall behind.

Messina reported that there is a significant gap in the SOC differential: BU 14 officers receive about \$2,600 annually while BU 12 police officers receive \$8,000 annually.

As further described by Dobrowolsky, deputy sheriffs face the same level of investigation and intrusiveness into any situation on or off duty as City and County police officers. There are not many jobs where the employer can tell you what you can and cannot do off duty; and restrict your actions. So, Dobrowolsky explained, the compensation should be fair.

Director of Public Safety Espinda expressed concern about the Union's proposed deletion of the consultation provisions of the existing SOC provision. Espinda reported that during his 6-year tenure the State has not proposed changes to the SOC for consultation or attempted changes unilaterally.

Espinda believes that it is important that the consultation language remain; which still allows the Union to grieve all the way through arbitration if it has a problem with any change. To indicate that mutual agreement is required for change would restrict management's ability to implement necessary or legally required changes to the SOC's. Chief Redulla agreed with this assessment.

Espinda is not a part of cost negotiations and so expressed no opinion of cost items of the proposal. He expressed, however, that the SOC's are not dependent on how long you serve; they are the same for all deputy sheriffs.

The SOC differential was awarded in BU 14's first interest arbitration in 2016. U-4. The current language and amount of the SOC differential of \$1.25 per hour was awarded then. The 2016 arbitration panel was persuaded that deputy sheriffs should be compensated because of their 24-hour on and off duty SOC status. U-4.

## **C. Parties' Positions**

### **1. Union**

As articulated by Dobrowolsky in his testimony, there is no justifiable reason why BU 14 law enforcement officers should be paid a SOC differential which is a third of what BU 12 police officers are paid. They are doing the same work and they are subject to the same SOC's. It makes no sense and it is not fair.

This is a glaring example of pay inequity between comparable groups which should be rectified by the Arbitration Panel so that law enforcement officers of BU 14 can begin to achieve full recognition for their value and status as first responders in the public service.

### **2. Employers**

The Union's proposal is similar to those at issue before the 2016 (Yamasaki) and 2018 (Higa) BU 14 arbitration panels. The 2016 panel explained its intent and rationale for its award, and set three conditions for it to apply: 1) the continuation of the performance of law enforcement duty expectations; 2) 24-hours per day; and 3) whether on or off duty. Should any of the aforementioned three conditions be discontinued, so too should this additional compensation.

Among other things, the Union's proposal goes beyond the parameters set in the 2016 award. It requires the Employer to develop and implement SOC differentials even if the Employer determined there is no justification to subject certain employees to SOC. Only deputy sheriffs and CREOs are currently subject to SOC. The Department of Transportation Harbor Enforcement Officers do not have a departmental SOC and are not entitled to the differential.



To summarize the reasons to reject this proposal: (1) As described above, it will interfere with management rights; (2) the Union failed in its burden to offer evidence to support its proposal; (3) substantial evidence shows the Union's proposals would have a severe impact on operations; (4) the cost of the proposal combined with the wage demand is excessive; and (5) it will create a whipsaw effect with other bargaining units in that other bargaining units will expect the same or more in subsequent negotiations.

#### **D. Discussion and Conclusions: SOC Differential**

The most straightforward reason for denial of the Union's proposal is cost. The Panel finds that the ATB salary increase discussed earlier is the more appropriate form of wage increase that applies to all employees of BU 14. The ATB increase is significant. The Union's SOC proposal, which also constitutes a substantial increase for many law enforcement officers, is too much for the term of this CBA.

As a result, the Panel denies the Union's SOCD proposal.

### **IX. HAZARD PAY**

#### **A. Union's Proposal**

The Union proposes to amend Article 31 Differentials for Ocean Safety with respect to hazard pay, effective July 1, 2019. The Employers oppose the Union's proposal and seek a continuation of existing language. The Union's proposal is:

#### **B. Hazardous Pay**

**1. In consultation with the Union, the Employer shall grant pay differentials for employees temporarily exposed to unusually hazardous working conditions; provided that the hazard has not already been recognized as a factor in assigning classes to salary ranges.**

2. The following assignments and the amount of hazard pay:

- a. Five dollars (\$5.00) for exposure while on duty to any weather condition (including, but not limited to high surf, tsunami, storm, severe thunderstorm, flash flood, hurricane, high wind, gale, tornado) at an "advisory" level or above as determined by the National Weather Service (NWS).

3. Basic Unit of Payment – The basic unit for computing such payments shall be the hour, provided that:

- a. A fraction of an hour shall be considered an hour;
- b. A full day's pay at hazard rates shall be allowed for four (4) or more hours of hazard work per day; and
- c. This pay is in addition to any other rate that may apply to the job.

\* \* \*

~~{B}-D. The Employer, in consultation with the Union, may terminate the differentials provided by this section [upon reclassification of an affected Employee's position to a higher classification because of the unusual or unique working conditions which qualified the Employee for the differential or] because such conditions cease to exist. U-12.~~

At hearing, the Union withdrew proposals to increase the Rescue Craft Operator differential, Article 31.A.2.a.2 and 3, and a proposal for new language in Article 31.C.4 regarding NREMT Basic Certification. U-12, pp. 2, 4.

**B. Summary of Evidence**

Phillips explained the Union's reasons for this new hazard pay language. Currently, under the existing CBA, there is a provision for hazard pay but only certain areas are receiving that pay. That is, the west and north shores of Honolulu County during certain months of the year; and Sandy Beach and Makapuu Beach on the southeastern side of Oahu year around. Honolulu County is the only county that is receiving hazard pay.

As now administered on Oahu, the Director of Honolulu's Emergency Services Department determines when hazard pay is to be paid. This new

provision places the determination of when to pay hazard pay into the hands of the National Weather Service (NWS). Phillips explained that the National Weather Service issues advisory warnings for hazardous conditions such as those identified in the proposal. The NWS consistently logs those warnings.

Phillips further explained that the Union wants to take the hazard pay determination out of the hands of the Director so that it is based upon objective conditions rather than subject to the Director's interpretation. The Union believes there needs to be some standard.

The Union's intent in making this proposal is to extend hazard pay so that it is received statewide and is fair for all WSOs and OSOs; and so that it covers all shorelines and coastlines.

Phillips acknowledged that there have not been formal consultation requests about the subject of hazard pay between the Union and Employers, and that such consultations might be beneficial. There is a process for doing so under the CBA.

Battalion Chief Giese (Maui) explained why, from an administrator's perspective, the Union's proposal presents difficulties. He explained NWS advisories, as a threshold definitional matter, cover significant inconveniences and cautions for conditions that could threaten safety – those conditions may not happen. NWS advisories also cover "chunks" of an area; not a beach or highly defined area. Giese expressed his reservations that as drafted, the Union's hazard pay proposal would result in payment of the differential for things that do not pose an appreciable hazard.

In addition, Giese explained that in assigning WSO to a salary range, the conditions that WSOs work under are considered to some extent and it is difficult to evaluate what conditions justify additional hazard pay. Giese reported that, for comparison purposes, fire fighters do not get hazard pay for many aspects of their work because the hazards they face are inherent to their job – the essence of it. Rather, they typically receive hazard pay only when engaged in certain specialized, categorized activities.

For example, under the fire fighters' CBA, they receive a 15% hazard premium for duties and activities in an aquatic environment, including swimming, using SCUBA and other equipment, including surfboards, and boats. The premium is paid when they actually go out into an aquatic environment.

Further, Giese expressed that the Union's proposal would be administratively "crippling." Advisories, in all their forms, would have to be tracked when issued; where and if they apply to open areas determined; and then it must be determined who is working in those areas. On top of that, management must communicate with everyone on duty about who gets the differential and who does not; and make sure it is accurately reflected on time sheets.

As a general rule, Giese opined that differentials are hard to administer and are dysfunctional. From his experience, they have been divisive because employees fight over who gets it, who deserves it and who does not. Any time you implement a differential, there are those employees who believe they deserve more; a culture of entitlement is promoted rather than a culture of commitment to emergency service.

Gieseae expressed that WSOs do exceptionally important work under sometimes highly dangerous, challenging circumstances. He believes they should be paid what they deserve, and he would support a pay increase for them. Gieseae urged as a supervisor, however, that it not be in the form of this proposed differential.

Director Howe expressed concerns similar to those of Gieseae in terms of the administration of the Union's hazard pay proposal. On Oahu, there would be a greater impact because their department has more WSOs.

Howe explained that NWS advisories are just that, and may be issued two to three days in advance of an event. Also, the NWS advisory was designed for emergency management purposes and not for ocean recreation purposes. Typically, NWS issues an advisory for the biggest waves in the biggest spot in an entire region as the threshold for issuing their advisory. On the topography of the Hawaiian Islands, beaches and conditions vary greatly, even between short distances.

Currently hazard pay for WSOs is tied to actual exposure; situations where an employee could be injured or incapacitated. In Howe's opinion, the Union's proposal which attaches hazard pay to NWS advisories does not necessarily tie into when employees are exposed to a condition.

### **C. Parties' Positions**

#### **1. Union**

The intent of this proposal is to allow all ocean and water safety officers across the State of Hawaii to qualify for hazard pay. There is need for an objective

standard to govern hazardous pay, and not the consultation process. The issue is broader than consultations, grievances and denials.

The hazard pay differential is an important component of the agreement between the parties insofar as it now affects Honolulu ocean safety officers. The pay isn't enough. BU 14 members and the Union strongly believe that all ocean and water safety officers, regardless of county, deserve the same hazardous duty pay as currently exists in Honolulu.

