TESTIMONY

SB 1621

LINDA LINGLE
GOVERNOR

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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 17, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: Tuesday, February 17, 2009
Time: 2:45 p.m.
Place: Conference Room 224 State Capitol

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

Testimony in Strong Opposition of S.B. 1621 – Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 1621 seeks to do away with the federally-run democratic secret ballot election process, which employees currently follow when deciding to organize as a union. The Bill provides that if the Hawaii Labor Relations Board finds that a majority of the employees have signed a 'valid authorization' designating an individual or labor organization as their bargaining representative, then the board shall certify the individual or organization as the representative **without directing an election**.

This legislation also attempts to force employers, to enter into collective bargaining meetings within ten days after receiving a written request for collective bargaining from the non-elected representative.

The Bill provides procedure for conciliation under section 377-3 if an agreement is not entered into after ninety days. If after thirty days beginning on the date the request for conciliation is made, the parties have not entered into agreement, the Hawaii Labor Relations Board shall refer the dispute to an arbitration panel established by the board.

II. RELEVANT LAWS

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.

The NLRA went through significant changes in 1947 when the Taft-Hartley Act added a set of provisions designed to regulate and disempower unions. The statutory scheme that exists today, the Labor Management Relations Act ("LMRA"), combines the original pro-labor provisions of the Wagner Act with the limitations on union activity established by Congress in 1947.

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....

Further, according to information provided by the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), "Most working people have the legal right under Section 7 of the National Labor Relations Act (NLRA) to join or support a union and to engage in collective bargaining. This includes the right to:

1. Attend meetings to discuss joining a union.
2. Read, distribute and discuss union literature (as long as this takes place in non-work areas during non-work times, such as break or lunch hours).
3. Wear union buttons, T-shirts, stickers, hats or other items on the job at most worksites.
4. **Sign a card asking your employer to recognize and bargain with the union.**
5. Sign petitions or file grievances related to wages, hours, working conditions and other job issues.
6. Ask other employees to support the union, to sign union cards or petitions or to file grievances.

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, lay off, 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. SENATE BILL

The Department supports the right of workers to organize, but strongly opposes this bill for the following reasons:

1. On April 14, 2008 Governor Lingle vetoed H.B. 2974 which is substantively the same Bill as S.B. 1621, for the following reasons:
    a. The “card check” procedure envisioned by this bill is a poor substitute for the secret ballot and is ripe for abuse.
    b. The use of the secret ballot election process provides the employee anonymity and the opportunity to carefully consider and weigh individual choices after having the time to be fully informed by both the labor organization and the employer of various advantages and disadvantages of being collectively represented.
    c. Nothing in this bill specifies how or when signatures can be obtained and there is no provision for neutral supervision. As a result there is no way to determine whether a worker’s signature was given freely and without

intimidation, pressure, or coercion from fellow employees, labor representatives, or the employer.

d. Maintaining the secret ballot is the fair, appropriate, and democratic way to protect workers' privacy and to ensure workers have the ability to vote their conscience without fear of repercussion or retaliation.
e. There is no compelling justification for replacing an unbiased, democratic process with one that has the potential to erode a worker's existing rights and protections under law.
f. This bill is also objectionable because it places arbitrary restrictions and deadlines 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 for nearly 75 years.

2. This legislation is less-democratic as it forces the employer to effectively remain and to ensure that the NLRB election process is bypassed in an attempt by a labor organization to persuade their employees to join a union. Additionally, 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. (See Attachment)

   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. <u>In forcing the employer to enter into this agreement, that choice is taken away from them.</u> 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.

4. According to information provided by the AFL-CIO, a worker's right to organize is already protected.

5. The NLRA has been developed over the last 69 years to ensure a proper balance between the rights of those employees that want to organize and those that do not, as well as providing a fair process that protects the rights of employers.

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February 15, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Tuesday, February 17, 2009
2:45 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 1621
Relating to Collective Bargaining

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S. B. No. 1621 is to implement and promote the right to organize for purposes of collective bargaining, extend certain authorities to labor organizations, and allow labor disputes to be defenses against prosecution for certain violations of law.

The Department of Human Resources Development **strongly opposes** the amendments to Chapter 380, Hawaii Revised Statutes, set forth in Section 3 of this measure (See page 3, beginning from line 11, through page 4, ending on line 18).

First, this bill would create a new, statutory union representational privilege which would allow Unions to withhold so-called “confidential” union information and communications made in the course of rendering union representational services. The expansive scope of this new privilege is breathtaking, as it would protect union communications and information from labor agreement negotiations, grievance and unfair labor/prohibited practice investigations and processing, exhaustion of internal

union procedures and remedies, and actions to enforce rights established by contract or statutes. This protection would be unilateral since there is no provision in the bill to recognize a reciprocal management privilege. Thus, application of this privilege to a Chapter 380, HRS, labor dispute in court would be patently absurd because employers would have to produce their internal communications and information, generated by their managers, supervisors, and employees, while the unions would have no corollary obligation to do the same. There are no circumstances under which a court of law could render a sound opinion or ruling when the record consists only of one party's evidence. Ironically, with this privilege in place, the bill's proposed amendment to Section 380-6, HRS, is unnecessary because no liability could ever be proven against a labor organization.

Second, and most repugnant to the State, is the bill's requirement at Section 3, first subsection (d), that the "representational privilege shall be respected by the courts, administrative agencies, arbitrators, legislative bodies, and other tribunals." This brazen attempt to extend the scope of the privilege beyond Chapter 380, HRS, proceedings blatantly usurps the power and authority of the courts, agencies, arbitrators, legislative bodies, and other tribunals to rule on issues of privilege and evidence based on their own statutes, rules, policies and procedures, and any other applicable laws. For example, Section 658A-17, HRS, of the State's Uniform Arbitration Act, already prescribes how arbitrators are to handle witnesses, subpoenas, discovery, and privileges. Also, the Hawaii Labor Relations Board has rules of practice and procedure which govern witnesses, subpoenas, discovery, and privileges for hearings within its jurisdiction.

Therefore, we strongly urge that these amendments to Chapter 380, beginning from line 11 on page 3 up through line 18 on page 4, be deleted in their entirety.

Thank you for the opportunity to testify on this matter.

