

JAN 28 2009

A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

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

1 SECTION 1. The purpose of this Act is to implement and
2 promote the right to organize for the purpose of collective
3 bargaining, as recognized in article XIII of the Hawaii state
4 constitution.

5 SECTION 2. Chapter 377, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§377- Facilitation of initial collective bargaining
9 agreements. Whenever collective bargaining is for the purpose
10 of establishing an initial agreement following certification or
11 recognition, the following procedure shall apply:

12 (1) Not later than ten days after receiving a written
13 request for collective bargaining from an individual
14 or labor organization that has been newly organized or
15 certified as a representative, as defined in sections
16 377-5(a) and 377-5(e), or within such further period
17 as the parties agree upon, the parties shall meet and



1 commence to bargain collectively and shall make every
2 reasonable effort to conclude and sign a collective
3 bargaining agreement;

4 (2) If, after the expiration of the ninety-day period
5 beginning on the date on which bargaining commenced,
6 or an additional period as the parties may agree upon,
7 the parties have failed to reach an agreement, either
8 party may notify the Federal Mediation and
9 Conciliation Service of the existence of a dispute and
10 request mediation. Whenever such a request is
11 received, it shall be the duty of the Federal
12 Mediation and Conciliation Service promptly to put
13 itself in communication with the parties and to use
14 its best efforts, by mediation and conciliation, to
15 bring them to agreement; and

16 (3) If, after the expiration of the thirty-day period
17 beginning on the date on which the request for
18 mediation is made under paragraph (2), or an
19 additional period as the parties may agree upon, the
20 Federal Mediation and Conciliation Service is not able
21 to bring the parties to agreement by conciliation, the
22 Federal Mediation and Conciliation Service shall refer



1 the dispute to an arbitration panel established in
2 accordance with regulations as may be prescribed by
3 the Federal Mediation and Conciliation Service. The
4 arbitration panel shall render a decision settling the
5 dispute, and the decision shall be binding upon the
6 parties for a period of two years, unless amended
7 during that period by written consent of the parties."

8 SECTION 3. Chapter 380, Hawaii Revised Statutes, is
9 amended by adding three new sections to be appropriately
10 designated and to read as follows:

11 "§380- Union representation. (a) A duly certified
12 labor organization that represents employees for the purpose of
13 collective bargaining has a privilege to refuse to disclose and
14 to prevent any other person from disclosing confidential
15 information and communications made for the purpose of
16 facilitating the rendition of union representational services to
17 employees through the collective bargaining process, including
18 but not limited to negotiations over labor agreements,
19 investigation and processing of grievances or unfair labor or
20 prohibited practices, exhaustion of internal union procedures
21 and remedies, and actions to enforce rights established by
22 contract or statutes on behalf of employees.



1 (b) The representational privilege shall extend to a duly
2 certified labor organization, its officers, agents, employees,
3 and designated representatives.

4 (c) Confidential information shall include all statements,
5 documents, and information obtained from employees, employers,
6 and other sources, and shall apply to the work product of the
7 labor organization, its officers, agents, employees, and
8 designated representatives.

9 (d) The representational privilege shall be respected by
10 the courts, administrative agencies, arbitrators, legislative
11 bodies, and other tribunals, except no privilege shall apply if
12 the representational services were sought, obtained, or used to
13 enable or aid anyone to commit or plan to commit what the labor
14 organization knew or reasonably should have known to be a crime
15 or fraud.

16 (e) The union representational privilege may be waived
17 only by duly authorized officers of the labor organization in
18 writing.

19 **§380- Payment for union representational activities.**

20 (a) A labor organization that provides representational
21 services related to collective bargaining may bring a civil
22 action in circuit court for nonpayment of union dues by members



1 and agency fees by persons covered by a collective bargaining
2 agreement.

3 (b) The court in any action brought under this section
4 shall order payment of back dues or agency fees, or both, with
5 interest and allow for costs and reasonable attorneys' fees to
6 be paid by the defendant.

7 §380- Defenses for protected activity in a labor
8 dispute. It is a complete defense to prosecution for trespass
9 as a violation of section 708-813 through 708-815 and offenses
10 against public order as a violation of section 711-1101,
11 711-1102, and 711-1105, where a person or persons are engaged in
12 a labor dispute within the meaning of section 380-13(3), to
13 publicize the existence of said dispute on the pathways,
14 sidewalks, and areas adjacent to the entry ways or exits used by
15 customers or employees, or both, to gain access to the
16 establishment gained in the dispute."

17 SECTION 4. Section 377-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§377-5 Representatives; [and] elections[-]; employee free
20 choice. (a) Representatives chosen for the purposes of
21 collective bargaining by a majority of the employees voting in a
22 collective bargaining unit shall be the exclusive



1 representatives of all of the employees in such unit for the
2 purposes of collective bargaining. [~~Any individual employee or~~
3 ~~any minority group of employees in any collective bargaining~~
4 ~~unit shall have the right at any time to present grievances to~~
5 ~~their employer in person or through representatives of their own~~
6 ~~choosing.]~~

7 (b) Whenever a question arises concerning the
8 determination of a collective bargaining unit, as defined in
9 section 377-1, the board, in order to assure to employees the
10 fullest freedom in exercising the rights guaranteed by this
11 chapter, shall conduct an appropriate hearing upon due notice
12 and it shall decide in each case the unit appropriate for the
13 purpose of collective bargaining.