The Arbitration Panel has authority to remedy serious inequities in a variety of ways. BC Gieseke has suggested more salary to the officers. What is clear is the inequity; it must be fixed and fixed now.

## **2. Employers**

### ***City***

The City strenuously objects to the necessity and reasonableness of this flawed proposal. Howe and Gieseke explained in detail the problems of receiving hazard pay based upon National Weather Service advisories. Gieseke articulated the "administratively crippling" nature of this proposal (quoting John Tichtner.)

Article 30 of the current CBA already provides for hazard pay. In fact, WSOs working on Oahu's Maka'u'u Beach and Sandy Beach receive hazard pay year around and those working on the North Shore and Leeward Shore receive hazard pay from October 1 to March 31.

### ***County of Maui***

Both Phillips and Young described searches and rescues they have performed and the dangerous conditions in which they executed the searches.

The conditions they described were harrowing, and their actions were nothing short of heroic.

Rebuttal testimony of Chief Giese, however, explained difficulties with the Union's proposed changes. He detailed problems with NWS advisories by example; such advisories are a low bar to invoke a hazard differential. Giese also explained that as a supervisor he prefers that OSOs be paid what they are worth, and to get rid of "dysfunctional" differentials.

#### **D. Discussion and Conclusions: Hazard Pay**

The Panel is persuaded by testimony of Giese and Howe that the Union's proposal, as drafted and tied to the advisories of the NWS, is problematic. Further, the Panel finds Giese's testimony and experience concerning the divisiveness of differentials, in general, to ring true.

For differentials, there are sound reasons that contract provisions should draw clear lines and be easy to administer. They should be based upon performance of extraordinary activities that are not necessarily inherent to a job; and/or which require specialized training and equipment to perform a particular unique function.

The Panel is convinced that in this case the better avenue for achieving a wage increase that is more equitable for all WSOs is a significant ATB wage increase. As a result, the Panel denies the Union's Hazard Pay proposal.

## **X. UNIFORMS AND EQUIPMENT**

### **A. Union's Proposal**

The Union proposes to amend Article 32 – Uniforms and Equipment (Law Enforcement). The Employers propose existing language and rejection of the Union's proposal.

The Union's proposal adds the following new language to Article 32, Section I:

**B. Law Enforcement Uniforms – Uniforms and uniform accessories for law enforcement personnel which are required by the Employer shall be furnished by the Employer at no cost to the Employee and shall remain the property of the Employer while in the custody of the Employee. Uniform and uniform accessories include, but are not limited to, the following:**

- 1. "Class A" Uniform (3)**
- 2. "Class B" Uniform (2)**
  - 1. Ammunition**
  - 2. Ammunition Carrying Case**
  - 3. Badge**
  - 4. Baton (expandable type with holder)**
  - 5. Campaign Hats w/ Badge (2 hats – 1 Straw, 1 Felt)**
  - 6. Campaign Hat Cover (rain)**
  - 7. Cap (baseball cap)**
  - 8. Duty Jacket**
  - 9. Flashlight – Heavy Duty type with batteries**
  - 10. Handcuffs**
  - 11. Handcuff case**
  - 12. Holster, duty weapon**
  - 13. Name tag**
  - 14. Patches**
  - 15. Pepper Spray (with holder)**
  - 16. Rain Jacket**
  - 17. Rifle or 12 gauge shotgun (where necessary)**
  - 18. Sam Browne Belt (with belt buckle and belt keepers)**
  - 19. Soft Body Armor (vest type, bullet proof) which shall be replaced by the employer according to manufacturer's specification or whenever necessary because the body armor has degraded or no long provides adequate protection to the law enforcement officer.**



- 20. Traffic Gear – breakaway traffic vest (OSHA certified), white gloves, hard hat
- 21. Uniform belt
- 22. Uniform Insignias
- 23. Whistle

**C. The following items of apparel are not considered as part of a uniform:**

- 1. Work clothing such as coveralls.
- 2. Shoes, boots, socks, and ties. (Whenever the Employer requires the Employees to wear safety shoes or safety boots, the Employer shall provide such items.)
- 3. Shirts normally worn under a uniform coat or blouse. (Shirts of a distinctive uniform appearance normally worn as an outside garment in place of a uniform coat or blouse are considered as part of the uniform.)

The Union also proposed to delete the current section D, and to amend Article 32, Section I to increase the maintenance allowance of uniforms from \$20.00 per month to \$25.00 per month, with increased amounts also for other types of uniforms that consist of lesser items (from \$10.00 to \$15.00; from \$6.00 to \$10.00.)

The Union further proposed the amendment and addition of the following new language to Article 32, Section II B:

B. All policies and/or practices of the Employer existing on the effective date of the Agreement which provide for the replacement of uniforms due to normal wear and tear, or which provide for a replacement allowance for uniforms due to normal wear and tear shall be continued for the duration of the Agreement, except that ~~[the replacement allowance shall be 75% of the actual replacement cost of the items of uniforms purchased by the Employee.]~~ :

- 1. The Employer shall provide, at no cost to the Employee, one (1) replacement uniform annually, and
- 2. The replacement allowance of any additional uniform annually shall be 75% of the actual replacement cost of the items of uniforms purchased by the Employee. U-12, Article 32.

At hearing, the Union withdrew a proposal to increase the weapons maintenance allowance. U-12, p. 6.

**B. Summary of Evidence**

Wulfert, who is the Sergeant for Training and Staff Development (TSD), testified about the reasons for this proposal. With respect to the new equipment provision, Wulfert explained that during certain times of the year or certain administrations, equipment has not been properly issued to deputy sheriffs. With this article, the parties will have agreed to the specifically listed items and they will have to be issued.

At hearing, Wulfert went through the items on this list as set forth in the proposal. He reported that at the end of recruit class deputies do not always receive these items. The Union wants to ensure that the items are issued and received by deputies in a timely manner. He identified problems with the receipt of, for example, badges, campaign hats and covers, duty jackets, flashlights, rain jackets, soft body armor, traffic gear, and uniform insignias.

Wulfert reported a particular concern with body armor. DPS changed its policy in August 2019 to allow for discretion, as it deems necessary, for the type of body armor. Previously, from 1995 to 2019, deputies wore Level III; now it is Level IIA, which, in Wulfert's opinion, is insufficient for our modern age.

The Union's proposal also seeks an increase in the uniform cleaning allowance from \$20.00 per month to \$25.00 per month. The proposal adds a provision that requires the Employer to provide one (1) replacement uniform

annually at no cost to the employee. It further includes a replacement allowance (\$75.00) for any additional items of the uniforms.

Wulfert explained that their uniforms take a beating; and with frequent washing they fade and fall apart. Wulfert emphasized the importance of deputies looking professional and these new provisions will help in that effort.

State Sheriff Albert Cummings provided testimony in response to the Union's equipment proposal. He explained that when a new class of deputies completes training, they are equipped through TSD. Once TSD supplies all of the equipment, they usually send a voucher of general billables to the administration office and it is paid. If there is a shortage of items, there is a process in place to make a request for such items.

Cummings identified several requisition and purchase orders and records for procurement for items including flashlights, tourniquets, traffic whistles, traffic gloves, and lanyards for whistles. Cummings acknowledged that he did not personally distribute these items, but each section commander had the responsibility to do so and he was told that they had been distributed. State Exs. 33-37.

Cummings further noted that if anyone is unhappy that certain equipment items have not been provided to recruits, they can file a grievance.

Espinda also responded to the Union's proposal. He expressed that the Union's proposal goes too far into detail and makes a "one-size-fits-all" approach not only for their organization but for law enforcement in general. Espinda believes that DPS properly outfits employees and always has been responsive to any

requests for additions or upgrades for all deputy sheriffs, including those performing specialized functions.

### **C. Parties' Positions**

#### **1. Union**

As explained by Wulfert, the reason for this proposal is that during certain administrations and at certain times, equipment is not properly issued to law enforcement officers. If this article is in the parties' CBA, management must provide the listed items; and it should be done at the end of recruit class.

Wulfert also explained, among other things, the problems with DPS's updated policy that allows it discretion with respect to body armor. That is, the armor selected, Level IIA, is insufficient and unsafe. Director Espinda's testimony on cross-examination demonstrated a lack of knowledge about body armor that is alarming.

The Union's proposal bears directly on the professionalism of law enforcement officers; and even more significantly, on their survival as they face dangers and risks daily to their personal safety and lives.

It is imperative that the Employer provide law enforcement employees with whatever is needed for them to do their jobs and protect their lives and that is why the Union has resorted to specifying these needs in Article 32.

#### **2. State**

Based upon the testimony from Cummings, Espinda, Redulla and the Union witness Dobrowolsky, it is clearly evident the Employer has a track record of properly equipping their employees, at no cost to them. The evidence is undisputed

that the State goes beyond the Union's proposal for not only the rank and file LEOs, but specialized units like PSD's Special Operations Unit and DOCARE.

The Union's proposal seeks a uniform replacement allowance that is not justified given current language that provides for replacement if a uniform is destroyed or damaged in the performance of duty. The Employer already heavily subsidizes the costs of replacement uniforms at the rate of 75%. Further, the cost of this proposal together with the Union's wage demands will compound the State's costs.

The Panel should reject the Union's proposal and maintain the current practice and procedures, which take into consideration the unique circumstances and operational needs of affected departments. Changing the current practice by adopting the one-size-fits-all proposal is impractical and unnecessarily costly.

