

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

August 18, 2016

Council Chamber, 8th Floor

CONVENE: 10:35 a.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Michael P. Victorino (out 11:40 a.m.)
Councilmember Mike White

EXCUSED: Councilmember Riki Hokama

STAFF: Carla Nakata, Legislative Attorney
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel
Gary Y. Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
David J. Underwood, Director, Department of Personnel Services
Gregory L. King, Central Purchasing Agent, Department of Finance

PRESS: *Akaku: Maui Community Television, Inc.*

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COW-1(42) LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION: IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN BARGAINING UNIT 11, REPRESENTED BY THE HAWAII FIRE FIGHTERS ASSOCIATION, AND THE STATE OF HAWAII, CITY AND COUNTY OF HONOLULU, COUNTY OF HAWAII, COUNTY OF MAUI, AND COUNTY OF KAUAI) (CC 15-6)

CHAIR GUZMAN: . . .*(gavel)*. . . Good morning. Welcome to the Committee of the Whole. I'm Don Guzman, the Chair. I'd like to introduce our Members for today's meeting starting with Stacy Crivello, our Vice-Chair. Good morning. And. . .

VICE-CHAIR CRIVELLO: Good morning, Chair.

CHAIR GUZMAN: Thank you. Bob Carroll, good morning.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR GUZMAN: Gladys Baisa, good morning.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR GUZMAN: Elle Cochran, good morning.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha and good morning, Chair.

CHAIR GUZMAN: Good morning. Chair Mike White, good morning.

COUNCILMEMBER WHITE: Good morning.

CHAIR GUZMAN: And Mike Victorino, good morning.

COUNCILMEMBER VICTORINO: Aloha, Chair. Good morning.

CHAIR GUZMAN: We have for our Staff, our Secretary, Clarita Balala, our Legislative Attorney, Carla Nakata. We also have our Deputy Corporation Counsel, Mr. Gary Murai; David Underwood, Director of Personnel Services; and Greg King, the Central Purchasing Agent, Department of Finance. Before we begin, I'd like to check in with our District Offices starting with District Office of Lanai. Are you there?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Fernandez. Turning our attention to Hana District Office. Are you present?

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MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Lono. Molokai District Office, are you present?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Alcon. Do we have any testifiers in today's Chamber?

MS. NAKATA: Mr. Chair, no one has signed up to testify in the Chamber.

CHAIR GUZMAN: Very good. Thank you. Without objections I'd like to close public testimony.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Thank you. We have...we are closing...close public testimony. Today I'm going to turn your attention to the first item and only item on today's agenda. The Litigation Matters, Special Counsel Authorization in the Matter of the Interest Arbitration Between Bargaining Unit 11, Represented by the Hawaii Fire Fighters Association, and the State of Hawaii, City and County of Honolulu, County of Hawaii, County of Maui, and County of Kauai. The Committee is in receipt of the correspondence, dated August 12, 2016, from the Department of Corporation Counsel transmitting the following: 1) a proposed resolution entitled Authorizing the Employment of Tor...I'm gonna need some assistance here...Torkilds . .

COUNCILMEMBER WHITE: Torkildson.

CHAIR GUZMAN: Torkildson, sorry. Torkildson Katz Moore Hetherington & Harris as Special Counsel in the Matter of the Interest Arbitration Between Bargaining Unit 11, Represented by the Hawaii Fire Fighters Association, and the State of Hawaii, City and County of Honolulu, County of Hawaii, County of Maui, and County of Kauai; and 2) a proposed bill entitled a Bill for an Ordinance Authorizing the Mayor of the County of Maui to Enter into a Cooperative Purchasing Agreement with the State of Hawaii, City and County of Honolulu, and County of Kauai for Legal Services Relating to the Interest Arbitration Hearing of the Contested Articles of the Bargaining Unit 11 (Fire Fighters) Collective Bargaining Agreement, and to Enter into an Expert Consulting and Support Services Agreement with the State of Hawaii, City and County of Honolulu, County of Kauai, and County of Hawaii for Consultation Services Relating to the Interest Arbitration Hearing of the Contested Articles of the Bargaining Unit 11 (Fire Fighters) Collective Bargaining Agreement. Wow! Do we even have enough room for the rest of the contents? That's a huge title. So, Members, that's what we have before us. We have Mr. Murai that is lead counsel for this item representing the Corporation Counsel. I believe that he would like to address the Committee in open session.

