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March 10, 2008

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

Date: March 11, 2008
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Testimony in Opposition of Senate Bill 2594, SD1 – Relating to Labor

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2594, SD1 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 employee's 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 Hawaii Labor Relations Board ("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.

Testimony of Karl F. Borgstrom, President, Associated Builders & Contractors Hawaii

Committee on Labor and Public Employment
Tuesday, March 11, 2008, 0900

Re: Opposition to SB 2594, SD1, Relating to Labor

Chairman Sonson, Members of the Committee:

My name is Karl F. Borgstrom, president of the Associated Builders and Contractors of Hawaii, an association of member companies in the construction industry, representing more than 5000 employees in that industry. On behalf of our membership, ABC Hawaii wishes to register its opposition to SB 2594, reiterating the points made previously in opposition to HB 2974 and adding some additional comments.

SB 2594 seeks to circumvent the time-honored and accepted procedures established under the National Labor Relations Act for determining employee labor affiliation. Just as a similar legislative proposal in the 2007 session used the alleged threat of labor unrest and its disruptive impact on public projects as its rationale, the language of HB 2594 infers an unsubstantiated need to "streamline" union certification by circumventing secret ballot labor elections that assure employees' freedom of choice whether or not to be represented by a union and by whom they will be represented.

The rationale for "streamlining" appears to lie in the assumption that if there is no contest between bargaining representative contenders why bother to have an election? Such an assumption ignores the obvious—employees may not want to be represented by a bargaining unit at all! Those employees may for any number of reasons feel compelled to sign in a petitioning process conducted by an individual or labor organization. It is one thing to sign a petition to ultimately put a matter to a vote in a secret ballot process; it is quite another to feel you have to personally sign, in full view of a petitioner, in order to protect your job and your working relationships with your peers.

The NLRB provides strict and detailed procedures that ensure a fair election, free of fraud and intimidation, where employees may cast their vote confidentially. SB 2594 proposes that a petition containing the signatures of a majority of the employees in a unit appropriate for bargaining be accepted as a valid authorization designating an individual or labor organization as their bargaining representative, and mandates that the board shall not direct an election.

SB 2594 makes no provision for supervision or monitoring of that petitioning process to ascertain whether those signatures were freely given or that they do, in fact, represent the intentions of the employees. It states that the petition is "valid" simply based on its containing a number of signatures constituting a majority of employees in a unit. In its rush to "streamline" the selection of a bargaining agent, this legislature, through SB 2594, would discard the fundamental right of an employee to express his or her vote for or against that bargaining agent through the time-honored secret ballot process that guarantees the validity of the selection process. The concept of a "secret ballot" is a winning process for all parties and should be retained by the State of Hawaii.

In conclusion, ABC Hawaii stands in opposition to SB 2594 and urges the Committee not to move it forward for consideration.

Thank you.

Karl F. Borgstrom, Ph.D.
President
Associated Builders and Contractors, Hawaii

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KNOT YOUR BAG
The right way to trash plastic bags

March 11, 2008

To: House Committee on Labor & Public Employment
Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, Government Affairs

Re: SB 2594 RELATING TO LABOR

Chairs & Committee Members:

We oppose this measure.

It will eliminate the current system of allowing a secret ballot. If the Legislature adopts this method of election, then it can be said that the Legislature should extend this policy to political elections, where a candidate for office could just go out and get signature cards and hold the votes necessary to assume the public office.

With the secret ballot, nobody really knows how an individual votes. This is a vital part of our society, whether it be a vote for or against a candidate for public office, or whether to support or not support a labor movement.

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

State Capitol, Conference Room 309
Tuesday, March 11, 2008; 9:00 a.m.

LATE TESTIMONY

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2594, SD1 RELATING TO LABOR

The ILWU Local 142 supports S.B. 2594, SD1, which allows certified representation of an appropriate collective bargaining employee unit that does not have a certified representation when a majority of the employees validly authorizes the representation and requires immediate collective bargaining between parties once entities are certified as exclusive representatives.

S.B. 2594, SD1 is modeled after the Employee Free Choice Act, which is under consideration by Congress and has already 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 limits its effect to those workers not covered by the National Labor Relations Act, primarily in agriculture.

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 and bargain for a better life. These employers intimidate, harass, coerce and fire workers who try to form unions and bargain for their 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.

Gordon Lafer, an Associate Professor at the University of Oregon, wrote a report titled "Free and Fair?" comparing the union representation election process with democratic election standards. His conclusion is that union representation elections are neither free nor fair, and his analysis centers on six elements:

1. Equal access to the media. In a democratic election, each side is allowed to disseminate its viewpoint to create an informed electorate. As Lafer says, "equal access to mass media is not only an issue of fairness to candidates; it is a prerequisite for enabling democratic citizens to make informed choices." The framers of the Constitution emphasized that public media should not be controlled by one party.

