

ACT 214

H.B. NO. 3467

A Bill for an Act Relating to Hawaii Employment Relations Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend Hawaii's collective bargaining law to prevent discrimination during and at the conclusion of labor disputes in the public and private sector.

SECTION 2. Section 377-6, Hawaii Revised Statutes, is amended to read as follows:

“§377-6 Unfair labor practices of employers. It shall be an unfair labor practice for an employer individually or in concert with others:

- (1) To interfere with, restrain, or coerce the employer's employees in the exercise of the rights guaranteed in section 377-4;
- (2) To initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with the employer, nor from cooperating with representatives of at least a majority of the employer's employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where the activities or use create no additional expense to the employer;
- (3) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representative of the employer's employees in a collective bargaining unit, unless the board has certified that at least a majority of the employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one year preceding the date of the agreement. No employer shall justify any discrimination against any employee for nonmembership in a labor organization if the employer has reasonable grounds for believing that:

- (A) Such membership was not available to the employee on the same terms and conditions generally applicable to other members;
- (B) Or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership;
- (4) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit provided that if the employer has good faith doubt that a union represents a majority of the employees, the employer may file a representation petition for an election and shall not be deemed guilty of refusal to bargain;
- (5) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in paragraph (3);
- (6) To violate the terms of a collective bargaining agreement;
- (7) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the board or of any tribunal of competent jurisdiction;
- (8) To discharge or otherwise discriminate against an employee because the employee has filed charges or given information or testimony under the provisions of this chapter;
- (9) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;
- (10) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter;
- (11) To make, circulate, or cause to be circulated a blacklist[.];
- (12) To offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute; or
- (13) Based on employment or willingness to be employed during a labor dispute, to give employment preference to one person over another who:
 - (A) Was an employee at the commencement of the dispute;
 - (B) Exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization engaged in the dispute; and
 - (C) Continues to work for or has unconditionally offered to return to work for the employer."

SECTION 3. Section 89-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- (6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in section 89-11;
- (7) Refuse or fail to comply with any provision of this chapter; [or]
- (8) Violate the terms of a collective bargaining agreement[.];
- (9) To replace any nonessential employee for participating in a labor dispute; or
- (10) To give employment preference to an individual employed during a labor dispute and whose employment termination date occurs after the end of the dispute, over an employee who exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization involved in the dispute."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1992.)