14 (c) Whenever a question arises concerning the
15 representation of employees in a collective bargaining unit, the
16 board shall determine the representatives thereof by taking a
17 secret ballot of employees and certifying in writing the results
18 thereof to the interested parties and to their employer. There
19 shall be included on any ballot for the election of
20 representatives the names of all persons submitted by an
21 employee or group of employees participating in the election,
22 except that the board may in its discretion exclude from the



1 ballot one who, at the time of the election, stands deprived of
2 one's rights under this chapter by reason of a prior
3 adjudication of one's having engaged in an unfair labor
4 practice. The ballot shall be so prepared as to permit of a
5 vote against representation by anyone named on the ballot. The
6 board's certification of the results of any election shall be
7 conclusive unless an appeal is taken therefrom under this
8 chapter.

9 (d) Questions concerning the representation of employees
10 may be raised by petition of any employee, or group of
11 employees, or the employee's representative, or labor
12 organization acting in their behalf, or by petition of the
13 employee's employer in the case of jurisdictional disputes, or
14 in any case after a union has requested recognition. Where it
15 appears by the petition that an emergency exists requiring
16 prompt action, the board shall act upon the petition forthwith
17 and hold the election requested within such time as will meet
18 the requirements of the emergency presented. The fact that one
19 election has been held shall not prevent the holding of another
20 election among the same group of employees, if it appears to the
21 board that sufficient reason therefor exists. In any election
22 where the choices on the ballot do not receive a majority, a run



1 off shall be conducted, the ballot providing for a selection
2 between the two choices receiving the largest and second largest
3 number of valid votes cast in the election.

4 (e) Notwithstanding any other provision of this section,
5 whenever a petition is filed by an employee or group of
6 employees or any individual or labor organization acting in
7 their behalf alleging that a majority of employees in a unit
8 appropriate for the purposes of collective bargaining wish to be
9 represented by a labor organization for the purpose of
10 collective bargaining, the board shall investigate the petition.
11 If the board finds that a majority of the employees in a unit
12 appropriate for bargaining has signed valid authorizations
13 designating the individual or labor organization specified in
14 the petition as their bargaining representative and that no
15 other individual or labor organization is currently certified or
16 recognized as the exclusive representative of any of the
17 employees in the unit, the board shall not direct an election
18 but shall certify the individual or labor organization as the
19 bargaining representative of the employees.

20 (f) The board shall develop guidelines and procedures for
21 the designation by employees of a bargaining representative in



1 the manner described in subsection (e). Such guidelines and
2 procedures shall include:

- 3 (1) Model collective bargaining authorization language
4 that may be used to make the designations described in
5 subsection (e); and
6 (2) Procedures to be used by the board to establish the
7 validity of signed authorizations designating
8 bargaining representatives pursuant to subsection
9 (e)."

10 SECTION 5. Section 377-9, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

12 "(d) After the final hearing, the board shall promptly
13 make and file an order or decision, incorporating findings of
14 fact upon all the issues involved in the controversy and the
15 determination of the rights of the parties. Pending the final
16 determination of the controversy the board may, after hearing,
17 make interlocutory orders which may be enforced in the same
18 manner as final orders. Final orders may dismiss the complaint
19 or require the person complained of to cease and desist from the
20 unfair labor practices found to have been committed, suspend the
21 person's rights, immunities, privileges, or remedies granted or
22 afforded by this chapter for not more than one year, and require



1 the person to take affirmative action, including reinstatement
2 of employees [~~with or without pay, as the board may deem~~
3 ~~proper.~~], a make whole order in favor of employees, including
4 back pay with interest, costs, and attorneys' fees. Any order
5 may further require the person to make reports from time to time
6 showing the extent to which the person has complied with the
7 order. Furthermore, an employer who wilfully or repeatedly
8 commits unfair or prohibited practices that interfere with the
9 statutory rights of employees or discriminate against employees
10 for the exercise of protected conduct shall be subject to a
11 civil penalty not to exceed \$20,000 for each violation. In
12 determining the amount of any penalty under this section, the
13 board shall consider the gravity of the unfair or prohibited
14 practice and the impact of the practice on the charging party,
15 on other persons seeking to exercise rights guaranteed by this
16 section, or on public interest."

17 SECTION 6. Section 380-6, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§380-6 Liability of association, officers, members. (a)**
20 No officer or member of any association or organization, and no
21 association or organization participating or interested in a
22 labor dispute, shall be held responsible or liable in any court



1 of the State for the unlawful acts of individual officers,
2 members, or agents, except upon clear proof of actual
3 participation in, or actual authorization of, such acts or of
4 ratification of such acts after actual knowledge thereof.

5 (b) In accordance with the constitutional right to
6 organize for the purpose of collective bargaining, no
7 association or organization, its officers, employees, agents,
8 members, or designated representatives shall be responsible or
9 liable in any court or agency to any other person for engaging
10 in lawful collective bargaining activities or for participating
11 in a labor dispute, as defined in section 380-13(3)."

12 SECTION 7. If any provision of this Act, or the
13 application thereof to any person or circumstance is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act, which can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Report Title:

Collective Bargaining

Description:

Allows union certification of certain employees or employee groups by signed authorization from the employee; requires collective bargaining to begin upon union certification; sets certain deadlines for initial collective bargaining agreement procedures and conciliation of disputes; sets civil penalty for unfair labor practices; extends certain authorities to labor organizations representing employees for collective bargaining; allows labor disputes to be defenses against prosecution for certain violations of law.