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MR. MURAI: Good morning, Members.

COUNCILMEMBER COUCH: Turn on your mic.

MR. MURAI: Deputy Corporation Counsel Gary Murai. Before I begin, I'd like to first thank Chair Guzman and his Staff for expediting the setting of this hearing. This is a matter of some exigency and some time constraints. I'd also like to thank the Members for making themselves available on such short notice. What's happened in this case is, as you folks may know, when we enter into contract negotiations with unions, we negotiate and arbitrate as an employers' group. Typically, each jurisdiction will often represent themselves. You know, each jurisdiction has their own Deputy AG or Deputy Corp. Counsel representing their jurisdiction. In this case because this is the first of all of the union bargaining units that will be coming up for negotiation...I'm sorry, that are presently in negotiation may also go to arbitration, we felt that this was an important matter for us to...for the employer group to give it our best shot. Because we all know and historically that the first or the early contracts may often set the bar for subsequent contracts. The employer group felt that it was important to retain special counsel to represent the employer group jointly and each of the jurisdictions have done their own vetting and their own selection. For Maui County, we convened a special committee within my office to review the letters of interest and resumes of the attorneys who responded to our call for any law firms or lawyers who are interested in doing labor work for the County and we've identified Robert Katz of the law firm Torkildson Katz Hetherington Moore [sic] & Harris as having the requisite skill and experience through past interest arbitrations where Mr. Katz has represented the government or government entities and we'd like to request leave from this Committee and from the Council to retain Mr. Katz and concurrent with that we're also asking for your permission to enter into, you know, agreements with the State and the other counties to not only retain Mr. Katz, but also to retain a consultant. We're requesting...we intend to hire Patrick Kilbourne and Mr. Kilbourne has done excellent work on behalf of employers in the past, and I know that as a whole, employers have been satisfied and very pleased with the results that Mr. Kilbourne has assisted us in obtaining. That's it for an overview, and you know, in judging from some of the feedback I got I understand that some of the Committee Members may also have questions about the interest arbitration process itself. I'll be glad to answer as best as I can. Also present is Director of Human...DPS Director Dave Underwood. You know, Mr. Underwood is a long-time warrior in these contract negotiation battles. There may be times where I will be deferring to him because he has intimate knowledge of the nuts and bolts workings of how this mysterious process works. Some of this can be held in open session especially when you speak of the procedural things generally. However, if we do delve into specifics about this particular negotiation and interest arbitration, I would ask or I would recommend to the Chair that we go into executive session for those matters. Thank you, Mr. Chair.

CHAIR GUZMAN: Thank you, Mr. Murai. If there are questions that you cannot answer in open session, please indicate and we will reserve those for executive session.

MR. MURAI: Thank you.

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CHAIR GUZMAN: Just indicate to the Committee. Do you have any opening comments, Mr. Underwood?

MR. UNDERWOOD: Mr. Chair, no thank you, but I'm here to answer questions as Mr. Murai said about the process or what may have happened in this particular case to the extent that we can.

CHAIR GUZMAN: Okay. Thank you. Mr. King, do you have any opening statements?

MR. KING: No, Chair, no opening statements and also I'm here to answer any questions you guys have.

CHAIR GUZMAN: Thank you. Members, the floor is open for any questions. Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. It was unclear to me in your description whether Mr. Katz is being hired by the group or individually by Maui.

MR. MURAI: Mr. Katz...because the Council had the foresight to appropriate \$100,000 to the Department of the Corporation Counsel for the purpose of procuring, you know, a negotiator or retaining outside experts in this field, we were the only jurisdiction that had a budget for that sort of thing. So at the request of the other jurisdictions Maui County is the procuring agency and the other jurisdictions are entering into collective purchasing agreements with the County so that they may join in on retaining Mr. Katz.

COUNCILMEMBER WHITE: Okay, and then it's my understanding that with the Fire Department we've already reached an impasse.

MR. MURAI: Yes, we have.

COUNCILMEMBER WHITE: Are you able to tell us the reason for the impasse this early in the process?

MR. MURAI: For that I would defer to Mr. Underwood.

CHAIR GUZMAN: Mr. Underwood.

