



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

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January 28, 2008

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

Date: Tuesday, January 29, 2008

Time: 8:15 a.m.

Place: Conference Room 309, State Capitol

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

**In Strong Opposition
to
H.B. 3368- Relating to Labor**

I. OVERVIEW OF PROPOSED LEGISLATION

House Bill 3368 amends Chapter 103, Hawaii Revised Statutes ("HRS"), (Expenditure of Public Money and Public Contracts), by making union organizing known as "Card Check" a requirement on any business seeking a government contract over \$25,000.

Notably, this bill also seeks to do away with the federally-run democratic election process, through secret balloting, which employees currently follow when deciding to organize as a union.

This legislation attempts to force non-union contractors involved in Chapter 103, HRS, projects with the state (i.e., housing projects for Hawaiian Homelands, affordable housing, homeless shelters, schools, etc.) to enter into a "crosscheck" agreements, with any labor organization that requests such an agreement, as a requirement for government funded work.

"Card Check" and/or "Crosscheck" agreements stipulate that the employer agrees to allow a union agent to advocate for the union by meeting with workers and soliciting them to sign a card supporting the unionization. The employer agrees to recognize the union once they sign up a simple majority of workers and to bypass the secret ballot, election process employees usually use to vote on whether to be unionized or not.

Furthermore, this measure goes on to require that all contracts under Chapter 103 contain provisions allowing employees to organize and mandating that agencies contracting with the government to provide services furnish labor organizations access to its employees in lunchrooms, lounges, or "other non-public areas on the contractor's premises during employees off-work periods, for organizational purposes." The duty to enforce Chapter 103 falls on the governmental agency and the Department of Labor and Industrial Relations ("Department").

This measure also calls for a \$5,000 fine for each violation of Chapter 103. This penalty would be payable to the government agency who entered into the contract with the service provider. Moreover, this measure would make any contractor liable to an employee who has been "affected" by the violation in the amount of his or her unpaid compensation. In the case of a willful violation, a contractor would also be liable for liquidated damages.

The effective date is upon approval.

II. CURRENT LAW

Chapter 103, HRS

Under the current law, the provisions of Chapter 103 apply only to service contracts in excess of \$25,000. Current law mandates that wages paid correlate with wages paid to State workers performing similar work. Chapter 103's provisions are to be enforced by the government agency contracting for services.

Chapter 103 currently provides for certain exemptions to its provisions, one of which is contracts between the government and a nonprofit service provider.

Furthermore, under Chapter 103, there is no requirement to incorporate provisions regarding organized labor in to contracts.

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".

Federal laws have a long tradition of recognizing the rights of workers to join labor unions. Since the passage of the Wagner Act in 1935, federal law has protected employees' exercise of their free choice to decide whether to join a union. This statute, which is also known as the National Labor Relations Act ("NLRA"), prohibits discrimination due to union membership. The Act, in Section 8(a)(3), provides that:

It shall be an unfair labor practice for an employer --:
by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
29 U.S.C. § 158(a)(3).

The NLRA, otherwise known as the Wagner Act, was passed by Congress in 1935. The NLRA is the grandfather of employee rights legislation in the United States. Although passed primarily to create a peaceful system for unionization and collective bargaining, the NLRA was also the first federal employment discrimination statute - making it illegal for employers to discipline or discharge employees because they engage in union activity and other protected concerted activities.

Exclusive jurisdiction for enforcement of the NLRA was vested in a unique administrative agency – the National Labor Relations Board ("NLRB"). The NLRB was given broad authority to interpret and enforce the rights and obligations created by the NLRA, and to develop through case-by-case adjudication, a body of law to govern labor-management relations.

Section 7 of the NLRA describes the essential employee rights underlying the act:

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....

Section 8 of the NLRA says employers cannot legally punish or discriminate against any worker because of union activity. 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."

