



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

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February 4, 2008

**LATE TESTIMONY**

To: The Honorable Brian Taniguchi, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: February 5, 2008

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

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

**Testimony in Opposition  
of  
Senate Bill 2594 – Relating to Labor**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

Senate Bill 2594 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. SENATE 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.

LINDA LINGLE  
GOVERNOR



MARIE C. LADERTA  
CHIEF NEGOTIATOR

HAROLD DeCOSTA  
DEPUTY CHIEF NEGOTIATOR

STATE OF HAWAII  
OFFICE OF COLLECTIVE BARGAINING  
EXECUTIVE OFFICE OF THE GOVERNOR  
235 S. BERETANIA STREET, SUITE 1201  
HONOLULU, HAWAII 96813

February 3, 2008

**LATE TESTIMONY**

TESTIMONY to be PRESENTED to the  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
For Hearing on Tuesday, February 5, 2008  
9:00 A.M., Conference Room 016

By

MARIE C. LADERTA  
CHIEF NEGOTIATOR

on

**Senate Bill No. 2594  
Relating to Labor**

CHAIR TANIGUCHI AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY  
AND LABOR:

With regard to collective bargaining in public employment, S.B. No. 2594 would add a new section to Chapter 89, Hawaii Revised Statutes (HRS), to provide specifically for:

- Any "employee or group of employees" to petition the Hawaii Labor Relations Board to certify—without an election—an entity to serve as an exclusive representative of a "unit appropriate for bargaining" if: (1) the unit has no representative; and (2) a majority of that unit have signed authorizations designating the entity to serve as their representative; and
- A mechanism by which a newly selected representative could require the employer to begin new collective bargaining within 10 days of the receipt of a request for new collective bargaining.

The Office of Collective Bargaining **respectfully opposes** the proposed additions to Chapter 89, HRS, because: (1) this new, alternative certification method is unnecessary; and (2) Section 2 of this bill may be interpreted as providing a new statutory mechanism to vitiate a current and binding 2-year contract solely if a bargaining unit selects a new representative.

Through this bill, the Legislature is attempting to fix something that is not broken. HRS § 89-6 defines "Appropriate bargaining units" and sets forth Bargaining Units 1-13. HRS § 89-7 provides for the election of representation for these units. Pursuant to HRS § 89-5(i)(2), the Hawaii Labor Relations Board shall establish the procedures for the election of employee representation and shall investigate and resolve any disputes. As is evident from the Annual Report of the Board for 2006-2007, all 13 Bargaining Units have had the same, exclusive representation since the early 1970s. *Hawaii Labor Relations Board Annual Report 2006-2007* at page 6.

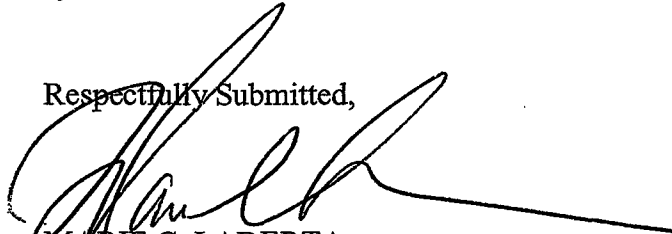
The bill appears to be intended to circumvent HRS § 89-5 (Hawaii Labor Relations Board), HRS § 89-7 (Elections), and HRS § 89-8(a) (Recognition and representation; employee participation) all of which provide for recognition and selection of representation. The current statutory provisions appear sufficient to provide for an appropriate bargaining unit's selection of representation. There appears no reason to change the current statutory structure.

For these reasons, we respectfully urge that Sections 1 and 2 of this bill be deleted if this bill is passed out by the Committee.

The Office of Collective Bargaining takes no position regarding the proposed revisions to Chapter 377, HRS.

Thank you for the opportunity to testify on this measure.

Respectfully Submitted,



MARIE C. LADERTA,  
Chief Negotiator



# HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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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 Government Employees Association  
February 5, 2008

**S.B. 2594 – RELATING TO**  
**LABOR**

The Hawaii Government Employees Association supports S.B. 2594 with amendment. We strongly support a streamlined process for employees to unionize in the private sector.

However, we do not support an amendment to Chapter 89, HRS, which governs public sector bargaining. Existing law on collective bargaining has worked well for unions and employers in the public sector and should be maintained to preserve current harmony. We respectfully request the removal of the proposed language regarding Chapter 89, HRS, from the bill.

Thank you for the opportunity to support S.B. 2594 with amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nora A. Nomura', written over a horizontal line.

Nora A. Nomura  
Deputy Executive Director

**LATE**

TESTIMONY BEFORE THE SENATE COMMITTEE ON  
JUDICIARY & LABOR

RE: SB 2594-RELATING TO LABOR

FEBRUARY 5, 2008

ROGER TAKABAYASHI, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

Chair Taniguchi and Members of the Committee:

The Hawaii State Teachers Association supports SB 2594 with the deletion of Section 1 (Chapter 89, HRS, is amended by adding two new sections to be appropriately designated and to read as follows).

Thank you for the opportunity to testify.

**THE SENATE**

Committee on Judiciary and Labor  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

State Capitol, Conference Room 016  
Tuesday, February 5, 2008; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2594  
RELATING TO LABOR**

The ILWU Local 142 supports S.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.

S.B. 2594 is modeled after the Employee Free Choice Act, which is under consideration by Congress and has passed the U.S. House of Representatives. S.B. 2594 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.

S.B. 2594 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 whether to form unions to 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.

S.B. 2594 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 S.B. 2594, 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, S.B. 2594 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 as they wish.

In addition, we recommend that **Section 1 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 S.B. 2594. Thank you for allowing us the opportunity to testify on this important matter.