#### **D. Discussion and Conclusions: Uniforms and Equipment**

Based upon the evidence presented, as summarized above, the Panel is not convinced of the need for the Union's proposed changes and new language. The Panel agrees that the proposal is much too detailed in its approach. The Panel also is concerned about the cost, particularly in light of other wage demands.

The Panel notes that the BU 12 CBA contains a uniforms and equipment article that is different in form and substance from the Union's proposal. U-58, Article 17, pp. 28, 29.

Among its provisions, the BU 12 CBA contains language that establishes a committee for the purposes of evaluating proposed changes regarding uniforms and equipment, and sets up a procedure for handling such matters. The Panel

suggests that the parties consider adapting the language of this article to fit the BU 14 workplace. By establishing such a process, issues may be dealt with informally and promptly without the need for a grievance. It offers the parties a specific mechanism that may help resolve any problems that arise.

The Panel denies the Union's proposal.

## **XI. OTHER LEAVES OF ABSENCE**

### **A. Union's Proposal**

The Union proposes certain amendments to Article 45 – Other Leaves of Absence. The Employers oppose the Union's proposal, and seek the continuation of existing contract language. The Union's proposal provides:

G. Other Leaves without Pay. An appointing authority ~~[may]~~ **shall** grant regular or non-regular Employees leave without pay for no more than twelve (12) months, for any of the following reasons: [list of 10 reasons omitted.]<sup>11</sup>

K. Leave Pending investigation of Charges.

1. Whenever an investigation of charges against an Employee is pending, ~~[and the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:~~

~~[a] [T]he Union and the Employee who is placed on [the] leave [without pay] pending an investigation shall be given written notice within forty-eight (48) hours [after] **prior to** such action [is] taken. The written notice shall provide an explanation, including available facts, on why the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place and the effective date of the leave [of absence without pay] pending an investigation.~~

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<sup>11</sup> To summarize the listed reasons: physical or mental illness, death in the family, extension of vacation, to seek political office, emergency personal business, annual cessation of normal operations, child adoption, child or pre-natal care, care for immediate family member, care for parents, spouse, children and/or grandparents.

~~b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (3) days, the appointing authority may exercise its options provided in subparagraph K 2.~~

~~c. If the Employee who has been placed on leave of absence without pay pending investigation is cleared of all charges or if the charges are dropped or not substantiated, the Employee shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending an investigation.~~

~~d. Disciplinary or Discharge Action Resulting From and Investigation of Charges:~~

~~1) In the event a suspension is warranted, the Employer may consider any portion of the period of the leave of absence without pay pending an investigation towards fulfilling, in whole or in part, the disciplinary action considered appropriate by the Employer. The Employee shall be reinstated without loss of pay and benefits for any portion of the period of the leave of absence without pay which has not been considered towards fulfilling the disciplinary action.~~

~~2) In the event a discharge is warranted, the Employee shall not be granted any back pay or restored with any rights and benefits for the period of leave of absence without pay pending an investigation.]~~

2. [Notwithstanding the foregoing, w] **Whenever an investigation of charges against an Employee is pending, the Employer shall have the discretion to:**

- a. retain the Employee in active duty status;
- b. place the Employee on leave of absence with pay; **or;**
- c. ~~return the Employee to active duty status from leave without pay pending an investigation; or]~~
- [d]c. reassign the Employee to another work unit or area and in the same or different capacity.**

The action shall be for the length of time as may be necessary to conclude the investigation, **not to exceed 6 months unless extended by mutual consent of the Union and the Employer, provided the Employer makes the request in writing with a reasonable explanation of why the investigation will exceed 6 months.**

## **B. Summary of Evidence**

Bradley Kapono Apao is the Field Services Officer for the Advocacy Section of the Union. Apao explained that the Union's proposal limits the discretion of the Employer to place employees on leave without pay pending investigation.

With respect to Article 45.G, Apao confirmed that the Union's proposed change ("may" to "shall") would take away management's discretion with respect to leave without pay, so that management is required to grant leave without pay for no more than 12 months for any of the ten reasons listed in the article.

As to Article 45.K, the Union is concerned about employees not receiving their wages while under investigation, as it affects employees' livelihoods. Apao explained that the provision that allows for the 30 days without pay has been deleted because that amount of time can affect one's ability to pay the mortgage and other bills, especially with the high cost of living in Hawaii.

Apao also expressed concern about possible abuse of discretion. Specifically, the Director of Public Safety has the discretion to place someone on leave without pay for 30 days, and that power could be abused if, for example, the director did not like or get along with someone.

Apao further spoke to the Union's reason for the change which requires 48 hours prior written notice. He explained that due process should be afforded to a person subject to investigation and they should know why they are being placed on leave prior to that action. Basic information should be provided, including whether or not they are a witness or the accused. According to Apao, that is something that the Department of Public Safety does not do.



Apao pointed out that the Department has the option of retaining the employee on active duty status; or they can place the employee on leave of absence with pay. Apao acknowledged the Union's proposed change places a 6-month limitation on the identified options, but that they may be extended by mutual agreement between the parties.

Denise Tsukayama is the Equal Opportunity Administrator for the City and County of Honolulu. Tsukayama commented on two parts of the Union's proposed changes to Article 45.K. With respect to K.1, and the requirement of prior notice, Tsukayama explained that sometimes immediate action is necessary to remove someone from the workplace, particularly in cases of sexual harassment, so that prior notice is not possible. If allegations are current and egregious, the Employer must separate the parties immediately.

Tsukayama also expressed concerns with the Union's proposed changes to Section K.2 and the 6-month requirement. Tsukayama reported her concern here is the same; that is, if the investigation is not completed by then, the Employer still has responsibilities to prevent behavior and the possibility of retaliation.

With respect to Section K.2's requirement of mutual agreement, Tsukayama stated that it is the Employer's responsibility to ensure the safety of the workplace, so she does not believe that management can share that responsibility with anyone else.

Espinda testified about the State's concerns with the Union's proposal. First, he noted that in 2018 the Union presented this same proposal in interest arbitration, and that panel ruled in the State's favor.

With respect to the proposed change to Article 45.G, the “may” to “shall” language, Espinda explained that management has the authority to grant leaves in all the collective bargaining agreements that he deals with; and in all those contracts the language is “may.” Espinda has operational concerns because BU 14 members are spread out thin throughout the State, and if he was required to grant leave it could result in not enough officers to provide services.

As to the proposed changes to Section K.1, Espinda explained that the existing SOC's already require prior notice to any action being taken, including an opportunity to meet and discuss the contemplated action. And, once a decision is made but before it is implemented, an employee is provided with another such opportunity. Espinda also pointed out that in his Department, leave pending investigation happens rarely.

Espinda expressed additional concerns with the Union's proposal to remove language of Section K.1. (b). Espinda reported that there are certain circumstances where leave without pay is appropriate and in the best interests of the Department and the public. Such decisions are contemplated carefully prior to any decision.

Finally, Espinda had concerns about putting a 6-month time limit on the length of an alternate assignment. He believes it should be left open to the Employer as sometimes it may be necessary to go beyond 6 months, for example, due to complexity, or the unavailability of witnesses or the accused. He noted that the employee has the remedy of contesting the matter through the grievance procedure, if necessary.

DOCARE Chief Redulla expressed concerns similar to those of Espinda's with respect to the Union's Article 45 proposal. The proposed change from "may" to "shall" in Section G would restrict management's ability to manage its workforce and provide services.

Also, like Tsukayama, with respect to Section K, Redulla explained that there are instances such as alleged workplace violence and sexual harassment in which the Employer must act immediately and which would not allow for 48 hours prior notice. Redulla had similar concerns to those of Espinda and Tsukayama about the proposed time limitations on return to work. Director Howe did, too.

### **C. Parties' Positions**

#### **1. Union**

The Union's proposal seeks to accomplish three goals: 1) to require that an appointing authority shall grant an employee's request for leave without pay not exceeding twelve (12) months, for any of ten (10) enumerated reasons; 2) in case of leaves without pay of five (5) days or more for physical or mental illness of the employee, he or she may submit certification from a licensed physician, Advanced Practice Registered Nurse (APRN) or a Physician Assistant in order to be cleared for return to work; and 3) whenever an investigation of charges is pending against an employee, he or she shall be given forty-eight (48) hours written notice prior to being placed on leave.

With respect to item 2 above, the parties agreed to the proposed language as set forth in the transcript of these proceedings. Volume VII, pp. 1212, 1213.

Apao acknowledged that the Union made this proposal in the BU 14 2018 arbitration; but that it is still important to the Union because the issues raised are of fundamental due process and matters that affect employee rights, not only management discretion.

Among the issues of critical importance is the change that no longer allows leave without pay to 30 days from the inception of an investigation. It is unfair and works a serious hardship on families. The 48-hour prior notice requirement also is fair and appropriate in all but the most egregious cases; and would restore the balance of fairness where an investigation is commenced.

The 6-month limit with the proviso for extension for good reasons also is a matter of fairness. Testimony established there have been, and continue to be, investigations that take far too long, in some cases years.

## **2. Employers**

### ***State***

The Union submitted the same proposal in the 2018 arbitration, and with no compelling new evidence or changes, this Panel should not find differently than the 2018 Panel which ruled in favor of the Employer.