MR. UNDERWOOD: You understand I can't go into details about the specifics of different proposals or whatever, but to give you the history of what's happened so far. Each of the contracts has a window in which we're required to pass any proposals for a successor agreement. For the Fire Department we passed proposals in March. Once proposals had passed and negotiations have been done there's a 90-day window. So after 90 days has passed either side can go to the Hawaii Labor Relations Board and say, I'm sorry, we're at impasse, we're not making any progress in negotiations. So in this case it is a fairly contentious round of negotiations, more so than in the past. There's a lot of articles on the table and we were not able to resolve them. So in early

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August the Hawaii Firefighters...early July the Hawaii Firefighters Association did inform the board that we were at impasse and they decided to go into arbitration.

COUNCILMEMBER WHITE: Yeah, I understand that you're unable to give us details in open session. Are you also unable to give us details in executive session?

MR. UNDERWOOD: That's correct. I would not be able to.

COUNCILMEMBER WHITE: That's one of my frustrations, Chair, because as you know we end up with the final result without really having any idea at any point during the process of where we are. And it's...I guess my other question is whether or not rank for rank recall is an issue for the employers this time around or whether we...is that an issue in the negotiations? Did we ask for it to be removed or not?

MR. UNDERWOOD: I couldn't comment on specific proposals right now.

COUNCILMEMBER WHITE: Well, the union has told me that...see we can get information from the union but we can't get it from our own team, which really irritates the hell out of me as the ones that end up having to fund it. I've been told that we have not requested the rank for rank recall even beyond the table, and if that's the case, it's a \$2.5 million increased cost without a significant change in coverage and I find that irresponsible at best. Thank you, Chair.

CHAIR GUZMAN: Maybe we can get a clarification either by Mr. Murai or Mr. Underwood as to why we cannot be disclosed with that type of information. What prevents. . .

COUNCILMEMBER WHITE: Especially in closed session. Excuse me for. . .

CHAIR GUZMAN: Right, why you're prevented from disclosing certain issues or terms to the Committee whether it be in open session or executive session.

MR. UNDERWOOD: Sure, Mr. Chair. At the beginning of each round of negotiations there's a set of ground rules that are set out for that particular round of negotiations. That's the agreement that all parties basically sign and bind themselves to. And one of those basic tenants of the ground rules is you do not discuss outside of negotiations the contents of negotiations. So we sign off on that when we start so that's the binding document that we've signed off on.

CHAIR GUZMAN: So when at some point you come to an impasse, you're not able to disclose what and why it was, you know, you've come to an impasse.

MR. UNDERWOOD: Correct. Because the negotiation processes can still proceed during an impasse and typically does. Just, you know, the impasse will start the arbitration, the ultimate resolution of it, but it does not stop the parties from continuing to talk while that is going on. So negotiations are typically still going on.

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CHAIR GUZMAN: Okay. I have another question. Is there any possible way I guess in the future since this is the first in a series of other negotiations for renewals, is there a possibility to put language in as part of the agreement or rules that would allow you to disclose in executive session the...I guess the discussion or the terms to the Committee...to the Council? Could that be I guess drafted in or agreed upon in future negotiations?

MR. UNDERWOOD: Mr. Chair, we can certainly propose that.

CHAIR GUZMAN: Okay. Mr. White.

COUNCILMEMBER WHITE: Yeah, I find it difficult to accept that once they've reached an impasse, I think you asked a very good question, why can't you tell us when there's an impasse? Because at that point negotiations are going into arbitration. So negotiations, I understand they can continue, but they're over for now.

CHAIR GUZMAN: Right.