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice-Chair
Tuesday, February 17, 2009; 2:45 p.m.
Conference Room 224

STATEMENT OF DR. GORDON LAFER ON S.B. 1621
RELATING TO COLLECTIVE BARGAINING

Chairman Takamine, Vice Chairman Taniguchi, and Members of the Committee, thank you for the opportunity to submit testimony for your Committee's hearing. My name is Gordon Lafer. I hold a PhD in Political Science from Yale University and am currently a professor at the University of Oregon's Labor Education and Research Center. I am also the founding co-chair of the American Political Science Association's Labor Project.

Over the past four years, I have conducted extensive research measuring the extent to which National Labor Relations Board elections match up to American standards – developed from the Founding Fathers to the present -- for defining "free and fair" elections. Unfortunately, I must report that NLRB elections look more like the discredited practices of rogue regimes abroad than like anything we would call American.

I would like to briefly describe the problems that currently plague the NLRB election system as well as the difficulties in negotiating first contracts. I am aware that SB1621 addresses Hawaii state labor law and not federal law. However, as the procedures governing union certification elections at the state level are largely similar to those of the National Labor Relations Act, the problems identified with the NLRB system are equally present in the current Hawaii state system.

I have attached a report that summarizes my research on NLRB elections. In what follows I will touch on only a few highlights of that report.

The role of secret ballots

In fact, there is no truly secret ballot in Labor Board elections, because supervisors are permitted to interrogate their underlings in terms that force most employees to reveal their political choices long before they step into the voting booth. The pressure tactics used to force employees to reveal their political preferences would be illegal in any election to the Senate – and we would not tolerate them in any foreign elections that claimed to be democratic. I would be happy to explain this problem further if Senators have followup questions on this issue.

Before going into the substance of my findings, I want to say a word about secret ballots, since so much of the debate around labor law reform has focused on the role of secret ballots.

Defenders of the current system argue that NLRB elections represent the "gold standard" for democracy in the workplace for a single reason: that Board elections end in a secret ballot.

To some, it may seem that as long as an election ends in a secret ballot, it must be fair. In the workplace, one might imagine that even in the worst case, if a worker is intimidated by his or her employer, one could lie to one's supervisor and pretend to be opposing the union; as long as, at the end of the day, you cast your ballot in the privacy of a voting booth, you are free to exercise your conscience.

It is critical to note that the American democratic tradition – from the Founders to the present – fundamentally rejects this view. In elections to public office, while the secret ballot is a necessary ingredient, there are a whole set of standards that must be met in the leadup to election day – such as equal access to the media and voters, free speech, etc. – which are equally crucial elements of defining a "free and fair" process. Indeed, our government has often condemned elections abroad when there was no question that they ended in a secret ballot, because they failed to meet these other, equally important standards.

After all, even Saddam Hussein had secret ballots. Indeed, history is full of dictatorial regimes that have remained in power despite the use of secret ballot elections. How do they do it? Through things such as threatening the livelihoods of opponents; denying them access to the media; and forcing all voters to attend propaganda rallies for the ruling party. Our government has rightly condemned these votes as "sham elections."

Unfortunately, the very standards that we insist on as minimal guarantors of democracy in other countries is violated by the NLRB system. With the exception of the secret ballot – and, as I will discuss later, there is no truly secret ballot in NLRB elections –every other aspect of NLRB elections fails to meet American standards defining "free and fair" elections.

Today I would like to focus on just three dimensions of democratic elections: access to voters; free speech; and protection of voters from economic coercion.

Access to voter lists

The first step in any American election campaign is getting a list of eligible voters, and it is law that both parties must have equal access to the voter rolls.

In NLRB elections, however, management has a complete list of employee contact information, and can use this for campaigning against unionization at any time – while employees have no equal right to such lists. Employers use legal maneuvers to delay union elections for months. Only after all delays have been settled does the union have a right to the list of eligible voters. A federal commission found that on average, unions received the voter list less than 20 days before the election.[1] Even then, the NLRB requires employers to provide workers' names and addresses – but no apartment numbers, zip codes, or telephone numbers.

If we imagine this system being applied to Senatorial elections – where one candidate had the voter rolls two years before election day, while his or her opponent was restricted to a partial list and only got it a month before the vote – none of us would call this a "free and fair" election.

Economic coercion of voters

When the founders of our country created the world's first democracy and gave the vote to the common people, they were particularly concerned that employers might use their economic power over workers to influence their political choices. In general, Alexander Hamilton warned, "power over a man's purse is power over his will."

For this reason, there is a wide range of federal and state laws that make sure employees can make political choices free from economic coercion.

In federal elections, it is illegal for a private corporation to tell its employees how they should vote, or to suggest that if one party wins business will suffer and workers will be laid off.[2] Supervisors or managers can't say *anything* to those they oversee that amounts to endorsing one side or the other. It is noteworthy that federal law doesn't require that employers spell out a *quid pro quo* threat stating, for instance, that anyone caught wearing a button supporting the "wrong" candidate will never get a promotion. It is understood that employees naturally are

[1] Dunlop Commission, Final Report, p. 47.

[2] Under FECA, corporations are free to campaign to their "restricted class" of managerial and supervisory employees, but are prohibited from engaging in any communication to rank-and-file employees that includes express advocacy for a specific candidate or party. 2 USC 441(b)(2)(A); 11 CRF 114.3, 114.4. According to the FEC, "express advocacy" can be either an explicit message to vote for or against a given candidate, or a message that doesn't use such explicit language but that "can only be interpreted by a 'reasonable person' as advocating the election or defeat of one or more clearly identified candidates." Federal Election Commission, *Campaign Guide for Corporations and Labor Organizations*, Washington, DC, June 2001, p. 31.

extremely sensitive to the need to make a good impression on their boss, and don't need a threat to be spelled out for it to influence their behavior. Thus, federal law protects the ability of workers to make a political choice based on personal conscience rather than economic coercion.

But in NLRB elections, this kind of intimidation is completely legal. Standard employer behavior involves having mass meetings where upper management attacks the idea of unionization, and then having supervisors tell each of their subordinates personally that they should vote against the union. In this way, NLRB elections maximize exactly the kind of behavior that is banned in federal elections.

Free speech and equal access to media

Free speech is the cornerstone of American democracy.