III. HOUSE BILL

The Department strongly opposes this bill for the following reasons:

1. This bill makes the public policy statement that the NLRB 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.

Alternatively, an employer should be allowed a choice in determining whether they want to have an equal voice with the labor union in advocating for or against organizing their establishment. In forcing the employer to enter into this agreement, that choice is taken away from them. Again, under state and federal law, an employer can already "voluntarily" enter into these agreements.

The Department believes it is bad public policy to force employers and employees to enter into these agreements as a condition of receiving state work or money. Further, the state strips the employee of their right to exercise their vote in private, without coercion or intimidation; and the employer of their right to insist on an election process that is both fair and ensures that employees are voting their conscience and not being peer pressured to sign a card.

Under this bill, the state is using the "power of purse" to force employers to agree to this organizing tactic in order to get work.

Current Process

1. 30% of workers at the job site sign a petition to the NLRB to conduct union elections.
2. The NLRB determines which employees make up the proposed "bargaining unit". (During this process, the union and the employer typically advocate for and against forming a union.)
3. The union is granted access to the names, addresses and phone numbers of the eligible employees. While the union is not granted access to the worksite, the union is allowed to pass out leaflets as workers enter and leave the workplace, visit with employees at their home, or have a meeting offsite to promote the union.
4. The NLRB holds an election. Employees vote in secret, in the privacy of the voting booth. The employer and union are not allowed to be in the election booth.
5. If the employees vote for a union, then bargaining unit begins negotiations with the employer over pay and benefits.

PROPOSED PROCESS

1. Employer enters into development deal with the state or is hired to do construction for a school who has been authorized a bond through the state.
2. As a condition for the work, the employer, and any subcontractors, must sign an agreement to accept "card check" or "crosscheck" method of organizing should a union wish to enter into talks to organize the employees of their company. **There is no election process.**
3. The union approaches the employees and hands the employee a card, asking them to sign it. The card signifies that they wish to join a union. **No oversight in how that signature was obtained.**
4. Once the union has 50% + 1, the company is officially unionized and the collective bargaining unit begins negotiations with the employer.



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

Testimony by
Hawaii State AFL-CIO
January 29, 2008

H.B. 3368 – RELATING TO LABOR

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 3368. This bill requires contractors who bids and receives public funds in excess of \$25,000 for a construction project to abide by certain conditions that would allow the workers to form and join a labor union.

Specifically, the contractor is prohibited from making statements or taking actions that would indicate their opposition or support for unionization of its employees. The contractor would also be required not to interfere with an organizing effort by providing access to their facility by the union. Another important feature of the bill permits the selection of a union through employee authorization cards if a majority of employees within a unit designates that labor organization to represent them.

Finally, any contractor who violates these provisions would be subject to a monetary fine, attorney's fees and other penalties. We urge your support of H.B. 3368.

Respectfully submitted,

fr Randy Perreira
President

Testimony from
Alfred C. Lardizabal, Government and Community Relations Director
Laborers' Union Local 368
In support of

HB3368

LATE TESTIMONY

RELATING TO LABOR

To The Committee on Labor and Public Employment
Tuesday, January 29, 2008, 8:30 a.m.
Conference Room 309
State Capitol

Honorable Representative Alex Sonson, Chair; Representative Bob Nakasone, Vice Chair and Members of the Committee on Labor and Public Employment:

HB3368 requires that contracts subject to certain wage requirements contain provisions allowing employers to organize. We are grateful to the introducers of this important bill.

For too long, the current federal administration has been bent on destroying the hopes of thousands of American workers to organize and to have a voice in their work place. As a result, thousands of jobs were exported to foreign countries, health care benefits cut, and other work conditions and benefits altered to the detriment of American workers and their families.

This bill sends a strong message to non-Hawaii construction firms that have their workers displace Hawaii workers, that it is time to level the playing field. Many Hawaii workers want a voice in their work place. We strongly support this bill.

Thank you for the opportunity to submit this testimony.