COUNCILMEMBER WHITE: And so the way I...the reason I'm a little concerned with us not being able to have a sense of where the negotiations are going is that we got 14 contracts coming up. In the past four years those contracts and other increases that the other non-union employees have received have increased our employment cost by \$65 million. I don't think we can sit back and be comfortable with another \$65 million increase or even something half as high. When I enter into negotiations with the ILWU, I'm the funder and I'm sitting at the table. In these negotiations, we don't even have Budget people or Finance people at the table. We have HR and our attorneys. There's nothing...nothing wrong with that at some level. But if we don't have people that are responsible for paying the bills involved, we're not likely to get the same kind of responsible fiscal outcome that I think all of us sitting here are hoping for. So it's just...it's a different way of handling it. You know, when I negotiate with the ILWU, we have healthcare, meals, retirement, and pay, and all kinds of work rules on the table all at once. Here, we don't have healthcare. That's handled separately. It's just a very different thing. We don't have the funder sitting at the table because the fund...the Administration is not the funder. They're the employer, but they're not the funder. When I sit at the table, I'm representing the funder and I'm the ultimate decision maker. So it's a different way of doing things and I'm just really, really uncomfortable with that, especially seeing that that \$65 million is equal to the...all the taxes generated in all of Kahului district, all of Wailuku district, all of my district, and all of Ms. Baisa's district combined. That is just the increased cost from the last four years and that's an annual cost. That's not cumulative. So it bothers me a lot that we can't even know where you're going and we end up with the final result that's up or down and basically we've had no say in it. So I'm kind of getting to the point where my only say is to say no when it finally gets to us. If we can't be a part of the process, then to hell with it. Other than that I'm really happy. . . .(laughter). . .

COUNCILMEMBER VICTORINO: Thank you very much.

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CHAIR GUZMAN: I know...I think a lot of our Members have the same sentiment. You know, there is that level of uncomfortableness or at least frustration when we're basically asked to fund at the very end and we really haven't been a part of or at least been disclosed of prior events that has happened. But let me ask the...before I call on Mr. Couch I'll do a follow up to what you stated. Who are present? Who will be present at this arbitration in terms of representing the different areas?

MR. MURAI: Mr. Chair, generally speaking of course, I'll be there along with possible other members of Corporation Counsel staff. Certainly, Mr. Underwood on behalf of DPS will be there with...also with other members of his staff and typically we have Chief Murray and most likely, Chief...Deputy Chief Shimada. And depending on what the issues are we may have Battalion Chiefs, depending on which operational issues are being litigated.

CHAIR GUZMAN: Okay. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I, too, am very frustrated and share Chair White's frustrations. But one of the things that he hasn't mentioned and that we should throw on the table is we are the policymakers so if we're the policymakers, why aren't we at the table. You...the Administration is the administration of the policy. We set the policy so we should be at...somebody from our body or at least we should be able to hear the troubles you're having in executive session. I agree with Mr. White...Chair White. It's ludicrous. We're the guys that set the policy and pay and we can't be at the table or we can't even hear where you're going. You can't come to us and say, okay, we're at this point, what would you like to do, give us some direction, or some policy that you would like.

MR. MURAI: I'm just, you know, Mr. Couch --

CHAIR GUZMAN: Yeah, Mr. Murai.

MR. MURAI: --you know, I do appreciate. I really do appreciate your and Chair White's frustration. All I can say is, you know, I personally have only been doing this for about five years now so I don't have the long institutional history of why we do things the way they do. I mean I could just say, well, you know, they are...the framework is set by Chapter 89 and a lot of the processes and procedures have been developed over time. One of the reasons why Mr. Underwood and I are often constrained in being more candid with the Council is we do have a...setting aside the agreement of confidentiality, we also have to be concerned about the union alleging that we have committed an unfair labor practice by prematurely or improperly disclosing the offers that have been exchanged, the state of the negotiations. You know, because we have these rules to protect the process. I don't know what kind of feedback, you know, Chair White, you're getting from union members or from the union, but if you are receiving this information, then I would have a concern that the union may be breaching their duties of confidentiality. I know that we take them very seriously. What I...if there is a breach by the other side, then I would have a concern about those, too.

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CHAIR GUZMAN: Can I follow up and I'll give you...following with Mr. Couch's line of questioning is there any...okay, since this is the first contract in a series of future contracts, 14 other ones that we're gonna be dealing with, I get back to the question again. Is there anything that we can I guess start to do or begin to I guess change the rules or the confidentiality agreement so that disclosure can be given to the Council and can you at least try to work on something like that or negotiate? Is it too late to negotiate for the future contracts that are coming up for disclosure to the Council? Either one of you.

MR. UNDERWOOD: The negotiations have already begun with all of the. . .

CHAIR GUZMAN: All of them?

MR. UNDERWOOD: Except for Bargaining Unit 12.

CHAIR GUZMAN: Oh, wow.

MR. UNDERWOOD: Yeah. We are actually in negotiations with all units except Bargaining Unit 12 at this point.

CHAIR GUZMAN: So it's too late to. . .

MR. UNDERWOOD: Those have already been kicked off when the agreements were in place.