The proposed change in Section G ("may" to "shall") directly interferes with the Employer's management rights as articulated in the Hawaii statute. HRS §89-9(d). The proposed language also creates operational concerns that could have a negative impact on the Employer's ability to serve the public, specifically law enforcement. These concerns were expressed in the testimony of Espinda and Redulla.

With respect to Section K, the Union seeks to delete language placing an employee on leave without pay pending investigation. This change eliminates the Employer's authority to place an employee on leave without pay pending investigation, in disregard of the seriousness of an allegation and overwhelming evidence. Espinda and Redulla explained how they currently use their discretion and why it is important to have the discretion to act on a case-by-case basis. The Union failed to offer any evidence to rebut Espinda's and Redulla's testimony, other than speculative testimony of possible abuse of discretion.

The Union's proposal that adds a 48-hour prior written notice requirement to Section K.1 raises particular concerns as testified to by Espinda, Tsukayama, and Redulla. The Employer has a duty to act in a timely manner to minimize the potential of further misconduct; and the requirement would cause unnecessary delay and could result in needless Employer liability.

The Union's proposed language to limit an investigation to a period of 6 months (Section K.2), absent mutual consent, places undue burden on the Employer without due regard to the complexity of the investigation and/or circumstances beyond the Employer's control. Every investigation is unique. Espinda and Redulla expressed similar concerns about the effect of this language, as did Tsukayama.

Finally, Chief Negotiator Ryker Wada explained that the Employer's concerns go beyond this bargaining unit as this particular article exists in all collective bargaining agreements. It is well known that any changes made here create an expectation for the bargaining units to receive the same, if not more.

### ***City***

The Union has failed to demonstrate the need or justification for these proposals.

Of particular concern, for the reasons explained by Tsukayama and Howe, is the Union's proposal mandating notice being provided prior to placing an employee on leave pending investigation.

Tsukayama also expressed concerns about the Union's proposal to terminate the leave after 6 months unless there was mutual agreement to extend it. Such a rigid time line hinders the ability of the Employer to conduct a fair and thorough investigation due to factors beyond the control of the Employer (witness unavailability, parallel investigations by outside agencies.)

Moreover, the Employer has a duty to stop alleged inappropriate conduct and ensure the complainant is not retaliated against.

Howe testified about the problems with the Union's proposed change in the language from "may" to "shall" with respect to granting leave without pay. It takes away management's ability to provide services to the public, and may lead to staffing shortages, closure of work locations, high use of overtime and inability to grant vacation to employees.

The City opposes all of the Union's proposals to change Article 45.

### ***County of Maui***

The Union presented no evidence to support their position that Maui County's discretion with respect to authorizing leaves should be eliminated; nor was there evidence to support a change in the existing approval process for

requesting leave for illness. There is no evidence that the current leave pending investigation provision in Article 45 is a problem.

Chief Giese testified that he is not aware of a request for leave without pay ever being made by an OSO, that he has never denied a request himself and he is not aware of any such denial on Maui.

With regard to completing investigations of employee misconduct, Chief Giese has conducted investigations himself, and while completing them in a timely manner can be challenging, he is not aware of any complaints or delays in completing investigations. Maui Fire Department (MFD) also hired a former police officer to be MFD's Internal Affairs Officer and conduct investigations, which has taken much of the burden off of supervisors.

#### **D. Discussion and Conclusions: Other Leaves of Absence**

The Panel recognizes the parties' agreement on item #2 identified above and it will be incorporated by reference into its award.

The Panel finds that the testimonial evidence in opposition to the Union's other proposed changes raises legitimate concerns. These concerns outweigh the reasons for these proposed changes.

The Panel reviewed other leave without pay contract provisions, specifically those contained in other first responder CBAs that are a part of the record, in particular: BU 10 (ACOs), BU 11 (Fire Fighters) and BU 12 (Police). State 22D; U-57, 58.

Consistent with testimony of Espinda and Wada, none of these CBAs mandate the granting of leave without pay. In addition, these CBAs do not require

prior notice of placement on leave without pay. There are 48-hour written notice requirements in the BU 10 and BU 11 contracts, but those require such notice after action is taken. U-57, Section 58; State 22D, A39j [Section 11A.01.a.]

Further, all of these CBAs allowed for 30 days without pay in this context; the BU 12 CBA allows leave without pay to be extended to a limit of 60 days for good cause.

The Panel denies the Union's proposal.

## **XII. ADMINISTRATIVE INVESTIGATIONS**

The Union proposes the addition of a new article concerning Administrative Investigations for BU 14 law enforcement officers. The Employer opposes the new article. The Union's proposal is set forth below.

### **A. Union's Proposal**

#### **ARTICLE (NEW) – ADMINISTRATIVE INVESTIGATIONS (LAW ENFORCEMENT)**

- A. Applicability of Article – This Article shall apply only to administrative investigations of an Employee conducted by the Employer related to any incident which:**
  - 1. Occurred during the Employee's on-duty or off-duty hours, and/or**
  - 2. Could lead to discipline, demotion or dismissal of any Employee for violation of any department rule or regulation.**
- B. Administrative Investigations of Internal or External Complaints**
  - 1. Definition and Scope – Except for a criminal investigation, an investigation shall be considered to be of an administrative nature whenever such investigation is conducted to determine the possibility or to establish a basis for discipline or dismissal of an Employee, regardless of whether such investigation originated by an internal or external complaint. An administrative investigation is to be used for internal departmental purposes only, and not for official criminal**



investigations. The Employee shall be presumed innocent until proven guilty and the burden of proof shall be on the Employer.

**2. Limitations:**

- a. Internal/External Complaints – Internal Complaints which may result in disciplinary suspension, demotion, dismissal or written reprimand shall be in writing, except as provided by law. All external complaints shall be in writing and sworn to by the complainant except as provided by law.
- b. Notification of Investigation – The Employee shall be informed of the nature of the investigation and shall be given a copy of the written complaint. The Employee shall be afforded a reasonable time to answer such complaints in writing.
- c. Personnel File – No materials concerning a complaint shall be entered into any personnel file of the Employee in cases where the Employee has been exonerated, or in which the complaint is determined to be unfounded.
- d. Personal Accountability – An Employee is required to account only for the Employee's own personal time and shall not be disciplined for lack of such knowledge of the activities of other Employees.
- e. Polygraph Examination – No Employee shall be asked or required to submit to a polygraph examination.
- f. Investigation Requirements – The investigative interview of an Employee shall be conducted at a reasonable hour, preferably at a time when the Employee is on-duty with reasonable notice given, unless the seriousness of the investigation is of such a degree that an immediate investigative interview is required, and if such interview occurs during the off-duty time of the Employee being investigated, the Employee shall be compensated in accordance with Article 22 – Overtime. Reasonable notice means that the Employee shall have at least five (5) working days to prepare for the interview and arrange for union representation. The Employee shall be informed in writing as to whether they are a witness or a suspect in the investigation. If the Employee is a suspect, they shall be apprised in writing of the allegations of such complaint at least five (5) working days before any interview commences.
- g. Location of Investigative Interview – The investigative interview shall take place at the office of the

investigator or any other place agreeable to the parties.

- h. Investigation Procedures – The Employee, prior to an investigative interview, shall be informed of the name and title of the person(s) in charge of the investigation. No persons other than the investigator(s), the Employee and the Employee's representative shall be permitted at the investigation except by mutual agreement. All questions directed to the Employee being interviewed shall be asked by and through no more than one investigator at a time; provided, however, the Employee may request and shall be entitled to have one representative of the Employee's choice for each investigator present. The Employee's representative shall be allowed to cross-examine the Employee at the close of the interview.
- i. Answering Questions During the Investigation – Each Employee shall answer only those questions specifically, directly and narrowly relating to the Employee's duties and actions while performing in their official capacity and pertaining to the investigation.
- j. Time Limit on Investigative Interview Sessions – Investigative interview sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary provided that no period of continuous questioning shall be longer than thirty (30) minutes without the Employee's consent. Questioning shall be conducted for not more than four (4) hours per day.
- k. Offensive Conduct During Investigation – The Employee being investigated shall not be subjected to offensive language or threatened with any disciplinary action. No promise shall be made or reward used as an inducement to answering any question. There shall be no off-the-record questions asked of an Employee.
- l. Record of Investigation – The complete investigative interview(s) of the Employee, including notations indicating the beginning and ending of all recess periods, shall be recorded, and there shall be no unrecorded questions or statements except by mutual agreement. At the written request of the Employee, a transcribed copy of the interview, if transcribed, shall be furnished within five (5) working days after the request. If a tape recording is made of the interview,

the Employee shall, upon written request, have access to the tape. The original tape shall remain the property of and in the custody of the Employer. Copies shall be made by the Employer and shall be certified to be true. The Employee may, at the Employee's option, have the investigative interview recorded on the Employee's personal recorder.

- m. Statute of Limitations – No Employee shall be subjected to an administrative investigation of a complaint that has been filed more than one (1) year from the date of the alleged incident, unless otherwise provided by law.
- n. Time Limit – Administrative investigations shall be completed within one hundred twenty (120) days of the matter coming to the attention of the Employer. In the event the Employer believes an extension beyond one hundred twenty (120) days is necessary, and the Employer establishes an appropriate burden that it has acted with due diligence and the investigation could not reasonably be completed due to factors beyond the control of the Employer (for example, extended illness or other unavailability of a critical witness, such as the complainant or the Employee being investigated), the Employer must contact the Union before the expiration of the one hundred twenty (120) days seeking to extend the time period. Any request for an extension based on the unavailability of witnesses shall include a showing that the witness is expected to become available in a reasonable period of time. A request based upon the above criteria will not be unreasonably denied.
- o. Weingarten Rights – Whenever the Employer conducts an investigative interview, the Employee being interviewed is entitled, upon request, to the presence of a Union representative if the Employee reasonably believes that the interview may result in disciplinary action. If Union representation is requested, no further questioning shall take place until the Union representative is present. The right to Union representation in such investigative interviews arises only when the Employee specifically requests Union representation. The Employee cannot be disciplined for making this request. Once an Employee requests Union representation, no further questioning will take place until the Union is present. When an Employee has requested Union

representation in an investigative proceeding, the Union representative may fully and actively represent the Employee and is not limited to the role of an observer.

