

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.

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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

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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