CHAIR GUZMAN: Okay, Members, that's what it is now. Mr. Couch.

COUNCILMEMBER COUCH: Well, follow up on to what Mr. Murai said and I understand where he's coming from, but you know, since we are the policymakers nobody came to us and said how do you want to start the negotiations. I mean you're just negotiating at what you think we want and from here maybe...I don't know where you think that we're coming from, but you've heard, you know, the frustration that rank to rank is not on the table all of a sudden. Had somebody come to us maybe in executive session, okay, we're gonna go into negotiations, what are your concerns. We don't get any of that and I don't understand why that's never been the case and why it's not the case now. And you guys are doing what has been done all along, now it's time to step outside of the box and talk to the people who are setting the policy and paying for this to see where we want to go. I think that's something that needs to be done sooner rather than later. Thank you.

CHAIR GUZMAN: Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. You know, every time we sit here and discuss this situation that we're discussing today we kind of repeat the same frustration that we have and we understand that you're the messengers and that you didn't set this policy and that what you're doing is what has been done before and you're facing us who are saying we don't like this. So what I would like us to spend

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some time thinking about is, is there any way we can change this and how do we change it? It's my understanding this is coming down from the State. That we're following policies or procedures that are set by the State, and if that is the case, then maybe it would behoove us to get together maybe through HSAC because we are the State at HSAC with four counties to get together and say we don't like this policy and we want to change. It's never gonna change unless we initiate something. And I would like to be a part of that, but you know, I don't know. Maybe, first of all, we can verify that this is a policy that's set by the State.

CHAIR GUZMAN: Mr. Murai or Mr. Underwood.

MR. MURAI: Chair, I will defer to Mr. Underwood.

MR. UNDERWOOD: Well, I think...I mean and we've heard your frustration, and you know --

COUNCILMEMBER BAISA: Yes.

MR. UNDERWOOD: --we've been here many, many times. And ultimately, the structure is set by statute because the statute does vest the...specifically define the representative for the County as the Mayor. So the statute does stipulate that. And then when we negotiate the employer group there's a...basically has provision and statute that says how decisions are made and that's by majority vote with the State having "X" number of votes and each County having one vote. So I understand the frustration. I mean we feel it as well. Don't...I mean don't...I don't want to make it sound like we don't feel it, but ultimately that's the structure that statutorily we're working in now and that's kind of where that comes from. That's what the statute lays out.

COUNCILMEMBER BAISA: So if we don't want this situation to continue, and you know, we all are very frustrated, and I'm sure we're not alone. I've got to believe that our fellow counties are also concerned about this. I think that we should start raising this as an issue. You know, we just went through a primary election. I think we missed an opportunity to raise this as an issue. I never heard it mentioned. But we still have some time and we have a Legislative Session coming up in January that this might be something that we'd look at. It's not working anymore. It may have worked before. But you know, when I listen to Chair White and you listen to the numbers that he shares with us and we know those numbers are good because Chair White is very good with doing his research and when he says it's this much I know it's that much. Maybe we need to do something because otherwise we're gonna sit here discussing this for the next ten years and nothing will happen. We have to initiate an action to change what we don't like and that's the only way I see it happening or it's just gonna go on and on. Thank you, Chair.

CHAIR GUZMAN: Thank you, Ms. Baisa. Who's next? Mr. Victorino, and followed by Mr. White.

COUNCILMEMBER VICTORINO: Thank you. I think Ms. Baisa hit the nail on the head. I mean we can sit here and talk until we're blue in the face. It's not gonna change.

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Unless HSAC and the rest of the counties take this up as one of their causes, we will continue in the same vein. It's been done this way for many, many years, even when I was on the Board of Education. The Governor had five votes, the Department had three votes, Board of Education had one. Do the math. We could never win.

COUNCILMEMBER BAISA: Yeah.