In election to public office, it is a bedrock principle that there is no such thing as a neighborhood, park or shopping mall that is accessible to one candidate but off-limits to the other. Radio and television stations are required to sell ad time on the same terms to competing candidates. Even private corporations are prohibited from inviting one candidate to address employees without giving equal opportunity to the opposition. From the founders to the present, it has been understood that democracy requires free speech, equal access to the media, and robust debate.

Yet this most basic standard of freedom is ignored by the NLRB.

Management is allowed to plaster the workplace with anti-union leaflets, posters, and banners – while maintaining a ban on pro-union employees doing likewise.

In addition, anti-union managers are free to campaign against unionization all day long, anyplace in the workplace, while pro-union workers are banned from talking about unionization except on break times. As a result, research shows that in a typical campaign, most employees never even have a single conversation with a union representative.

The most extreme restriction on free speech is employers' forcing workers to attend mass anti-union meetings. Not only is the union given no equal time, but pro-union employees can be forced to attend with the condition that they don't open their mouths. If they ask a question, they can be fired on the spot.

If, during the 2004 presidential election, the Bush campaign could have forced every voter in America to watch the *Swiftboat Veterans' for Truth* movie, with no opportunity for response from the other side – or if the Democrats could have forced everyone to watch *Fahrenheit 9/11* – they might well have seized the opportunity. But none of us would call this democracy.

No Truly Secret Ballot in NLRB Elections

While defenders of the NLRB system point to its secret ballot as the guarantor of democratic rights, in fact the system does not guarantee true privacy of the ballot.

In the American democratic tradition, the principle of the secret ballot is more than simply the fact that one enters a private booth to cast one's ballot. It is, more broadly, the right to keep one's political opinions to oneself – before, during and after the moment of voting. If a friend, neighbor or canvasser asks whom you are supporting in an election, you don't have to say. Indeed, you don't have to talk to them at all. The right to a secret ballot includes the right to refuse to participate in conversations designed to flush out one's politics: you cannot be forced to engage in a conversation that reveals your political preferences. It is this right, as much as what happens on Election Day itself, that makes up the principle of the secret ballot. Each of us is guaranteed the right to make political decisions as a matter of individual conscience, and to control how and whether we choose to share that with anyone else.

While NLRB elections do culminate in a private voting booth, they effectively undermine the secret ballot by allowing management to engage in practices that force workers to reveal their political preferences long before they step into the voting booth.

The standard procedure of employers – as documented in the guidebooks of management-side attorneys and consultants -- is to have every supervisor require each of their subordinates to participate in intensive one-on-one conversations designed to flush out that worker's feelings about unionization. These conversations happen multiple times during the course of the election campaign – sometimes multiple times per week. Because it is illegal to directly ask workers how they're voting, supervisors are coached in how to get this information without using those explicit words. Supervisors are, instead, instructed to have "eyeball to eyeball" conversations, in which they make provocative anti-union statements, and then carefully observe their subordinates' body language, listen to their response, and report back to the consultants who typically run such campaigns, grading each worker on a 1-5 scale measuring their political leanings.

Employees cannot refuse to participate in these conversations. But under this type of interrogation, only the most skilled of actors or dissemblers can fool their supervisors and keep their political leanings truly secret. Everyone else reveals their preferences – indeed, one management attorney boasted that, through the use of such methods, he could almost always predict the final vote total with remarkable accuracy.

The principle of the secret ballot is that you have the right to keep your political opinions to yourself forever, not just for the 60 seconds that you stand in the voting booth. By permitting employers to limit the secrecy of the ballot to the moment of voting, the NLRB system has hollowed out the fundamental meaning of this principle.

These practices would of course all be illegal if carried out in the context of a campaign for federal office. If we saw this happening in another country, we'd say that the secret ballot had been eviscerated in all but name. But this is the system currently in place in workplaces across our country.

Higher Standards Abroad than At Home

The truth is that we uphold higher standards for voters abroad than for American workers.

In 2002, the State Department condemned elections in Ukraine for failing to "ensure a level playing field," because

- employees of state-owned enterprises were pressured to support the ruling party;
- faculty and students were instructed by their university to vote for specific candidates;
- and the governing party enjoyed one-sided media coverage, while the opposition was largely shut out of state-run television.

Every one of these practices is completely legal under the NLRB.

The sad fact is that right now, our government demands higher standards of democracy for voters in Ukraine than it does for Americans in workplaces across the country.

Negotiating a First Contract

As stated in the Wagner Act, it is federal policy to encourage collective bargaining. One of the major obstacles to realizing this goal, however, is the difficulty workers face, even after winning recognition of their union, in negotiating a first contract. Studies estimate the up to one-third of newly organized unions fail to ever achieve a first contract.

This remarkable failure rate represents a widespread effort of employers to eliminate collective bargaining before it can take root as established practice in the firm. These employers view first contract negotiations as a second chance – following an election in which workers choose to organize – to keep their employees from having a collective voice in the workplace.

The NLRB system, while not per se encouraging such obstructionist behavior, greatly facilitates it. Employer-side attorneys and consultants regularly counsel their clients to adopt a strategy of maximum delay, in order to erode employees' sense of hope and confidence in the collective bargaining process; there is nothing in the NLRB system to contain such tactics. Furthermore, when employers violate the law by refusing to bargain in good faith, by far the most common remedy required by the Board is simply for employers to promise to act correctly in the future; no penalty of any kind is imposed. Finally, when negotiations reach an impasse and both sides declare themselves stuck, the NLRB system imposes a one-sided solution: management's last proposal is unilaterally implemented and, by force of law,

becomes the contract under which employees are governed. The ease with which most employees can be replaced, and the legal right of employers to permanently replace strikers, means that most workers cannot afford to strike to prevent this one-sided resolution. Knowing this, management-side attorneys often adopt a negotiating strategy explicitly aimed at reaching the point of impasse, forcing employees into a choice between an undesirable contract and the prospect of a long, costly and difficult strike.

Those who defend the current system against the proposal for first-contract arbitration sometimes insist that they are motivated by defending the right of employees to vote for themselves on what defines acceptable contract terms. But forcing employees to choose between a losing strike and having a one-sided contract unilaterally imposed on them is not a defense of workers' rights. I would guess that most employees would be perfectly happy to forego the "right" to have a contract unilaterally imposed on them.

