



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

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February 11, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: February 12, 2008

Time: 8:50 a.m.

Place: Conference Room 309, State Capitol

LATE TESTIMONY

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

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

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2974 proposes to allow union agents the ability to organize employees who work for employers that fall under Chapters 89 and 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.

HOUSE OF REPRESENTATIVE
24th LEGISLATURE
REGULAR SESSION of 2008

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Alex M Sonson, Chair

2/12/08
8:50 AM

HB 2974
Relating to Labor

LATE TESTIMONY

Chair Sonson and members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to offer our comments on this bill.

What makes this great country the greatest in the world is the freedoms that it's citizens have. We have the freedom of free speech, freedom to travel anywhere with out papers and of course the freedom of choice.

To preserve this freedom of choice, such as when we will go to the polls this November to vote in local or national races, we will do so with a secret ballot. After the candidates have provided the voter with information on why they are the best candidate, we will go into the voting booth and make that choice with out being pressured or having someone looking over our shoulders to make that choice.

The freedom of making a choice thru a secret ballot is also the hallmark of the union organizing process, because it provides the best safeguards against abuse. Both from the employer and the union attempting to organize.

The current process allows employees to pause and carefully consider the arguments from both side, consider their choices and then make a decision thru a secret ballot.

This bill would deny employees of that opportunity for a freedom of choice. This bill would allow the unions to approach an employee to sign a card, even if they do not understand what it means and the union can use it to get certification. There is no procedure to show that the union broke the rules in getting authorizations. The employee could be threatened or bribed to sign because there is no procedure to challenge it.

Outrigger Hotels is primarily a non-union company, but we are not anti-union. We are pro-employee. This bill will put the employee in the middle of a situation that they don't need to be in. The current process protects that employee, this bill does not.

We urge you to hold this bill and mahalo for allowing us to testify.



Randy Perreira
President

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

LATE TESTIMONY

Testimony by
Hawaii State AFL-CIO
February 12, 2008

H.B. 2974 – RELATING TO LABOR

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 2974 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 not to 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 ninety days of negotiations, either party can request conciliation through the Hawaii Labor Relations Board.

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 worker's resulting lack of bargaining power. Thank you for the opportunity to testify in support of H.B. 2974.

Respectfully submitted,

Randy Perreira
President

The Twenty-Fourth Legislature
Regular Session of 2008

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

LATE TESTIMONY

State Capitol, Conference Room 309
Tuesday, February 12, 2008; 8:50 a.m.

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

The ILWU Local 142 supports H.B. 2594, 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 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 is intended to limit its effect to those workers not covered by the National Labor Relations Act, primarily in agriculture.

H.B. 2974 is needed because 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 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.

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 agreed upon at Pacific Beach Hotel. In fact, the employer has now declared it will not recognize the union and has no duty to bargain--all in violation of the law. A boycott has been called against the owner and its companies, Pacific Beach Hotel and Pagoda Hotel & Restaurant. Although 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.

However, H.B. 2974 falls short in that area. While the bill sets a timetable to initiate negotiations and allows a request for conciliation if the parties are unable to reach a settlement, the conciliation can end in a stalemate. Therefore, we recommend that the bill be amended, borrowing language from the Employee Free Choice Act, to allow arbitration to resolve a dispute and provide for a collective bargaining agreement that will be binding for two years.

The following language is proposed:

Section 377- Facilitating initial collective bargaining agreements. (a) Not later
(c) If, after the expiration of the 30-day period beginning on the date on which the request for conciliation is made under paragraph (b), or such additional period as the parties may agree upon, the board is not able to bring the parties to agreement by conciliation, the board shall refer the dispute to an arbitration panel established in accordance with such regulations as may be prescribed by the board. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties.

We also recommend that the bill include **penalties** to strengthen enforcement. Without penalties, employers will feel free to violate the law at will.

In addition, we recommend that **Section 1 regarding Chapter 89 be deleted** from the bill in its entirety to remove the reference to unorganized public employees, who cannot organize without having a bargaining unit first established by law.

With these amendments and for these reasons, the ILWU urges passage of H.B. 2974. Thank you for allowing us the opportunity to testify on this important matter.