- p. Garrity Rights – Prior to any administrative investigation of an Employee, the Employer shall inform the Employee in writing of the Employee's Garrity Rights as follows:

*It is my understanding that this statement is made for administrative internal purposes only and will not be used as part of an official criminal investigation. This statement is made by me after being directed or ordered to do so by lawful supervisory employees. It is my understanding that by refusing to obey an order or directive to make this statement, I can be disciplined for insubordination and that punishment for this insubordination can be up to and including termination of employment. This statement is made only pursuant to such orders or directives and the potential punishment/discipline that can result for failure to obey that order or directive.*

**C. Critical Incident**

1. The respective Employers shall consult with the Union to develop policies and procedures governing a critical incident protocol, which shall include, but not be limited to the following incidents, whenever:
  - a. a firearm is discharged at a suspect(s) by an Employee; or
  - b. an Employee inflicts fatal or serious bodily injury to a person; or
  - c. an Employee is seriously injured and requires immediate medical attention; or
  - d. an Employee is involved in a vehicle pursuit or on-duty motor vehicle incident that results in the fatal or serious bodily injury of any person; or
  - e. an Employee is involved in an in-custody incident resulting in fatal or serious bodily injury.
2. An Employee directly involved in a critical incident as provided in C.1 shall not be required to submit a written administrative or police report until the Employee has had a reasonable period of time, not to exceed four (4) hours to consult with counsel of choice or a Union representative.
3. No disciplinary action shall be imposed on an Employee for failing to submit a written administrative or police

report in accordance with departmental rule, regulation, policy or procedure, if the delay was a result of C.2 above, or at the direction of the assigned investigator. However, the Employee shall be required to provide sufficient verbal information at the scene in order to establish probable cause, or information necessary to initiate an investigation and/or preserve the crime scene (such as suspect information, vehicles involved, etc.). The Employer may require additional questioning after a reasonable period of time has elapsed as provided for in C.2 above. When an Employee is identified as a suspect, the Employee shall be afforded Miranda rights. U-12.

#### **B. Summary of Evidence**

Apao explained that the Union proposed the same new article for administrative investigations in the 2018 BU 14 interest arbitration. The language was taken from the BU 12 SHOPO (police) contract.

The Union submitted the new language to address a number of problems and concerns with investigations. First, as mentioned before, the Department's notice of investigation does not consistently identify whether or not the employee is a witness or the subject of the investigation. U-81, 82. If an employee may face possible discipline, they have *Weingarten* rights as opposed to a witness who does not.

Apao explained there are also times that the accused does not receive a copy of the complaint in writing until prior to the pre-disciplinary, due process hearing. In addition, the notice of investigation often lacks clear allegations of the reasons for the investigation. Section 2 (b), Notice of Investigation, is intended to help the employee defend themselves by requiring such information.

Apao described that Section 2 (d) and Section 2 (i) are an attempt to avoid a fishing expedition and to help an employee to provide a proper defense by

limiting the scope of the investigator's questions to matters directly related to the investigation and the employee's official duties and activities.

According to Apao, the Union has had particular issues with the Department's timeliness of investigations. Currently there are no time limitations for an investigation. The new article includes provisions for a 120-day time limit on investigations, unless extended by agreement of the Union; and places a statute of limitations of one year for an investigation to commence. That is, the Employers could not investigate any complaint against an employee that was filed more than a year from the alleged incident, unless otherwise provided by law.

Apao submitted several examples of timeliness issues that had occurred with the Department. In those cases, the Department reduced disciplinary suspensions because of their timeliness issues. As Apao understood it, the Department acknowledged the problem with the length of the process.

In a July 2016 case, the incident occurred on July 19, 2015 and the discipline was imposed on July 22, 2016. U-78. Another case concerned an incident that occurred on July 9, 2015, and the discipline was issued on August 21, 2017. U-79. The most recent example involved an incident that on October 10, 2018 and the discipline was issued on September 12, 2019. U-80.

Director Espinda testified about the DPS's existing investigative process and the problems that he has with the Union's proposed new language.

In 1994, a stipulated grievance arbitration award set the foundations of the disciplinary and investigative process used by DPS. The underlying grievance was a class action involving ACOs of BU 10. State Ex. 29. DPS further developed its

disciplinary and investigative process through a consultation process with all unions involved. State Ex. 30, 31. Its existing policies and practices are applied to all employees across all bargaining units. DPS has centralized the process under the Office of the Director; no individual programs take disciplinary action on their own.

In advance of imposing discipline, DPS has a pre-disciplinary process which is a second layer to the first process. In the first process, there is an assigned investigator. If a determination is made to proceed, then a "mini-trial" is held before a hearings officer from the Investigations and Inspections Office. The employee is provided a complete copy of the investigation, including all allegations and evidence prior to that hearing. The employee and their union representative make their case and the hearings officer makes a recommendation to Director Espinda. Espinda then goes through his own evaluation process.

Espinda has concerns with the Union's proposed Section B.2, which requires internal and external complaints to be in writing. Espinda explained although it would be helpful to have complaints in writing, DPS takes complaints in all forms, including telephone calls. His major concern is the proposed language would have a chilling effect on people who are willing to come forward with complaints against staff. DPS always has operated with the understanding that it has the obligation to investigate all complaints submitted regardless of the form in which they are submitted.

With respect to employee notification of an investigation, DPS uses a formatted, standardized letter across all bargaining units which includes the

applicable section or code at issue. The “and/or” language that the Union objects to is a part of that standard letter that is used across all bargaining units. Espinda believes that generally speaking employees know exactly why they are being questioned in any particular case; there is a general reference to the particular matter being investigated. In that same letter, employees are notified that they are entitled to union representation. U-81.

Espinda has concerns with Section B.2 (d), personal accountability, because the purpose of the investigation is to get all facts and circumstances surrounding the incident, and may include observations of employees not just what they did personally. Espinda also has concerns with the restrictive nature of Section B.2 (i) because employees are held accountable 24/7 for their behavior, not just when performing in their official capacity.

For the same reasons, as explained earlier, Espinda is concerned with proposed language that places time limits on complaints and investigations. He believes it would have a chilling effect on those willing to come forward. In addition, the 120-day time limit for investigations is arbitrary and there are occasions in which investigations take longer, depending upon the complexity of the case. Sometimes the pre-disciplinary process takes time as the hearings officer looks deeper into the case depending upon information brought forward.

Chief Redulla echoed all of the concerns voiced by Espinda. With respect to Section B.2 (h), he noted also that it is not typically the Union representative’s responsibility to examine witnesses; rather it is the Employer’s responsibility.



## **C. Parties' Positions**

### **1. Union**

Apao became aware of big problems in notices of investigations when he was assigned to BU 14. Because the notice of investigation does not inform the recipient whether he or she is the accused or witness, the person's right to representation may be compromised. Nor do the notices contain clear allegations of what is being investigated.

There have been timeliness issues as well, among other problems. The Union's proposal is tailored to address those problems. The critical incident protocol addresses the need for such a protocol when serious incidents occur on the job.

The bottom line is that BU 14 law enforcement officers are first responder public safety members like police officers, fire fighters and nurses. BU 12 police officers have a provision that is largely the same as the one proposed here. There is no compelling reason why it should be denied to deputy sheriffs and CREOs of BU 14 who do fundamentally the same work.

It is hard to comprehend why a law enforcement employer would not agree to such due process protections for its own employees as contained in this proposal which are indisputably matters of working conditions. The new proposal for standards governing administrative investigations is a matter of fundamental fairness.

Notwithstanding that the 2018 Arbitration Panel declined the Union's proposal, the identified problems continue.

## **2. State**

Management's right to discipline employees under HRS §89-9(d) includes the right to investigate to determine whether discipline is justified. In its case law, the Federal Labor Relations Authority (FLRA) has found non-negotiable proposals relating to various aspects of administrative investigations that limit the Employer's ability to discipline.

The Union's proposal is the same as the one previously submitted in the 2016 BU 14 interest arbitration. That panel rejected the Union's proposal on the basis of the existing language being sufficient to address issues raised by the Union.

Upon comparing this proposal with Article 12 of the BU 12 SHOPO agreement, it is abundantly clear that only portions of that article were taken; the Union has "cherry-picked" language.

The Employer objects to this proposal in its entirety because the current process for conducting administrative investigations is both fair and reasonable. It was developed in consultation with the Union and that consultation was successful. Changing the process now would be operationally burdensome.

Specific objections to various provisions are provided in the testimony of Espinda and Redulla. Also, some provisions contain misleading and confusing language or language that is overbroad. Further, some provisions interfere directly with management's right to discipline employees, are non-negotiable, or are restrictive.