Similarly, opponents of first-contract arbitration sometimes raise the prospect of arbitrators deciding contracts on terms that render an employer financially insolvent or uncompetitive. But the data do not support this fear. There is an extensive track record of labor contracts settled by arbitration – in the private sector, in the public sector, and in other countries. I do not know of a single case where a public or private entity was forced to close operations as a result of contract terms established by arbitration.

For employees – and for the federal goal of encouraging a stable regime of collective bargaining – establishing an impartial and non-confrontational means for settling first contracts would be a major step forward.

Illegal activity in NLRB system, compared with FEC

The things I've described so far are legal. However, NLRB elections are also characterized by an extraordinary level of illegal activity.

Labor law is the only area of American employment law in which it is statutorily impossible to impose fines, prison, or any other punitive damage.

As a result, it is not just "rogue" employers who break the law. Any rational employer might decide it's worth it to fire a few workers in order to scare hundreds more into abandoning their support for unionization.

In my research, I have measured the impact of illegal retaliation against union supporters by making the most conservative possible calculations. Nevertheless, the results are extremely troubling. One out of every 17 eligible voters in NLRB elections is fired, suspended, demoted or otherwise economically punished for supporting unionization.

If federal elections were run by NLRB standards, we would have seen 7.5 million Americans economically penalized for backing the "wrong" candidate in the last presidential election cycle.

Imagine what this would mean. Every family in America would know someone who had been fired or suspended in retaliation for their political beliefs. Most citizens would quickly become too scared to participate in any public show of support for non-incumbent candidates. If we continued to hold elections amidst such widespread repression, they would be sham elections. The outcome would not represent the popular will, but would simply reflect the fear that governed the country.

What I'm describing may sound like a bad science fiction movie. But it is the reality that workers face when they try to organize.

If we compare illegal activity per voter under the NLRB with that under the FEC, the data suggests that NLRB elections are 3,500 times dirtier than federal elections.

This number may sound incredible; but it's true. But suppose my numbers are off by as much as an entire order of magnitude. Then the NLRB system would be only 350 times dirtier than federal elections.

Any way you count it, the system is profoundly broken, profoundly undemocratic, and, I would say, profoundly un-American.

Conclusion

If we're serious about having a truly democratic process for American workers, we must begin by fixing these problems.

The undemocratic nature of the current election system cannot be fixed by better funding or smarter administration. It can only be fixed by changing the law.

Thank you again for the opportunity to contribute to your deliberations.

While I am not able to participate in person in Honolulu, I would be happy to respond in writing to any followup questions that your Committee may have, or to provide any additional information that might be useful in your consideration of this critical issue.

Attachment:

G. Lafer, *Neither Free Nor Fair: The Subversion of Democracy Under NLRB Elections*, American Rights at Work, Washington, DC, July 2007.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 17, 2009

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB 1621 "Relating to Collective Bargaining"

Chair Takamine and Members of the Senate Committee on Labor:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly opposes SB 1621 "Relating to Collective Bargaining". because of the increased burden that it places upon businesses at a time when they can least afford it while giving unions unfair and extraordinary powers and rights.

SB 1621, in §380- Union representation, allows for secrecy in the collective bargaining process. Labor organizations can refuse to disclose and prevent any other person from disclosing confidential information and communications in the collective bargaining process, including but not limited to negotiations over labor agreements, investigation and processing over grievances or actions to enforce rights established by contract or statutes on behalf of employees The section also provides union immunity from actions of the courts, administrative agencies, arbitrators, legislative bodies and other tribunals. This union secrecy provision will hinder a fair collective bargaining process.

Another section in §380- provides protection against criminal trespass in a labor dispute. This section provides unions with legal immunity and authorizes unions to engage in criminal conduct if engaging in a labor dispute. Persons who publicize the existence of a labor dispute on pathways, sidewalks and areas adjacent to the entry ways or exits used by customers or employees would not be violating the law if this bill were to pass.

The bill eliminates the employees' right to a secret ballot and is tilted in favor of union certification. The proposed addition of § 377- Facilitation of initial collective bargaining agreements allows and encourages organizers to pressure employees to sign up against their will. The right of freedom of choice would be denied to all workers. The likelihood

of greater pressure on employees to vote for union representation is increased if this provision remains in the bill.

This bill includes a “binding arbitration” provision that mandates arbitrators to dictate wages and benefits unders a union contract, then deprive workers the chance to vote on that contract.

BIA-Hawaii strongly opposes SB1621, “Relating to Collective Bargaining”. We ask that the bill be held.

Thank you for the opportunity to express our views.

Karen L. Nakamura

Chief Executive Officer
BIA-Hawaii

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LOCAL 142

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE: Tuesday, February 17, 2009
TIME: 2:45 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

TESTIMONY OF THE INTERNATIONAL LONGSHORE & WAREHOUSE UNION LOCAL 142, AFL-CIO ON S.B. 1621 RELATING TO COLLECTIVE BARGAINING

My name is Fred Galdones and I am the president of the International Longshore and Warehouse Union, Local 142, AFL-CIO (ILWU). The ILWU represents approximately 20,000 private sector employees for the purpose of collective bargaining in a number of industries including agriculture, tourism and resorts, health care, and the general trades. We are in favor of Senate Bill No. 1621 which implements and promotes the right to organize for the purpose of collective bargaining as recognized in Article XIII of the Hawaii State Constitution by making certain amendments to the Little Wagner Act (chapter 377), and the Little Norris-LaGuardia Act (chapter 380). These changes are necessary to strengthen and expand the American middle class through restoration of the workers' freedom to organize and collectively bargain under our nation's labor laws.

As you may be aware the U.S. House of Representatives has recognized the critical need for labor law reform in America through the passage of the Employee Free Choice Act of 2007. A copy of Congressional Report No. 110-23 is attached hereto. See attachment 1. The report documents the vital role of labor unions to the creation of the American middle class (see pp. 13-15), the nature of the attacks on worker rights we have experienced in recent decades which has reduced the percentage of organized workers in the private sector to 8% (see pp. 8-10), and the economic consequence of a human rights crisis which has resulted (see pp. 8-13). The majority report also verifies the need for specific changes including increased penalties for violation of worker rights (see pp. 15-19), a majority sign-up certification process (see pp. 19-23), and for first time contract mediation and binding arbitration (see pp. 23-25). During the 2008 legislative session lawmakers in Hawaii also acknowledged the need for labor law reform in House Bill No. 2974, H.D. 2 which was adopted by both the House and Senate but vetoed by our Republican Governor (unfortunately).

