



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 26, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 27, 2008
Time: 11:00 a.m.
Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in Opposition
of
House Bill 2974, HD1 – Relating to Labor**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2974, HD1 proposes to allow union agents the ability to organize employees who work for employers that fall under Chapters 377, Hawaii Revised Statutes ("HRS"), under a union organizing method known as "card check".

II. CURRENT LAW

Crosscheck / Card Check

Nothing in state or federal law prevents an employer from *voluntarily* entering into an agreement with a labor organization that wants to organize under "crosschecking" or "card check".

Under this method, if a union is able to collect 50% + 1 of the qualified employees signature, and the employer recognizes and agrees to the method, the union is authorized to enter into negotiations on behalf of the employees.

Chapter 377

State laws have a long tradition of recognizing the rights of workers to join labor unions. Additionally, state law also protects an employees' exercise of their free choice to decide

whether to join a union. Chapter 377, known as the Hawaii Labor Relations Act ("HLRA"), prohibits discrimination due to union membership. The HLRA was modeled after the National Labor Relations Act and created primarily to establish a peaceful system for unionization and collective bargaining, the HLRA makes it illegal for employers to discipline or discharge employees because they engage in union activity and other protected concerted activities. The employer cannot threaten to or actually fire, layoff, discipline, transfer or reassign workers because of their union support. The employer cannot favor employees who don't support the union over those who do in promotions, job assignments, wages and other working conditions. The employer cannot lay off employees or take away benefits or privileges employees already have in order to discourage union activity."

Hawaii law already establishes that employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.

III. HOUSE BILL

The Department strongly opposes this bill for the following reasons:

1. This bill makes the public policy statement that the HLRB supervised elections, where an employee casts their vote to join a union by confidential ballot, in the privacy of a voting booth, is no longer acceptable for the State of Hawaii.
2. This legislation is less-democratic as it does away with the secret balloting process that is inherent in our democratic society in allowing people to vote their conscience and imposes a simple "sign up" sheet.

We should continue the current process which is patterned after how we vote for public officials. Alternatively, the Department questions the need for such legislation and has concerns about the abolishment of secret balloting, which is specifically designed to protect employees from undue coercion.

3. This is an issue of fairness. Employees should be allowed to voice their support for or against a union in the privacy of the voting booth without undue pressure or intimidation from both management and the union.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Fourth Legislature, State of Hawaii Hawaii State House of Representatives Committee on Finance

Testimony by
Hawaii Government Employees Association
February 26, 2008

H.B. 2974, H.D. 1 – RELATING TO LABOR

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2974, H.D. 1 and the proposed amendments to Chapter 377, HRS (The Hawaii Employment Relations Act). As drafted, the bill would allow employees at a company to unionize if a majority signed cards expressing their desire to join a union. Currently, an employer does not have to recognize the majority's signatures and can insist on a secret ballot election. Unfortunately, in a high number of cases, the employer uses the time before the vote to pressure employees to not join a union.

The other suggested additions to Chapter 377, HRS, will prevent efforts by employers to stall negotiations indefinitely. The parties are required to make every reasonable effort to conclude and sign a collective bargaining agreement. If the parties are not successful after 90 days of negotiations, either party can request conciliation through the Hawaii Labor Relations Board, and ultimately an arbitration panel.

Labor unions have a significant role to play in helping to fix today's economic ills, most notably increasing income inequality. This cause of this problem is due in large part to the difficulty in organizing unions and the workers' resulting lack of bargaining power. Thank you for the opportunity to testify in support of H.B. 2974, H.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nora A. Nomura", written in a cursive style.

Nora A. Nomura
Deputy Executive Director



The Twenty-Fourth Legislature
Regular Session of 2008

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308
Wednesday, February 27, 2008; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2974, HD1
RELATING TO LABOR**

The ILWU Local 142 supports H.B. 2974, HD1, which certifies entities as exclusive representatives absent an election where no other representatives are certified as the exclusive representatives and further requires immediate collective bargaining between parties once entities are certified.

H.B. 2974, HD1 is modeled after the Employee Free Choice Act, which is under consideration by Congress and has already passed the U.S. House of Representatives. H.B. 2974 provides for a streamlined method of allowing workers covered by the Hawaii Employment Relations Act to exercise their legal right to union representation. This legislation would not affect the majority of workers in Hawaii and limits its effect to those workers not covered by the National Labor Relations Act, primarily in agriculture.

The current system for workers to form unions and bargain is broken. Some employers, even in Hawaii, deny workers the freedom to decide for themselves to form unions and bargain for a better life. They intimidate, harass, coerce and fire workers who try to form unions and bargain for their economic well-being--even in violation of the law. They know that fighting back will take time, money, and energy--all of which may be in short supply for workers who need to earn a living. Workers should have the freedom to make their own choice about whether to have a union and bargain, without interference from management, but this is not possible under the current system.