This Panel should reject the Union's proposal as the 2016 Panel did. To summarize the reasons: (1) The Union has failed to meet its burden to present evidence to support the proposal; (2) substantial evidence shows the proposal will have a severe impact on operations; and (3) it will infringe on management's rights.

#### **D. Discussion and Conclusions**

The Panel understands the Union's purpose, and desire, for inclusion of an article that deals with the subject of administrative investigations for uniformed personnel, particularly law enforcement personnel. As illustrated by Article 12 of BU 12's CBA (police), and even Article 19 of BU 11's CBA (Fire Fighters), articles that deal with such investigations are common.

Since the Union took its proposal from BU 12's CBA, the Panel has compared it with the Union's proposed language. Many of the provisions are the same or similar to that language, but we agree with the Employer that there are important differences.

For example, Section B.2 (f) of the Union's proposal here contains a prior notice requirement of 5-working days before an interview commences if the employee is a suspect. The BU 12 CBA contains no such requirement. U-58, Article 12, Section B.2 (f).

In addition, there is no administrative investigation time limit in the BU 12 contract as compared to the Union's proposed 120-day time limit for investigations. U-58, Article 12.

Further, as mentioned by Chief Redulla, Section 2.B (o) appears to go beyond what is usual for the participation of a Union's representative, by permitting

them to fully and actively represent the employee. This language is not in the BU 12 CBA. U-58, Article 12, Section 2.B (h).

The Panel is aware of the need when developing new language to adapt it to the particular work place. The above differences, however, are significant and the evidence in this proceeding does not convince the Panel that such language should be added to the BU 14 CBA.

The Panel acknowledges evidence submitted by the Union concerning timeliness issues with DPS administrative investigations. The Union is understandably concerned about the length of time it has sometimes taken DPS to complete them. It is a legitimate concern. Espinda has recognized the problem, himself, in assessing discipline in some cases.

Also, the Panel believes it is reasonable for the Employers to provide notice, up front, if an employee is a suspect as opposed to a witness. As the Union notes, there are differences in *Weingarten* rights of employees depending upon their status.

Still, taking into account all of the provisions of the proposed new Article, the Panel has serious concerns with it and we are not persuaded to award it. We deny the Union's proposal.

### **XIII. MAINTENANCE OF FACILITIES**

#### **A. Union's Proposal**

The Union proposed a new article for Ocean Safety concerning maintenance of facilities. That proposal is:

#### **ARTICLE (NEW) – MAINTENANCE OF FACILITIES (OCEAN SAFETY)**

- A. The Employer shall maintain vehicles, work areas, locker rooms and other facilities in a clean, safe, and sanitary condition.**
- B. The Employer shall provide a locker for each ocean/water safety officer to be situated at the duty station from which the ocean/safety officer is assigned. The locker shall be full length and of sufficient size so that uniforms and other duty equipment may be adequately secured.**
- C. Adequate toilet facilities including toilets and wash basins shall be provided for employees at their assigned duty stations. In the renovation of existing or construction of new duty stations, the Employer shall provide adequate toilet facilities including showers, toilets, and wash basins located near the locker room area.**

**B. Summary of Evidence**

Young testified about the reasons for this Union proposal. As he explained, it is time to update ocean safety facilities from a standpoint of safety. WSOs and OSOs have many more medical calls now as well as more medical equipment. There is a need for a sanitary storage location.

There also are watercrafts that are outside, sitting in the rain, and towers that are safety hazards. Some beach parks currently use water luas or plastic portable bathrooms. Young's beach does not have running water. On the Island of Hawaii, WSOs have no lockers; on Oahu there may be a few. A lot of WSOs/OSOs take their personal equipment home every day.

Simply put by Young: WSOs and OSOs want to work towards increasing their level of professionalism and creating infrastructure for the future. Young acknowledged that the Union's proposal would likely be expensive; he had not taken steps to determine its cost.

Howe has issues and concerns about the Union's proposal. On Oahu, Ocean Safety provides service to 178 beaches with a wide variety of different

facilities. His main concern is with the definition of “duty station.” He explained Ocean Safety has lifeguard towers on the beach, tower operation support facilities, rescue operation support facilities, district operation bay stations, a training center and an administrative office. For some, there is no issue; they have water and power.

Howe reported, however, that in the beach environment and with lifeguard towers in particular – they are not designed for lockers. It would be a huge cost; towers would have to be redesigned. In addition, bringing water to these towers may trigger a complete environmental assessment. Howe does not believe it is reasonable to accomplish this in any reliable time frame due to permitting, regulatory requirements, design, logistics and procurement.

On Oahu, existing towers now have reasonable access to toilets and washbasins, but WSOs may have to walk a distance. Some locations have porta potties. One hotel property has agreed that WSOs can use the facilities of the hotel.

Giese described a wide variety of situations on Maui beaches as well. Some beaches have a porta potty, porta sink or hose for running water. He believes showers exist at all beach parks. At some beaches OSOs have a private restroom; at others the public restroom is available. In one case a hotel has given OSOs permission to use their facilities. On Maui, OSOs do have lockers.

On Oahu, Howe reported that Ocean Safety now owns three facilities; previously they were all owned by Parks & Recreation locally. Howe is promoting a facilities development program to ensure there are adequate facilities for the

needs of employees. He considers this to be an issue of the highest priority for the Department and the Ocean Safety Division.

**C. Parties' Positions**

**1. Union**

There should be no dispute that water and ocean safety officers should be provided safe and sanitary work areas, especially given their responsibility for rescues and medical calls. While it is understandable that beach environments present challenges, Young was clear that the field of ocean safety is professionalizing. It is imperative that substantial progress be made toward improving facilities.

Clean and sanitary facilities are basic necessities and adequate storage and means of transport of equipment are just as important to enable water and ocean safety officers to do their jobs. It is time to attend to what they need and bring these facilities up to par.

**2. City**

In the Union's proposal, "duty station" is not clearly defined and would encompass lifeguard towers, various facilities, stations, or offices. As noted by Howe, some facilities may be ready to accommodate the requests; however, lifeguard towers are not. The Union's proposal would require an overhaul of the towers that are beyond the control of the City and Counties, even the State.

In addition, as explained by Howe, the requirement of water availability may trigger an environmental assessment and complete review of permitting requirements.

The Union has not met its burden of proving the necessity of its proposal and has failed to present sufficient evidence why it should be granted in light of the concerns raised by the counties. The Union's proposal should be rejected and concerns addressed through future discussions between the parties.

### **3. County of Maui**

No evidence was presented by the Union regarding facilities used by Maui County OSOs. Notwithstanding that no evidence was submitted by the Union, Chief Giesa testified about the facilities available to OSOs at Maui County beach parks, which are the same facilities used by the public.

Some beach parks have a private restroom for OSOs; all beach parks have running water. All Maui OSOs have lockers. Jet skis have storage facilities, although occasionally a jet ski may be stored outside. Giese was not sure where medical supplies were stored, but believed it varies depending on the site – lifeguard towers, on the jet ski itself and in vehicles.

### **D. Discussion and Conclusions: Facilities Maintenance**

On its face and in conjunction with Young's testimony, the Panel finds the intent and purpose of the Union's proposal to be sound. The requirements for facilities set forth in the Union's proposal correspond not only to professional services but also to basic sanitation, safety and health needs for employees and by extension, those that they serve.

The Panel recognizes, however, that in some locations, in order to accomplish the things required by the Union's proposal, there is likely significant cost, and perhaps other regulatory impediments as well.



To that end, the Panel denies the Union's proposal as drafted, but will issue an award that requires the parties to set up a standing facilities maintenance committee to address the subjects raised in the Union's proposal and to develop a plan to resolve identified issues. That committee will be comprised of an equal number of management and bargaining unit personnel from each jurisdiction, as selected respectively by the Employers and Union. Meetings shall be held monthly, unless waived by the committee upon a determination it is not necessary.

This is an interim step. The parties will reassess the situation at the end of the term of this CBA and decide what further action is needed to address any problems.

#### **XIV. INTERESTS AND WELFARE OF THE PUBLIC AND LAWFUL AUTHORITY OF THE EMPLOYERS**

In arriving at its findings and conclusions in this case, the Panel has taken into account the interests and welfare of the public. It is an overarching, general principle that the Panel has considered in the application of all of the statutory criteria. The Panel has applied and balanced criteria in a manner that recognizes the importance of paying the BU 14 employees a fair, competitive wage commensurate with their duties, skills and abilities, and at the same time takes into account financial concerns and conditions of the Employer Group.

To that end, the Panel has considered and applied HRS §89-11(f)(1). The Panel's findings and conclusions are consistent with the lawful authority of the Employers.

In its post-hearing brief, the State argued that the Union's non-wage proposals should be rejected in their entirety, in part because many of the proposals are non-negotiable under HRS §89-9(d).

The State contends this Panel must reject the Union's non-cost items because it lacks subject matter jurisdiction over such matters. The State argues that despite the fact the Panel heard evidence regarding the Union's proposals, it is well-settled law that the parties cannot waive subject matter jurisdiction and an arbitrator has no jurisdiction over matters that are non-negotiable.

Non-negotiability issues raised now, at this late date, offer no opportunity for Union response and put the Panel at a disadvantage in properly and thoroughly evaluating such claims. Further, and more importantly, the authority on issues regarding the scope of the collective bargaining obligation lies with the Hawaii Labor Relations Board. State arguments are better addressed there or on appeal consistent with applicable law, should the Employer deem it necessary to pursue its claims.