Sections 2, 4, and 5 of this bill contain amendments to HRS chapter 377 (the Little Wagner Act) similar to the Employee Free Choice Act which is currently working its way through the U.S. Congress. As you know, chapter 377 was adopted in Hawaii in 1945, was modeled after the Wagner Act of 1935, and was responsible for extending collective bargaining to sugar, pineapple, and other workers in Hawaii who were exempt from the jurisdiction of the National Labor Relations Board (NLRB). See ILWU v. Ackerman, 82 F. Supp. 65, rev'd, 187 F.2d 860 (1948). The ILWU currently represents approximately 1,600 agricultural workers in 10 bargaining units in Hawaii, and chapter 377 applies to many of them and others who work for companies not engaged in interstate commerce sufficient to trigger NLRB

jurisdiction. Hawaii's workers need true freedom to join unions to strengthen and expand the middle class in this state. See attachment 2 (The Facts: What the Freedom to Join Unions Mean to America's Workers and the Middle Class).

Senate Bill No. 1621 also amends Hawaii's Little Norris-LaGuardia Act (HRS chapter 380) to implement and promote the constitutional right to engage in collective bargaining under Article XIII of the State Constitution. In 1950 the framers of Hawaii's constitution decided to afford state constitutional protection for the right to engage in collective bargaining following New York in 1939, Florida in 1944, Missouri in 1945, and New Jersey in 1947. See United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai`i 46, 51, 62 P.3d 189, 194 (2002). This was done, in part, to protect employees against judicial actions which rendered illegal protected concerted activities by employees under the common law. F. Frankfurter & N. Greene, The Labor Injunction at 27.

Sections 3 and 6 of this measure amend the Little Norris-LaGuardia Act to address court and legal developments which interfere and restrain employees from the free exercise of collective bargaining under the developing common law. Employees who join labor organizations need greater protections against judicial and court actions which do not respect the confidentiality of information provided to union negotiators and representatives during the course of negotiations and contract enforcement. Employee organizations must have a means of obtaining civil relief to collect dues from members and agency fee payers equally. We cannot continue to have trespass and nuisance laws enforced against union members and organizers who legitimately exercise their collective bargaining rights. Finally, we need a reasonable measure of protection from threats of law suits based on defamation and tort claims where union

members and officers are merely engaged in lawful collective bargaining activities.

For the foregoing reasons we urge favorable action from you on Senate Bill No. 1621.

My name is Judy Engkabo, Vice President of Title Guaranty Escrow Services, Inc. I would like to go on record as opposing SB1621. Thank you

Judy Engkabo
Vice President, Business Development
Statewide Projects Manager
Title Guaranty Escrow Services, Inc.
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http://www.tghawaii.com
A Legacy Built on Promises Delivered

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Randy Perreira
President

Telephone: (808) 597-1441
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii State AFL-CIO
February 17, 2009

S.B. 1621 – RELATING TO COLLECTIVE BARGAINING

The Hawaii State AFL-CIO strongly supports the purpose and intent of S.B. 1621 and the proposed amendments to Chapter 377, and 380 HRS, (The Hawaii Employment Relations Act). As drafted, the bill would allow employees to unionize through majority sign-up. Presently, an employer does not have to recognize majority sign-up and can insist on a secret ballot election, resulting in numerous delays, threats, coercion and any other tactics to ensure union organizing drives fail. In fact, nationwide, over 86,000 workers have been fired over the past eight years for trying to unionize.

According to Kate Bronfenbrenner from Cornell University, "employers fire workers in a quarter of all campaigns, threaten workers with plant closings or outsourcing in half and employ mandatory one-on-one meetings where workers are threatened with job loss in two-thirds." Undeniably, employees are fearful of losing their jobs and therefore, vote no when the election finally occurs. This type of coercion needs to stop, and the employee free choice act can help prevent these hideous tactics from occurring.

Furthermore, opponents claim the employee free choice act would take away the sanctity of the secret ballot and as a result oppose the bill. However, opponents should try and compare a union election to a political election. In a political election, candidates have equal access to the voters, whereas in a union election, the employers have access to the employees while the union does not. This is obviously not fair and a complete advantage to the employer.

In addition, 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. This will help thwart the numerous delays that employers use. In addition, as stated from SB 1621 "an employer who willfully or repeatedly commits unfair or prohibited practices that interfere with the statutory rights of employees or discriminate against employees for the exercise of protected conduct shall be subject to a civil penalty not to exceed $20,000 for each violation." The civil penalty should hopefully protect the employee from employer abuses.

It is time to give the working class a break. The economy is nearing depression levels, unemployment is rising each and every month and more and more of our working class are struggling to stay in their homes. Meanwhile, the wage disparities between CEO's and workers continue to widen, with the middle class working family facing pay cuts or layoffs. That is not the way to fix our ailing economy.

It is time to pass the employee free choice act and level the playing field once and for all. It is our working class that will help revitalize our economy and get us out of this economic crisis we are currently in. Passage of the employee free choice act is a step in the right direction.

Thank you for the opportunity to testify in support of S.B. 1621.

Respectfully submitted,

Randy Perreira
President

MONSANTO HAWAII
2104 LAUWILIWILI STREET
BLDG. K, SUITE 101K
KAPOLEI, HAWAII 96707

February 17, 2009

HEARING BEFORE THE
SENATE COMMITTEE ON LABOR

TESTIMONY ON
SENATE BILL 1621

Chair Takamine and committee members:

My name is Fred Perlak and I am the Vice-President of Research and Business Operations for Monsanto in Hawaii. I ask that you consider my testimony in strong opposition to SB 1621.

My company is part of the corn seed industry here in Hawaii. This industry has grown significantly in Hawaii in recent years, over 40% from 2007 to 2009. We are now the leading agricultural component in the state with over $146 million in direct spending in Hawaii. It is the faint flicker of light in a darkening and increasingly difficult economy both here in Hawaii and on the mainland.

