



GOV. MSG. NO. 814

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 14, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB952 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB952 HD1 SD2 CD1

A BILL FOR AN ACT
RELATING TO LABOR.

Sincerely,

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 14, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 952

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 952, entitled "A Bill for an Act Relating to Labor."

The purposes of this bill are to: (1) change the union certification process by allowing certification of a union representative through card check authorizations without a secret ballot election; (2) to permit a union and individual employees, but not an employer, to collect attorneys' fees and costs in actions before the Hawaii Labor Relations Board (HLRB); and (3) to allow a civil penalty if an employer or employee, but not a union, willfully or repeatedly commits a prohibited practice.

This bill is objectionable for the following reasons:

1. Certification of Union Representative Through Card Check Authorization

Section 1 provides for board certification of a union representative through card check authorization, which undermines employees' right to organize for purpose of collective bargaining under both the Constitution and the statute.

Under Sections 1 and 2 of Article XIII of the State Constitution, employees have the constitutional right to

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"organize for purpose of collective bargaining." Based on this right, the Legislature granted employees freedom to participate in the collective bargaining process through representation of their own choosing. Sections 89-3 and 377-4, Hawaii Revised Statutes (HRS), were enacted and designed to protect employees. These statutes provide that employees have the right of self-organization and the right to form, join, or assist labor organizations, and bargain collectively through representatives of their own choosing. Further, sections 89-3 and 377-4, Hawaii Revised Statutes, also provide that employees have a right to refrain from such activities.

In Hawaii, elections have been the exclusive means by which a union may obtain certification by the HLRB to act as a collective bargaining representative for a group of employees. However, if enacted, this bill would obligate the HLRB to certify a union based on authorization cards without an election. Authorization cards are poor indicators of support and this method of certifying a collective bargaining representative is susceptible to intimidation, coercion, and introduces irrelevant factors into the calculus of whether to select union representation.

Secret ballot elections, on the other hand, provide employees with an opportunity to carefully consider their choice after being fully informed by both the union and the employer of the advantages and disadvantages of union representation. The National Labor Relations Board has repeatedly stated that secret elections are generally the most satisfactory and indeed the preferred method of ascertaining whether a union has majority support.

We should continue the current process of certifying union representatives through election, which is patterned after how we vote for public officials.

2. Award of Attorneys' Fees and Costs

Section 2 seeks an amendment to section 377-9, Hawaii Revised Statutes, modifying the remedial powers of the HLRB to include authority to award interest on back pay awards, plus costs and attorneys' fees, in favor of employees.

Section 89-14, Hawaii Revised Statutes, provides that any controversy concerning prohibited practices may be submitted to the HLRB in the same manner and with the same effect as provided in section 377-9, Hawaii Revised Statutes. Section 89-13, Hawaii Revised Statutes, provides that it is unlawful for either employers or unions to engage in prohibited practices either against one another or against individual employees. Complaints alleging prohibited practices may be lodged by a union against an employer on behalf of one or more union members, by an employer against a union, or by an individual employee against his union, his employer, or both.

If this bill becomes law, this amendment would mean that unions or employees could seek to recover attorneys' fees and costs from employers upon prevailing in prohibited practice complaints, but employers would be provided with no such reciprocal right. This failure gives unions and employees an unfair advantage over employers.

This bill may also have a detrimental impact on the resolution of labor disputes through the grievance procedure and arbitration provided for in the current public collective bargaining agreements. Those public collective bargaining

agreements provide that each side will bear its own costs and fees. If this bill is enacted, the incentive for union attorneys to file HLRB claims, instead of grievances, will be greatly increased.

3. Civil Penalty Against Employers

The bill amends section 377-9, Hawaii Revised Statutes, by mandating that HLRB impose a civil penalty not to exceed \$10,000 in the event that an employer or employee is found to have "wilfully or repeatedly" committed a prohibited practice. The Legislature did not explain why such a mandatory penalty is necessary in the first place, particularly in light of the fact that the HLRB is already empowered with a wide range of discretionary remedial tools.

More importantly, even if one assumes that mandatory penalties of this nature are needed, this proposal unaccountably fails to provide for such penalties against a union if the HLRB finds it has committed prohibited practices against an employer. The bill also fails to provide for the imposition of a civil penalty in the event that a union has been found to have committed prohibited practices against one of its own members. In short, this bill gives unions an unfair advantage over both employers and individual employees.

4. Conflict With Current Law

This bill also appears to conflict with current law. The bill states that if the parties cannot reach a collective bargaining agreement, either party may request conciliation under section 377-3, Hawaii Revised Statutes. On page 3, lines 4-11, the bill also states that "[i]f, after the expiration of the twenty-day period beginning on the date on which the request

for conciliation is made . . . or such additional period as the parties may agree upon, the conciliator is not able to bring the parties to agreement . . . the board shall refer the dispute to an arbitration panel[.]"