## **XV. CHANGES IN THE FOREGOING CIRCUMSTANCES**

### **A. Parties' Positions**

#### **1. Union**

In October of 2019, the Employers and the Union reached agreements for BU 2, BU 8, and BU 13. On December 23, 2019, the parties reached an agreement for BU 3. In March of 2020 the parties reached an agreement on BU 4. These five settlements echo or exceed the settlements or arbitration awards achieved by other bargaining units during this same period and negate the Employers'

assertion that they do not have the ability to pay the Union's proposal in these proceedings.

Hawaii has had more than its share of disasters; hurricanes, floods, volcanic eruptions and earthquakes. The recent declaration of the coronavirus COVID-19 pandemic is cause for concern. The recent reports of isolated cases in Hawaii, unlike the mainland, are indicative of no community spread. As more people become ill, apprehension will grow as will concerns about the impact this pandemic will have on Hawaii's governmental resources. There is no way to assess accurately what response will be required, nor over what period of time.

There is every reason to assume that the costs of this arbitration will be met. Not only because of Hawaii's healthy economy but also because of assurances provided by the Legislature. HGEA states in its closing brief that the Union leadership has been advised that the Legislature is responding favorably to all of the settlements and awards issued and will likely fund them before the legislative session terminates.

It would be unfair to deny salary increases and benefits to this bargaining unit because of fear of what is happening on the mainland. Past experiences show that in times of crises, as the Great Recession following 2008, everyone made sacrifices. That may be the case again if this pandemic grows. At this point, however, there is no reason to deny BU 14 members the pay equity that they clearly deserve.

## **2. State**

The recent world-wide coronavirus outbreak is expected to have a major negative impact on the Hawaii economy as indicated in recent COR revenue forecasts, UHERO tourism forecasts, and unemployment projections. Bad news continues to flow and the news is only bound to get worse. Hawaii's economic health depends on tourism. Substantial raises given to State employees would not likely be passed by the Legislature, which has in the past approved furloughs and reductions in force because of budgetary problems.

### **B. Discussion and Conclusions**

The ultimate economic impacts of COVID-19, coronavirus are, at this time, unknown. Because the coronavirus pandemic is so recent, documents and recent news stories concerning its potential impacts were attached to post-hearing briefs. This matter was not addressed at the evidentiary hearing in January.

There is no sound and fair basis for assessing the economic impacts of the coronavirus now, in this proceeding. Any attempt to do so at this time would be based solely on speculation. This developing situation should be addressed by the parties, not this Panel, after more is actually known about the effects of the coronavirus. All those potentially affected, not just the employees of BU 14, should be a part of any effort to deal with problems that may arise.

## **XVI. STIPULATIONS OF THE PARTIES**

The parties agreed to the authority and composition of this Panel as well as to the agreements referenced above in this decision. Other than that, the Panel is not aware of any other stipulations.

## **XVII. CONCLUSION**

Consistent with the above findings, the Panel will enter an award for an ATB salary increase of 4.5% increase for FY 2019-2020 and 4.5% for FY 2020-2021, for a total of an 9% ATB increase over the biennium. The Panel also will award eligible step movements. The Panel further will order the parties to engage in discussions to restructure the salary schedule to recognize this unit as a public safety unit and to move towards compressing the salary schedule.

The Panel will issue an award with respect to the subject of Facilities Maintenance consistent with its above findings. The Panel denies all of the Union's other proposed changes to the CBA.

The Panel will include in its award all tentative agreements and stipulations of the parties. The Union withdrew certain portions of its proposals at hearing. The Panel also incorporates by reference those modifications, as set forth in the transcript, into this decision.

In arriving at our findings and conclusions, even if not discussed in detail, the Panel has considered all of the statutory factors that apply to this interest arbitration. We have focused this decision on particular factors as indicated by the evidence and arguments of the parties. In addition, even if not mentioned, we have reviewed and considered all of the evidence, authorities and arguments submitted by the parties.

In the Matter of the Interest Arbitration )  
between )

HAWAII GOVERNMENT EMPLOYEES )  
ASSOCIATION, AFSCME, LOCAL )  
152, AFL-CIO )  
(Union,) )

and )

DAVID Y. IGE, Governor, State of )  
Hawaii; KIRK CALDWELL, Mayor, City )  
and County of Honolulu; HARRY KIM, )  
Mayor, County of Hawaii; MICHAEL C. )  
VICTORINO, Mayor, County of Maui; )  
DEREK KAWAKAMI, Mayor, County of )  
Kauai, )  
(Employers.) )


STATE OF HAWAII  
INTEREST ARBITRATION  
BARGAINING UNIT 14  
HLRB CASE NO. 18-I-14-177  
AWARD

Being mindful of the legislative purpose under HRS §89-11, and taking into consideration  
the factors of HRS §89-11(f), the Panel awards the following:

1. FY 2019-2020: Effective July 1, 2019, BU 14 employees will receive a 4.5% across-the-board salary increase with continuation of step movements.
2. FY 2020-2021: Effective July 1, 2020, BU 14 employees will receive a 4.5% across-the-board salary increase with continuation of step movements.
3. The Employers shall engage in discussions with the Union to restructure the salary schedule to recognize this unit as a public safety unit and to move towards compressing the salary schedule.
4. The parties will establish and maintain a facilities maintenance committee consistent with this decision to focus on clean, safe and sanitary conditions for vehicles, work areas, locker rooms and other facilities for ocean/water safety officers. That committee will be comprised of an equal number of management and bargaining unit personnel from each jurisdiction, as selected respectively by the Employers and Union.
5. The Union's other proposals are denied.

6. All tentative agreements of the parties are incorporated into the 2019-2021 CBA. All agreements at hearing and withdrawal of proposals at hearing are incorporated by this reference. All existing articles of the CBA not modified herein or by the parties will remain in effect and incorporated into the successor 2019-2021 CBA.
7. Pursuant to HRS §89-11(j), the parties will share equally in the Chair's fees and expenses.

Respectfully submitted,



Kathryn T. Whalen  
Neutral Chair  
Date: April 15, 2020

\_\_\_ I concur

\_\_\_ I dissent

\_\_\_ Opinion attached.

\_\_\_ I concur

\_\_\_ I dissent

\_\_\_ Opinion attached

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Stacy Moniz  
Union Panel Member  
Honolulu, Hawaii

Dated: April , 2020

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William Brilhante, Jr.  
Employer Panel Member  
Hilo, Hawaii

Dated: April , 2020

6. All tentative agreements of the parties are incorporated into the 2019-2021 CBA. All agreements at hearing and withdrawal of proposals at hearing are incorporated by this reference. All existing articles of the CBA not modified herein or by the parties will remain in effect and incorporated into the successor 2019-2021 CBA.
7. Pursuant to HRS §89-11(j), the parties will share equally in the Chair's fees and expenses.

Respectfully submitted,

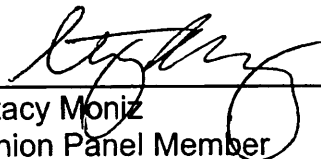


Kathryn T. Whalen  
Neutral Chair  
Date: April 15, 2020

☒ I concur

☐ I dissent

☐ Opinion attached.

  
\_\_\_\_\_  
Stacy Moniz  
Union Panel Member  
Honolulu, Hawaii

Dated: April 15, 2020

☐ I concur

☐ I dissent

☐ Opinion attached

\_\_\_\_\_  
William Brilhante, Jr.  
Employer Panel Member  
Hilo, Hawaii

Dated: April , 2020



6. All tentative agreements of the parties are incorporated into the 2019-2021 CBA. All agreements at hearing and withdrawal of proposals at hearing are incorporated by this reference. All existing articles of the CBA not modified herein or by the parties will remain in effect and incorporated into the successor 2019-2021 CBA.
7. Pursuant to HRS §89-11(j), the parties will share equally in the Chair's fees and expenses.

Respectfully submitted,




Kathryn T. Whalen  
Neutral Chair  
Date: April 15, 2020

☒ I concur

☐ I dissent

☐ Opinion attached.




Stacy Moniz  
Union Panel Member  
Honolulu, Hawaii

Dated: April 15, 2020

☐ I concur

☒ I dissent

☒ Opinion attached



William Brilhante, Jr.  
Employer Panel Member  
Hilo, Hawaii

Dated: April , 2020

Arbitration Award and Decision for Bargaining Unit 14 (BU 14)  
William Brilhante, Jr., Employer Panel Member  
Dissenting Opinion

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 the majority has failed to properly apply the statutory factors in formulating the Award.

I disagree with the majority's conclusion, as the Arbitration Panel should have considered the financial ability of the employer to meet the cost associated with its Award in light of the current and future economic impacts of the coronavirus pandemic ("COVID-19"). Once the COVID-19 pandemic became all encompassing, additional consideration and discussion should have been elicited from the parties regarding the financial ability of the employer to meet across the board salary and step increases of 11.58% to the BU-14 members.

The Employer's ability to pay wage proposals shall be based on current taxes, fees, or charges, and current sources of revenues. *HRS* §89-11(f)(4). The Arbitration Panel should have considered the changing economic conditions that were first raised by the Council on Revenues ("COR") in its December 20, 2019 report and subsequently confirmed in its March 30, 2020 Interim Forecast Update.

Accordingly, this panel member is concerned with the Employer's ability to fund the majority's conclusion due to a slowing and uncertain Hawaii, U.S. and global economy due to the COVID-19 pandemic.