A big part of our success has been our highly motivated workforce. Everyday, I see how hard everyone works. All of us have demonstrated commitment to our company with dedication, efficiency and a willingness to consistently produce high quality seed. We are proud of our workforce and what we have accomplished. In return, our company provides us with an excellent wage and benefits package, a very safe workplace environment where safety is not compromised and our company's appreciation and respect for employees.

All of the legislation proposed this session to simplify the unionization process has one common theme, the elimination of the secret ballot during the consideration of unionization. I strongly believe our workers have the right to secret ballot, to choose in confidence whether to accept unionization or not. It is their right, a right they have had for decades, a right that has been and should be protected. In a state that prides itself on the protection of the rights of all, I find it wrong and inconsistent that legislation could be adopted that so casually removes the rights of these workers.

Many familiar with the unions do not understand our opposition. Everyone at Monsanto works hard for their pay and our workers should safely and privately, decide whether or not they want to give 2% of their salary for union representation.

When considering this legislation, please consider the rights of our co-workers to choose the issue of unionization safely, privately and secretly. Please do not take that right away. Thank you.

Testimony in **Support** of SB1621
Relating to Collective Bargaining

By
Al Lardizabal, Director of Government Relations
Laborers' International Union of North America, Local 368

To the Senate Committee on Labor
Tuesday, February 17, 2009
Room 224, 2:45 p.m.

Honorable Dwight Takamine, Chair; Honorable Brian Taniguchi, Vice Chair and Members of the Committee:

The Laborers' International Union of North America Local 368 **supports** SB1621 providing for union certification of certain employees by signed authorization from the employees and allows collective bargaining to commence upon union certification.

We humbly ask each Legislator to stand up for the common worker. Workers as consumers are part of the solution to our economic malaise, not the problem.

Thank you for the opportunity to submit this testimony.

NFIB
The Voice of Small Business®

Before the Senate Committee on Labor

DATE: February 17, 2009

TIME: 2:45 p.m.

PLACE: Conference Room 224

Re: SB 1621
Relating to Employment Security
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Business in Hawaii, we ask that you reject SB 1621. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

More and more, employers are being forced to recognize labor unions without first holding a private-ballot employee election -- the election process that is guaranteed in law and administered by the National Labor Relations Board. To prevent intimidation or harassment, the law establishes that neither a union nor an employer may coerce, harass or restrain employees in exercising their right to choose whether or not to support the union. Each employee's choice is made in the privacy of a voting booth, with neither the employer nor the union knowing how any individual voted. We believe that a secret ballot process is essential to ensure a process that is fair to both employers and employees.

We respectfully ask that you do not advance this measure.

841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813 (808)447-1840

EDWIN D. HILL
International President

LINDELL K. LEE
International Secretary-Treasurer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®

The Senate
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing: Tuesday February 17, 2009
Time: 2:45 p.m.
Place: Conference Room 224

Testimony of the International Brotherhood of Electrical Workers (IBEW)

Re: S.B 1621, Relating To Collective Bargaining

The current process under the NLRB for ensuring and protecting workers rights and freedom to form and join a union is badly broken and altogether useless for ensuring fairness and democracy.

I know that it's easy for me to identify with worker's difficult plight in unionizing because I see it and live it everyday. All of us in the labor movement regularly witness the horror and tragedy that these workers and their families face in attempting to unionize. This is why we are so passionate on this issue. If you haven't personally experienced what these workers must go through, it might be hard for you to comprehend why S.B 1621 is truly necessary.

So, allow me to attempt to frame it for you in such a way that will help you better understand and identify with the almost impossible obstacles workers face in forming a union.

All of you are elected and thus familiar with the process of elections and campaigning. But, I want to now share with you what the experience would be like if the current NLRB process was applied to your election.

- First off, you would always be considered the challenger and your opponent would always be the incumbent.

- Your opponent would not have to face election until you collected signed cards from 30% of the total people living in your district saying that they want an election. However, this is made even more difficult because you wouldn't be allowed in the district to get the cards signed.

- If you were some how able to get the necessary cards signed and force an election, you would have to do all your campaigning from outside your district, because neither you nor your aides would be allowed in the district.

-Your opponent would have unlimited TV time, including several hours a day of compulsory viewing time while you would be restricted to secret door to door canvassing.

- Your opponent could encourage everyone to wear his shirts and buttons and retaliate against those wearing your shirts and buttons.

- Your supporters would have to risk losing their jobs. Your opponent could fire one of your supporters in every precinct to send voters a message.

- Your opponent could prohibit your supporters from going to rallies to state their views.

- Should your opponent or his aides get caught threatening your supporters, they would only have to sign and post a letter, after the election, saying they won't do it again.

- Only your opponent would have access to the voters list.

- Your opponent could easily delay the election if he thinks that he'll do better later.

- The election would be held in your opponent's headquarters and voters would have to file by your opponents supporters as they vote.

- And, after all that, if you were miraculously still able to win, you wouldn't be able to take office because it would take years of litigation to enforce the election results.

Just imagine what it would be like and how difficult, if not impossible, for you to succeed.

No one would consider such an election process as this fair, just or democratic. Yet, this is exactly the process that workers must endure in order to gain union representation and recognition.

You can and should help change this ludicrous process by supporting S.B 1621.

Send a strong and clear message to those in this state, across the country and around the world that we as a state, value our people and will insist that they be treated with all fairness, dignity and respect in an environment clear from intimidation and harassment and will ensure that their right and freedom to join a union is truly protected.....This is the real democratic thing to do.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
International Representative
IBEW

ENGINEERING SOLUTIONS, INC.
Our Name, Our Mission for a Sustainable Environment

98-1268 Kaahumanu Street, Suite C-7 • Pearl City, Hawaii 96782 • Phone: (808) 488-0477 • Fax: (808) 488-3776

February 16, 2009

Hearing Date: Tuesday, February 17th, 2:45 pm, Room 224
Senate Committee on Labor

Honorable Senator Takamine, Chair, and Members of the Senate Committee on Labor:

RE: SB 1621 "Relating to Collective Bargaining"

We strongly oppose SB 1621 "Relating to Collective Bargaining". The bill provides further union rights and protections which are not equally afforded to employers. SB 1621, in §380- Union representation, allows labor organizations to refuse to disclose and prevent any other person from disclosing confidential information and communications in the collective bargaining process, including but not limited to negotiations over labor agreements, investigation and processing over grievances or actions to enforce rights established by contract or statutes on behalf of employees. This provision gives undue advantage to the labor organizations when the parties are to bargain "collectively".