However, in a union representation election, the employer has complete control over what is distributed to workers in the workplace. The employer is free to distribute anti-union literature and hold "captive audience" meetings to spread propaganda against the union without any opportunity for rebuttal by the union. The union's only access to the workers is outside of the worksite, posing another dilemma as home addresses and phone numbers are difficult to obtain.

2. Freedom of speech. In a democratic election, the right of free speech is guaranteed by the Constitution and promotes unfettered debate of political issues.

   In elections for union representation, employers may ban any discussion or debate about the union in any area of the company's property other than locker rooms and break areas and at any time other than break periods. Workers who express support for the union run the risk of being targeted for discipline and even termination however unlawful that may be.

3. Equal access to voters. In a democratic election, laws are enacted to level the playing field among candidates and promote competition. Lafer says this principle is the "driving motivation behind federal matching funds in presidential elections...to create a roughly level play field."

   In a union representaiton election, the employer has full access to the workers (i.e., the voters) during the workday while the union can only access the worker by mail, at home, or elsewhere off company property.

4. Voter coercion. Concern over undue influence of voters led those who developed the Constitution to design laws that guarantee even the most impoverished of citizens to participate in the political system without fear of financial penalty. There are laws, for example, that prohibit employers from pressuring their employees to support a particular candidate.

   However, in a union representation election, employees are susceptible to the most threatening form of economic coercion--the loss of one's job. Short of that, workers also face the threat of changes to work duties and assignments, loss of pay increases, and promotion denials. Eager to avoid union representation, employers will even threaten to close down the company if the union enters the picture.

5. Timely implementation of the voters' will. Democratic elections are held on a regular basis and those elected serve a fixed term of office. As Lafer says, "Once a winner is certified in an election, he or she must take office promptly, and cannot be deprived of office on the basis of procedural delays."

   In a union representation election, however, workers are not guranteed union representation even after the union successfully wins the election and election results are certified. Challenged ballots, unfair labor practice charges, and other appeals delay the will of the voters for union representation, sometimes for several years, during which time the status quo is maintained.

6. Campaign finance regulation. In a democratic election, personal wealth should not determine who wins an election. That is why federal campaign laws were enacted to permit candidates for federal office who face wealthy, self-funded opponents to increase both donations and expenditures. While this does not completely level the playing field, it is a recognition of the need to strive for balance among the candidates and encourage competition.

   In union representation elections, there is no limit for employers on how much can be spent to thwart union representation, no penalties for excessive expenditures, and very limited reporting requirements. Unions, on the other hand, have at their disposal only the dues collected from their own members to fund a campaign to organize new members, in most cases exceedingly insufficient to finance a campaign against a well-funded employer. Unions must also file extensive reports on expenditures.

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 negotiated at Pacific Beach Hotel. In fact, the employer has now withdrawn recognition in violation of the law. A boycott has been called against the owner and its companies, Pacific Beach Hotel and Pagoda Hotel & Restaurant. While Pacific Beach Hotel would not be affected by passage of S.B. 2594, it serves as an example of the lengths to which employers will go to avoid a collective bargaining agreement.

Ultimately, however, union certification alone lacks the ability to truly represent the workers. Without a collective bargaining ageement, 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.

To ensure that a first contract is negotiated, we propose an amendment to S.B. 2594. While SD1 sets a timetable to initiate negotations 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 for 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 thirty-day period beginning on the date on which the request for conciliation is made under subsection (b), or such additional period as the parties may agree upon, the conciliator is not able to bring the parties to agreement by conciliation, the conciliator shall refer the dispute to an arbitration panel established in accordance with rules as may be prescribed by the board. The arbitration panel shall render a decision settling the dispute, and the decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties.

In addition, an amendment of the effective date to July 1, 2008 would make S.B. 2594 consistent with H.B. 2974, HD2, which was passed by the House of Representatives.

The ILWU respectfully urges that S.B. 2594, SD1 be amended as proposed and passed by this committee. Thank you for allowing us the opportunity to testify on this important matter.

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

Testimony by
Hawaii Government Employees Association
March 11, 2008

LATE TESTIMONY

S.B. 2594, S.D. 1 – RELATING TO LABOR

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2594, S.D. 1 and the proposed amendments to Chapter 377, HRS (The Hawaii Employment Relations Act). This bill would allow employees at a company to unionize if a majority signed cards indicating their desire to unionize. An employer is not required to recognize the majority's signatures and can insist on a secret ballot election. All too frequently, the employer uses the time before the vote to exert pressure on the employees not to join a union.

The other suggested additions to Chapter 377, HRS, will prevent employers from stalling negotiations. The parties must make sincere efforts to conclude and sign a collective bargaining agreement. If, however, the parties are not successful after 90 days of negotiations, either party can request conciliation from the Hawaii Labor Relations Board. We suggest that the bill be amended to include an arbitration panel as in H.B. 2974, H.D. 2.

Thank you for the opportunity to testify in support of S.B. 2594, S.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director