Because the bill allows the parties to agree to conciliation beyond twenty days, it is not consistent with section 377-3, Hawaii Revised Statutes, which only empowers a conciliator to resolve disputes for ten to twenty days.

5. Collective Bargaining Restrictions

This bill is also objectionable because it places arbitrary restrictions on the negotiating parties without regard to the complexity of the agreement or the importance of free and non-coercive bargaining. Forcing parties to agree is antithetical to the system of labor relations that has served our country well. With the prospect of mandatory mediation and binding arbitration, bargaining may become more unrealistic as labor representatives push for very high wages in negotiation and employers counter that union demands would put them out of business.

This bill takes away the rights of unions and employers to bargain in good faith and interjects an arbitration panel to write the contract terms of the two parties. This undermines the purpose of a collective bargaining process and unnecessarily shifts power to the arbitration panels.

For the foregoing reasons, I am returning House Bill No. 952 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO LABOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 377, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:
4 "§377- Streamlining union certification. (a) When an
5 employee, group of employees, or any individual or labor
6 organization acting on their behalf, files a petition alleging
7 that a majority of employees in a unit appropriate for the
8 purposes of collective bargaining wish to be represented by an
9 individual or labor organization for those purposes, the board
10 shall investigate the petition. If the board finds that a
11 majority of the employees in a unit appropriate for bargaining
12 have signed valid authorizations designating the individual or
13 labor organization specified in the petition as their bargaining
14 representative, and that no other individual or labor
15 organization is currently certified or recognized as the
16 exclusive representative of any of the employees in the unit,
17 the board shall certify the individual or labor organization as



1 the representative without directing an election similar to that
2 under section 377-1(11).

3 (b) The board shall adopt rules governing the
4 certification of an exclusive representative under this section
5 and shall have the final determination on any controversy
6 concerning the eligibility of an employee to sign an
7 authorization card and the validity of an employee's signature
8 on an authorization card.

9 (c) For the purposes of this section, the term "employee"
10 means an employee as defined in section 377-1; provided that the
11 employee is employed by an employer with an annual gross revenue
12 of more than \$5,000,000."

13 **§377- Facilitating initial collective bargaining**

14 **agreements.** (a) No later than ten days after receiving a
15 written request for collective bargaining from an individual or
16 labor organization that has been newly organized or certified as
17 a representative, the parties shall meet and commence to bargain
18 collectively and shall make every reasonable effort to conclude
19 and sign a collective bargaining agreement.

20 (b) If, after the expiration of the ninety-day period
21 beginning on the date on which bargaining commenced, or such
22 additional period as the parties may agree upon, the parties



1 have failed to reach an agreement, either party may notify the
2 board of the existence of a dispute and request conciliation
3 under section 377-3.

4 (c) If, after the expiration of the twenty-day period
5 beginning on the date on which the request for conciliation is
6 made under subsection (b), or such additional period as the
7 parties may agree upon, the conciliator is not able to bring the
8 parties to agreement by conciliation, the board shall refer the
9 dispute to an arbitration panel established in accordance with
10 section 89-11(e)(2)(A) and rules as may be prescribed by the
11 board. The arbitration panel shall render a decision settling
12 the dispute, and the decision shall be binding upon the parties
13 for a period of two years, unless amended during that period by
14 written consent of the parties."

15 SECTION 2. Section 377-9, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) After the final hearing, the board shall promptly
18 make and file an order or decision, incorporating findings of
19 fact upon all the issues involved in the controversy and the
20 determination of the rights of the parties. Pending the final
21 determination of the controversy the board may, after hearing,
22 make interlocutory orders which may be enforced in the same



1 manner as final orders. Final orders may dismiss the complaint
2 or require the person complained of to cease and desist from the
3 unfair labor practices found to have been committed, suspend the
4 person's rights, immunities, privileges, or remedies granted or
5 afforded by this chapter for not more than one year, and require
6 the person to take [~~such~~] affirmative action, including
7 reinstatement of employees [~~with or without pay, as the board~~
8 ~~may deem proper.~~] and make orders in favor of employees making
9 them whole, including back pay with interest, costs, and
10 attorneys' fees. Any order may further require the person to
11 make reports from time to time showing the extent to which the
12 person has complied with the order. Furthermore, an employer or
13 employee who wilfully or repeatedly commits unfair or prohibited
14 practices that interfere with the statutory rights of an
15 employer or employees or discriminates against an employer or
16 employees for the exercise of protected conduct shall be subject
17 to a civil penalty not to exceed \$10,000 for each violation. In
18 determining the amount of any penalty under this section, the
19 board shall consider the gravity of the unfair or prohibited
20 practice and the impact of the practice on the charging party,
21 on other persons seeking to exercise rights guaranteed by this
22 section, or on public interest."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2009.