Another section in §380- provides protection against trespass in a labor dispute. This section would make it a complete defense to prosecution for trespass as a violation in a labor dispute. Persons who publicize the existence of a labor dispute on pathways, sidewalks and areas adjacent to the entry ways or exits used by customers or employees would not be violating the law that would be established by this bill.

Engineering Solutions, Inc. strongly opposes SB1621, "Relating to Collective Bargaining".

Thank you for the opportunity to express our views.

ENGINEERING SOLUTIONS, INC.

Richard E. Frey

Vice President

PRIDE AT WORK
Hawai'i
LESBIAN, GAY, BISEXUAL, & TRANSGENDER LABOR

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prideatworkhawaii@hawaiiantel.net
www.hawaflcio.org/PAWHI

February 17, 2009

Hawaii State Senate
Committee on Labor
Chair, Sen. Takamine
Vice Chair, Sen. Taniguchi

Testimony in favor or S.B. 1621 – RELATING TO COLLECTIVE BARGAINING

Pride At Work Hawai'i, whose mission is to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports S.B. 1621. As drafted, the bill would promote workers' right to organize for the purposes of collective bargaining. Presently, an employer does not have to recognize majority sign-up and can insist on a secret ballot election, resulting in numerous delays, threats, coercion and any other tactics to ensure union organizing drives fail. In fact, nationwide, over 86,000 workers have been fired over the past eight years for trying to unionize.

According to Kate Bronfenbrenner from Cornell University, "employers fire workers in a quarter of all campaigns, threaten workers with plant closings or outsourcing in half and employ mandatory one-on-one meetings where workers are threatened with job loss in two-thirds." Experience proves that there is nothing free and fair about the current system, but this bill will help change that.

Passage of this bill is important for lesbian, gay, bisexual, and transgender workers, who are particularly vulnerable to such threats - even in Hawai'i, despite legal protections against discrimination. In addition, having a union contract provides much-needed additional protection against harassment and discrimination for all minority groups, including LGBT workers.

In these difficult and uncertain economic times, it is more important than ever to give workers a fair shake if they want to organize themselves into unions. It is working people - LGBT and straight - that will help revitalize our economy and get us out of this economic crisis we are

currently in. Passage of the employee free choice act is a step in the right direction.

Thank you for the opportunity to testify in support of S.B. 1621. On behalf of all LGBT workers in Hawai'i, we hope you will support this bill.

Respectfully submitted,
Steve Dinion
President
Pride At Work Hawai'i

LARRY JEFTS
SUGARLAND FARMS
P.O. BOX 27
KUNIA, HI 96770

February 17, 2009

SENATE COMMITTEE ON LABOR

TESTIMONY ON SB 1621

Chair Takamine and committee members:

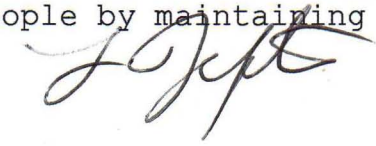
My name is Larry Jefts, owner/operator of a family farm on the islands of Oahu and Molokai. I am testifying in strong opposition to SB 1652.

Similar to other family farm businesses, my wife and I continuously struggle to be a viable farm operation in Hawaii. Not only do we have to meet the challenges of the natural elements, we also have to compete with the global market place and comply with the on-gong regulatory requirements placed on farmers. Farmers are entrepreneurs and willing to take extraordinary risk that is over and beyond any other industry. Placing additional processes and operational expense will take its toll on our operation.

The viability of our family farm relies on workers. We would not be in business if it were not for the hard work and dedication of our workers. We continue to stay in business not only for ourselves, but also for the hundreds of workers and their families we employ.

Making it easier to unionization does not resolve or address the issue of the overall competitiveness of Hawaii's farmers and businesses who struggle to keep the doors open. The agricultural work force in Hawaii is limited and difficult as we continuously loose workers to the hotel and construction industry. We should be focusing on how we will improve the viability of Hawaii's farmers, protect productive farm lands from being developed, and thus reduce the 90% of our food source from being imported into the state so that we are sustainable.

Protecting the workers right to vote in private is paramount. Subjected our workers to an open "card check" process will create intimidation and fear. Lets truly protect the voting rights of the people by maintaining a secret ballot. Thank you.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
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Local 1 & Plasterers/Cement
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JAUGHN CHONG
Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221

GARY AYCOCK
Boilermakers, Ironship Builders
Local 627

LYNN KINNEY
District Council 50
Painters & Allied Trades
Local 1791

ALANI MAHOE
Operating Engineers Local 3

LEONARD SEBRESOS
International Assoc. of
Heat & Frost Insulators
& Allied Workers Local 132

February 16, 2009

Honorable Senator Dwight Y. Takamine, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Labor
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT OF SB 1621**
Relating to Collective Bargaining
Hearing: Tuesday, February 17, 2009, 2:45 p.m., Room 224

Dear Chair Takamine, Vice Chair Taniguchi and the Senate Committee on Labor:

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

The Council SUPPORTS the passage of SB 1621 which allows union certification of certain employees or employee groups by signed authorization from the employee; requires collective bargaining to begin upon union certification; sets certain deadlines for initial collective bargaining agreement procedures and conciliation of disputes; sets civil penalty for unfair labor practices; extends certain authorities to labor organizations representing employees for collective bargaining; allows labor disputes to be defenses against prosecution for certain violations of law.

Thank you for the opportunity to submit this testimony in support of SB 1621.