Since the Post-Hearing Briefs were submitted more than two weeks ago, Hawaii's economy has been in a freefall that has not been seen since the Great Depression in the 1930's due to COVID-19. As of April 13, 2020, 504 cases of coronavirus and 9 death have been confirmed in Hawaii, with alarming numbers of new cases spiking every day. Mandatory restrictions on movement have been ordered by the State, with non-essential workers ordered to stay at home until at least April 30, 2020 and most public spaces ordered shut down. All travelers to Hawaii are now required to quarantine for 14 days which has abruptly halted the entire tourist industry which is the lifeblood of the Hawaii economy. Starting on April 1, 2020, the mandatory quarantine has been expanded to all interisland travel in Hawaii.

On March 30, 2020, The University of Hawaii Economic Research Organization ("UHERO") issued an Interim Forecast Update that predicts a grim and dire economic situation for Hawaii much worse than predictions it made just several weeks prior. It points out that in Hawaii, tourism has been deliberately shut down in an unprecedented move to slow the spread of coronavirus, a pandemic "raging in key US cities." UHERO Director Carl Bonham testified before the Hawaii legislature on March 30, 2020 that Hawaii is already experiencing a deep recession, and by the second quarter of the year, unemployment could hit 25 percent, up from 2.7 percent in January 2020. He also indicated there is no clear indication to an end in sight to this situation, and even if it passes quickly, recovery would take at least several years. Unemployment has surged with 116,000 people filing for unemployment compensation in Hawaii so far in March 2020.

The sudden and unexpected world-wide outbreak of the COVID-19 pandemic has been making headline news in Hawaii on a daily, if not hourly basis and news of it has been alarming. Infections have been rapidly increasing, and the death toll has been rising all over the world. On March 8, 2020, Hawaii reported its second positive test with no deaths for COVID-19 with the count, as of this writing, Hawaii now has 530 confirmed cases, with nine (9) COVID 19 deaths, mirroring rapidly increasing hot spots throughout the mainland, especially on the coasts, and around the globe.

On March 21, 2020, the Governor signed a second supplemental emergency proclamation ordering all individuals, both residents and visitors, arriving or returning to the State of Hawaii to a mandatory 14-day self-quarantine effective March 26, 2020. The mandate – the first of its kind in the nation – applies to all arrivals at state airports from the continental U.S. and international destinations and extends to other private and commercial aircrafts. The mandate would essentially stop all tourism on the islands which is the main source of revenue for Hawaii's economy. On March 22, 2020, the City and County of Honolulu and County of Maui Mayor's ordered a "stay-at-home, work-at-home order" effective March 25, 2020 and March 26, 2020, respectively. On March 23, 2020, the Governor of Hawaii signed a Third Supplementary Proclamation ordering all non-essential workers (public and private) in the State of Hawaii to "stay-at-home, work-at-home."

Additionally, there is considerable uncertainty with respect to the U.S. and global economies due to the COVID-19 pandemic and unanticipated emergencies could drastically affect the State's ability to generate revenue for the General Fund (GF) with no sight on how long it will take the State to recover. The State must build reserves to weather the end of an unfavorable economic cycle and unanticipated emergencies.

Economically, the U.S. stock market and oil prices have been plunging because of fears, and there have been reports of an impending, imminent global recession caused by reaction to the corona virus. In Hawaii, reports have been streaming in since February 2020 regarding the disastrous effects the coronavirus will have the local economy. On February 24, 2020, UHERO issued a state forecast update titled "Coronavirus Presents Danger To Hawaii Tourism." In the article, UHERO points out that:

Hawaii's economy has been on an expected slowing trend for the past several years. While visitor arrivals racked up another record year in 2019, real visitor spending fell last year as international spending languished. And now the coronavirus rears its ugly head. That represents a considerable - if as yet uncertain - risk to Hawaii's economy in the year to come.

Since then, bad news regarding Hawaii's economy continues to flow. Even the Hawaii legislature, House of Representatives who as of March 17 have been in recess indefinitely due to COVID-19 formed a special committee to address the fallout of Hawaii's economy due to the coronavirus. As reported in a March 3, 2020 Hawaii News Now article, 3 large events were recently cancelled or postponed, and the State of Hawaii, Department of Business, Economic Development and Tourism reported a \$23 million drop in visitor expenditures in February 2020 and a 7.3% decline in international passengers. The article also reports that in the past, lawmakers cut public employee salaries to help tackle a shortfall in the budget.

The news has only gotten worse. On March 5, 2020, the Honolulu Star-Advertiser reported United Airlines and Korean Airlines will cut service to Hawaii. This came after Hawaiian Airlines announced on February 26, 2020 that it will suspend all service between Honolulu and Seoul, and Korean Airlines announced a reduction in service.

On March 4, 2020, Civil Beat reported that Hawaii legislators are already preparing for possible economic effects of coronavirus. On March 7, 2020, the Honolulu Star-Advertiser in its article "Hawaii events, travel hit by coronavirus fears" painted a dire portrait of events that have been cancelled, suspended, or postponed because of coronavirus fears. On March 10, 2020, the Honolulu Star-Advertiser reported additional cancellations and "plummeting hotel occupancies - some as low as 10%."

"Hawaii hoteliers report that occupancy has dropped from a high of about 70% to a low of roughly 10%. Earlier this year statewide occupancies ranged from a high of about 90% to a low of about 80%."

On March 10, 2020, UHERO issued an "Interim Forecast Update: COVID-19 Will Impose Significant Economic Impacts In Hawaii." The update notes that "[i]n the past two weeks, things have changed markedly," and "[w]ith a sharp downturn in tourism and a long recovery period, our macroeconomic forecast for Hawaii is much more pessimistic, with job losses of nearly six thousand workers by the third quarter of this year, and a very restrained pace of hiring for the next several years."

On March 11, 2020, the COR met and sharply cut back Hawaii's revenue projections. The March 13, 2020 COR report to the Governor indicated as follows:

At the March 11, 2020 meeting, the Council on Revenues lowered its forecast for the growth of the State General Fund tax revenue in fiscal year (FY) 2020 from 4.1% to 3.8%. The Council's decision to lower the estimate was based on the deterioration of the economic outlook due to the COVID-19 virus. While most of the revenue effects of the virus will be felt in FY 2021, the Council reduced the FY 2020 grown forecast as some of the effects are expected to be felt in the last quarter of this fiscal year. The Council lowered the FY the FY 2021 forecast from 4.0% to 0.0% in an expectation of an economic downturn. The Council raised the forecast for FY 2022 to 5.0% and forecasted that General Fund growth would be 4.0% for FY 2022 to 5.0% and forecasted that General Fund growth would be 4.0% for FY 2023-2026 assuming that the effects of the COVID-19 virus would not be long-term.

In conjunction with Subsection (f)(4) discussed above, Subsection (f)(9) of HRS §89-11 states an Arbitration panel in reaching its decision shall give weight to

"[c]hanges in any of the forgoing circumstance during the pendency of the arbitration proceedings..." *HRS* §89-11(f)(4).

Therefore, based upon the above, I take issue with the fact that, in rendering this "windfall" decision for BU14, the majority tacitly disregarded and did not take into consideration all available information regarding COVID-19's current and future impacts on the Hawaii economy.

Ralph Schultz, B&F Program & Budget Analysis Manager, provided a table with a comparison between the COR's March 11, 2020 meeting and January 10, 2020 report, and it shows a nearly \$320 million reduction of GF revenue for FY 2021.

On March 12, 2020, the Hawaii legislature held its first meeting with the House Select Committee on COVID-19 Economic and Financial Preparedness, and the members painted a "grim picture of coronavirus impact on state." Carl Bonham, a University of Hawaii economics professor, pointed out that UHERO's dire projections for the state's economy were too optimistic given rapid changes in the past several days, and he predicted significant job losses and an upcoming recession for Hawaii and the United States.

Because the COVID 19 pandemic is a public health crisis, the State of Hawaii, Department of Labor and Industrial Relations ("DLIR") projects substantial increases in unemployment. DLIR projects \$4.3 million in increased costs just to administer the program. While the total impact remains uncertain at this time, DLIR also expects substantial impacts on the Hawaii's Workers' Compensation, Temporary Disability and Prepaid Health Care Programs, projecting an increase of \$5.3 million in administrative costs.

It is undisputed that Hawaii's economic health depends on tourism. These recent events will undoubtedly affect Hawaii's economy for years to come, and substantial raises given to State employees would not likely be passed by the legislature, which has in the past approved furloughs and reductions in force because of budgetary problems. Also, at the time of this writing, those same discussions regarding furloughs and reductions in force are occurring with the State and Union representatives.

As noted above, the State is going through a pandemic with a complete shutdown of the tourism industry which is the "bread and butter" of Hawaii's economy.

Despite this, however, it appears absolutely illogical to me that the majority panel would not have taken this into consideration in accordance with HRS§ 89.

Accordingly, I must dissent on the grounds that this Award goes beyond fiscally irresponsible, in fact, it has the potential to be fiscally disastrous for the State and County Employers. The majorities unwillingness to consider in greater detail the economic impacts of COVID-19 prior to issuance of its final decision goes against the basic foundation of HRS §89-11(f)(9), which specifically provides the parties a safe harbor for this type of unprecedented event. Therefore, placing the Employers already struggling financial viability in serious jeopardy.

Accordingly, I respectfully dissent and do not concur with the Bargaining Unit 14 Arbitration and Award Decision.



William Brilhante, Jr.  
BU 14 Employer Panel Member

4-15-2020

Date