Gordon Lafer, an Associate Professor at the University of Oregon, wrote a report titled "Free and Fair?" comparing the union representation election process with democratic election standards. His analysis is that union representation elections are neither free nor fair and centers on six elements:

1. Equal access to the media. In a democratic election, each side is allowed to disseminate its viewpoint to create an informed electorate. As Lafer says, "equal access to mass media is not only an issue of fairness to candidates; it is a prerequisite for enabling democratic citizens to make informed choices." The framers of the Constitution emphasized that public media should not be controlled by one party.

However, in a union representation election, the employer has complete control over what is distributed to workers in the workplace. The employer is free to distribute anti-union literature and hold "captive audience" meetings to spread propaganda against the union without any opportunity for rebuttal by the union. The union's only access to the workers is outside of the worksite, posing another dilemma as home addresses and phone numbers are difficult to obtain.

2. Freedom of speech. In a democratic election, the right of free speech is guaranteed by the Constitution and promotes unfettered debate of political issues.

In elections for union representation, employers may ban any discussion or debate about the union in any area of the company's property other than locker rooms and break areas and at any time other than break periods. Workers who express support for the union run the risk of being targeted for discipline, even termination however unlawful that may be.

3. Equal access to voters. In a democratic election, laws are enacted to level the playing field among candidates and promote competition. Lafer says this principle is the "driving motivation behind federal matching funds in presidential elections...to create a roughly level play field."

In a union representaiton election, the employer has full access to the workers (i.e., the voters) during the workday while the union can only access the worker by mail, at home or elsewhere off-property.

4. Voter coercion. Concern over undue influence of voters led those who developed the Constitution to design laws that guarantee even the most impoverished of citizens to participate in the political system without fear of financial penalty. There are laws, for example, that prohibit employers from pressuring their employes to support a particular candidate.

However, in a union representation election, employees are susceptible to the most threatening form of economic coercion--loss of one's job. Short of that, workers also face the threat of changes to work duties and assignments, loss of pay increases, and promotion denials. Eager to avoid union representation, employers will even threaten to close down the company if the union enters the picture.

5. Timely implementation of the voters' will. Democratic elections are held on a regular basis and those elected serve a fixed term of office. As Lafer says, "Once a winner is certified in an election, he or she must take office promptly, and cannot be deprived of office on the basis of procedural delays."

In a union representation election, however, workers are not guranteed union representation even after the union successfully wins the election and election results are certified. Challenged ballots, unfair labor practice charges, and other appeals delay the will of the voters for union representation, sometimes for several years, during which time the status quo is maintained.

6. Campaign finance regulation. In a democratic election, personal wealth should not determine who wins an election. That is why federal campaign laws were enacted to permit candidates for federal office who face wealthy, self-funded opponents to increase both donations and expenditures. While this does not completely level the playing field, it is a recognition of the need to strive for balance among the candidates and encourage competition.

In union representation elections, there is no limit for employers on how much can be spent to thwart union representation, no penalties for excessive expenditures, and very limited reporting requirements. Unions, on the other hand, have at their disposal only the dues collected from their own members to fund a campaign to organize new members, in most cases exceedingly insufficient to finance a campaign against a well-funded employer. Unions must also file extensive reports on expenditures.

H.B. 2974 will help to level the playing field for workers seeking to be organized. It would enable workers to form unions when a majority signs union authorization cards, without the need for an election. It would provide for a collective bargaining agreement to be initiated in an expeditious manner. Too often, employers will delay negotiation of a first contract while trying to find a means to nullify union certification.

This was the case for the workers of Pacific Beach Hotel, who went through two years of negotiations with two different employers for the same bargaining unit. A contract has yet to be negotiated at Pacific Beach Hotel. In fact, the employer has now withdrawn recognition in violation of the law. A boycott has been called against the owner and its companies, Pacific Beach Hotel and Pagoda Hotel & Restaurant. While Pacific Beach Hotel would not be affected by passage of H.B. 2974, it is an example of the lengths to which employers will go to avoid a collective bargaining agreement.

Ultimately, without a collective bargaining agreement, union certification lacks the ability to represent the workers. Without a contract, there are no rules to govern employer and employee conduct and no protection for the workers. Facilitating settlement of a first contract is vital for workers to achieve true union representation.

The ILWU respectfully requests that the bill be amended with a reasonable effective date and urges passage of H.B. 2974, HD1. Thank you for allowing us the opportunity to testify on this important matter.

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
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February 26, 2008

Honorable Rep. Marcus R. Oshiro, Chair
Honorable Rep. Marilyn B. Lee, Vice Chair
Members of the House Committee on Finance
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF HB2974
RELATING TO LABOR
Hearing: Wednesday, February 27, 2008 @ 11:00 a.m.

Dear Chair Oshiro, Vice Chair Lee and the House Committee on Finance:

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

The Council SUPPORTS the passage of HB2974, which certifies entities as exclusive representatives absent an election where no other representatives are certified as the exclusive representatives. Requires immediate collective bargaining between parties once entities are certified as exclusive representatives.

Thank you for the opportunity to submit this testimony in support of HB2974.

Sincerely,

William "Buzz" Hong

WBH/dg