COUNCILMEMBER VICTORINO: We could never win. So it was always set up that the Administration and the State Administration seems to always have the most votes and why in Police and Fire where they don't have any say or judicial duty on those particular departments and others makes no sense, but I don't know way back when what the thought process was at that point other than lumping all law enforcement together. I think that was with the premise that they used. So with that being said, I mean we can continue to discuss this matter. It's not gonna change unless we make that first step and make it. And next week on the 22nd we're gonna have an HSAC meeting in Honolulu so I will be bringing this matter up. You know, this will be a part of what I discuss with the other counties. And I believe this has been discussed in a general context and they all feel very much the same way is, how come we don't have a say, how come we don't have a seat at the table. And I think that's maybe where we need to have...have a seat at the table. I think that's what I would like to see us move towards having a seat so that one of ours are there to represent our point of view to make sure that our points of view as the funding and as the policymaker is there 'cause the Mayor doesn't do that and neither does others. So you know, I think this is important. So that being said and I don't want to prolong the conversation and Mr. White has more to discuss, I think that's where I would start and I would make it a point to make sure that gets started and I'll also put that on our agenda for our HSAC priorities here for Maui County. Thank you, Chair.

CHAIR GUZMAN: Thank you, Mr. Victorino, and if you could, could you do a correspondence to the Committee as in basically what you've stated on the floor and what your intention to do with HSAC regarding the, you know, I guess the first step in trying to organize the different jurisdictions to come on board and try to makes things happen or at least change the system.

COUNCILMEMBER VICTORINO: I'll have the Staff work on something and get it to you, Chair.

CHAIR GUZMAN: Okay.

COUNCILMEMBER VICTORINO: Okay. Thank you.

CHAIR GUZMAN: The only reason why I say that is because we should document what we're doing or at least our intention or. . .

COUNCILMEMBER VICTORINO: I always thought Akaku was my documentation.
. . .(laughter). . .

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CHAIR GUZMAN: Yeah, that too. But yeah. . .

COUNCILMEMBER VICTORINO: Thank you, Chair.

CHAIR GUZMAN: I would hope that whoever takes over PIA next, you know, term will follow up as well. Mr. White.

COUNCILMEMBER WHITE: I would appreciate it if you could...one of you could explain to us where in statute limits you to communicating within what you call the employer group and does not allow you to share things even in executive session. Because I, you know, we're part of the same team when it comes to cost, but we are the ultimate funders and it's just troubling to me that there's a statute that says you can't share things even in executive session. I don't know if there's a specific statute. If there isn't one, then I'd like to request, Chair, that we ask Corp. Counsel to draft an opinion on...that explains why we can't get that information because I have a real challenge with it.

CHAIR GUZMAN: Mr. Murai or Mr. Underwood, can you respond to Mr. White.

MR. MURAI: Well, I think that Mr. Underwood would probably have the more complete response, but to my knowledge there's no explicit statute in Chapter 89 that sets out the confidentiality. My understanding, and Mr. Underwood can correct if I misspeak, is that this is a process that has been, again, developed over the years and has been a mutual thing between the unions and the employers.

COUNCILMEMBER WHITE: I understand that, but you know, we can't share anything with the public that we hear in executive session. So what the hell is the problem?

CHAIR GUZMAN: Mr. Underwood.

MR. UNDERWOOD: Mr. Chair, yeah, I'm not aware of a statute that requires that. That is a agreement that is reached among the employer group at the start of negotiations so. . .

COUNCILMEMBER WHITE: But does the agreement say to whom you can disclose the information and to whom you cannot?

MR. UNDERWOOD: The agreement is we disclose the information to our principal which is for us is the Mayor. That's our line of communication. Since he's the ultimate authority that's who we're allowed to share information.

COUNCILMEMBER WHITE: Is there anything in the agreement that identifies that we are not included as principals?

MR. UNDERWOOD: No. It's just...normally it's just the principal.

COUNCILMEMBER WHITE: Okay. Then I'd like to have an opinion explaining why we can't be...why the information cannot be shared with us in executive session.

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CHAIR GUZMAN: I would like to request Corporation Counsel if you could draft an opinion to that. We'll follow up with a formal request via documentation. But let me ask this question, if you do disclose it to the Mayor, can the Mayor disclose that information to the Council?

MR. UNDERWOOD: Normally, the Mayor would be bound by confidentiality. You know, I guess we'd have to determine whether executive session would count or not. But normally, there is a prohibition against bargaining in public and publicly disclosing anything because that typically is counterproductive. So there is a commitment by the Mayor normally not to bargain in public or in the media or anything like that so I guess we'd have to determine whether it would extend to. . .

CHAIR GUZMAN: Yeah. We'll go ahead and send out a formal --

COUNCILMEMBER VICTORINO: Chair?

CHAIR GUZMAN: --a formal request.

COUNCILMEMBER VICTORINO: Yeah, I would like to tack on to what he's saying is to have that as part of the question, if in executive session we discuss that, is that considered public. I don't think so.

COUNCILMEMBER WHITE: No.

COUNCILMEMBER VICTORINO: Yeah, so I intend to agree. . .

CHAIR GUZMAN: Yeah, we will request a. . .

COUNCILMEMBER VICTORINO: Put all that in the. . .

CHAIR GUZMAN: Very good. What we'll do is. . .

COUNCILMEMBER VICTORINO: I'm sorry, Mr. White. I apologize.

COUNCILMEMBER WHITE: No problem at all.

CHAIR GUZMAN: What we'll do is we'll incorporate that as part of our request for a legal opinion, the executive session part of it. Mr. White, did you have a follow up?

COUNCILMEMBER WHITE: Another issue that I have is that...well, let me go back. In our negotiations, I don't sign any kind of agreement to confidentiality. I think the public as these negotiations are going on should have some understanding what's being asked, and you know, asked for. Because...and I think the purpose of the confidentiality could be because they're asking for too much and no one wants to let 'em know because I know in the private sector we haven't seen these kinds of increases that we see in these contracts and I'm assuming they're gonna be asking for

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something very similar. So I would question the sensibility of having these negotiations all private. I think the public has the right to know what the heck their public servants are asking for. So the other issue that I have is that we are, what, six months into this fiscal year. These contracts don't come up...contracts don't end for another 10½ months. Why does the statute allow for impasse 10½ months before the contracts expire? That's lunacy. So I would also like to ask Corp. Counsel and Department of Personnel Services to recommend changes to the statute in the upcoming session that would assist them in having a fair and more balanced negotiation process.

CHAIR GUZMAN: We'll go ahead and follow up via a formal letter through the Committee's request.

COUNCILMEMBER WHITE: Thank you. Thank you, Chair.

CHAIR GUZMAN: Thank you, Mr. White. Do we have any other questions at this point? I'm gonna move on to asking the question. What...can Mr. Murai or Mr. Underwood, tell us what is the advantage or disadvantage of hiring a special counsel in this case or in this I guess arbitration matter?

MR. MURAI: Mr. Chair, mainly it's the skill and expertise and experience of someone like Mr. Katz. Although...well, that's basically it. Just basically his level of skill, his past performance in representing other public sector employers in prior negotiations and arbitrations. I wasn't part of the discussion to hire special counsel initially. By the time I became involved the concept of having the employer group represented by special counsel was already formed and it was a matter of recruiting and selecting the most appropriate person. But having settled on...but the goal was to find an attorney that could represent as lead counsel jointly represent all of the jurisdictions with a high level of skill and expertise in the subject and that's how we ended up with Mr. Katz.

CHAIR GUZMAN: And you may want to or if need be I guess...if you can't explain or if you can't explain in open session, if you need to go into executive session, we'll do so. What would be the advantage of Maui County in hiring this special counsel or at least taking the lead on it. Would you need to go into executive session?

MR. MURAI: I think I'd prefer that.

CHAIR GUZMAN: Okay. Other questions from the Members before we go into executive session? Seeing none. . .

COUNCILMEMBER WHITE: Oh.

CHAIR GUZMAN: Oh, Mr. White.

COUNCILMEMBER WHITE: I should have said...verbalized it, but I don't know whether you can answer this in open session or prefer to do it in executive session, but you had

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RECESS: 11:17 a.m.

RECONVENE: 12:07 p.m.

CHAIR GUZMAN: . . .*(gavel)*. . . Committee of the Whole shall now reconvene in open session. Members, pursuant to our discussions in executive session this proposed legislation will be posted on August 23, 2016 on the Council agenda and if there's any further discussion in open session, I'd ask the Members at this time. Seeing none, without objections the Chair shall defer this item.

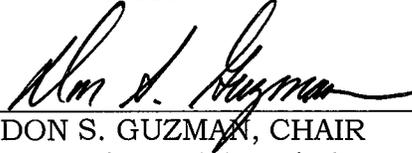
COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: RH)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. Thank very much, Members, for all your discussion and your time from the Administration as well as Staff. At this time, this meeting is adjourned. Thank you. . . .*(gavel)*. . .

ADJOURN: 12:08 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

cow:min:160818

Transcribed by: Clarita Balala