Sincerely,

W. Hong/dg

William "Buzz" Hong
Executive Director

Chair, Senator Dwight Y. Takamine
Vice-chair, Senator Brian T. Taniguchi
Committee: LABOR
From: Society for Human Resource Management (SHRM) Hawaii
(808) 523-3695 or e-mail: shrmhawaii@hawaiibiz.rr.com
Testimony date: Tuesday, February 17, 2009

Strongly Oppose SB 1621

SHRM Hawaii is the local chapter of a National professional organization of Human Resource professionals. Our 1,200+ Hawaii membership includes those from small and large companies, local, mainland or internationally owned - tasked with meeting the needs of employees and employers in a balanced manner, and ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii strongly opposes SB1621. The two-step process for union certification is vital for employees. Secret ballot voting protects employees against retaliation from those who disagree with their position on unionization. "Coercion" and "Intimidation" are charges made against both union organizers and business owners – secret ballot is the only way to ensure coercive and intimidating tactics are neutralized, and employees choices are protected.

Elimination of the two-step process would:

- Take away the additional time needed for employees to ask questions of multiple sources, consider the options, and make an informed choice.
- Encourage coercion and/or intimidation by those who are for and/or against union representation.

Because elimination of the secret ballot portion of the two-step certification process holds nothing redeeming for employees, SHRM Hawaii respectfully urges the committee to kill SB1621 to protect an employee's right to choose union or non-union with the protection of their identity.

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of its Legislative Committee members in discussing this matter further.

IRONWORKERS STABILIZATION FUND

Honorable Senator Dwight Takamine, Chair
Members of the Senate Committee on Labor
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF SB1621, RELATING TO COLLECTIVE BARGINING
Hearing: Tuesday, February 17, 2009

Dear Chair Takamine, and the Senate Committee on Labor:

The Ironworkers Stabilization Fund Local 625 SUPPORTS the passage of SB1621, which allows the union certification of employees by a signed authorization from the employees.

The State of Hawaii has long been known to be fair and protect the rights of the working men and women of Hawaii. This bill will allow for those who are unable to protect themselves at work a organization that will assist in giving them the pay and benefits they deserve. This bill will allow the process to create deadlines for the initial collective bargaining agreement and will set up procedures and conciliation of disputes.

We believe that this bill will assist in giving a decent pay for those people who cannot protect themselves. Our union, just want what is right for the hard working men and women of Hawaii.

Thank you for the opportunity to submit this testimony for Senate Bill 1621

94-497 Ukee Street *Waipahu, Hawaii 96797* *(808) 671-4344*

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Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony By: Alicia Maluafiti
SB 1621, Relating to Collective Bargaining
Senate LBR Committee
Tuesday, Feb.17, 2009
Room 224, 2:45 pm

Position: Strong Opposition

Chair Takamine and Members of the Senate LBR Committee:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association. The Hawaii Crop Improvement Association (HCIA) is a nonprofit trade association representing the agricultural seed industry in Hawaii. Now the state's largest agricultural commodity, the seed industry contributes to the economic health and diversity of the islands by providing high quality jobs in rural communities, keeping important agricultural lands in agricultural use, and serving as responsible stewards of Hawaii's natural resources.

HCIA strongly supports our workers' rights to secret ballot, to the inalienable privilege and right to vote in private for union certification. The current process provides this worker right, and we wholeheartedly endorse it. HCIA member companies provide competitive benefit packages, good wages and job environments where safety of the worker is the first priority. A few years ago, a union certification process was attempted on one of our member companies. In the end, after the secret ballot process, nearly 81% of the employees did not want to be union certified.

We urge you to hold this bill in committee. Thank you for the opportunity to testify.

AFSCME
LOCAL 152, AFL-CIO

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The Senate
The Twenty-Fifth Legislature
Committee on Labor

Testimony by HGEA/AFSCME, Local 152, AFL-CIO
February 17, 2009

S.B. 1621 – RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 1621 which proposes amendments to Chapter 377, HRS (The Hawaii Employment Relations Act); and Chapter 380, HRS (Labor Disputes; Jurisdiction of Courts). The bill allows union certification by signed authorization from the employee; facilitating initial collective bargaining in the private sector; sets civil penalty for unfair labor practices; extends certain authorities to labor organizations representing employees for collective bargaining; and provides for defenses for protected activity in a labor dispute.

The proposed process permits the employees, with a majority of their signatures, to petition to be represented by a union. Currently, an employer does not have to recognize the majority's signatures and can insist on a secret ballot election. The measure will help level the playing field, giving the choice to employees.

The proposed mechanism to facilitate settlement of an initial collective bargaining agreement will prevent efforts by employers to stall negotiations indefinitely; and provides for a request for conciliation and ultimately, arbitration to resolve a dispute and provide for a collective bargaining agreement that will be binding for two years. Further, the measure proposes to codify certain authorities of labor organizations in their representational activities.

Labor unions have a significant role to play in helping our economy recover and restoring the middle class. We strongly support the purpose and intent of the proposed legislation to streamline union certification and give employees a voice at work. Thank you for the opportunity to testify in support of S.B. 1621.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the Senate Committee on Labor
Tuesday, February 17, 2009
2:45 p.m.
State Capitol - Conference Room 224

RE: SENATE BILL NO. 1621 RELATING TO LABOR

Chair Takamine, Vice Chair Taniguchi, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's strong opposition to Senate Bill No. 1621, relating to Collective Bargaining. This measure will hurt Hawaii's fledgling agricultural industry and small businesses at a time when Hawaii strives to become more sustainable.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This bill allows certification of certain employees or employee groups by signed authorization from the employee; requires collective bargaining to begin upon union certification; sets certain deadlines for initial collective bargaining agreement procedures and conciliation of disputes; sets civil penalty for unfair labor practices; extends certain authorities to labor organizations representing employees for collective bargaining; and allows labor disputes to be defenses against prosecution for certain violations of law. This bill is also known as the "card check" bill.

Under current law, the decision of whether or not to form a union is usually left to the workers — through a secret ballot election. That means that workers can choose — in private — whether they want to join a union. But in such an election, workers might not vote the "right" way.

Under Card Check, paid union organizers could unfairly pressure workers to publicly sign a card stating that they support the union.

Just as unconstructive, the Card Check bill includes a "binding arbitration" provision that mandates arbitrators dictate wages and benefits under a union contract, and then deprive workers of the chance to vote on that contract. This expansion of government power is almost like reestablishing wage and price controls in our economy, and could put many employers out of business. We cannot afford this type of legislation, especially as Hawaii weathers this economic storm.

Furthermore, at a time when the state is trying to become more self-sufficient for food and produce this legislation is counter productive. Moreover, more of us are shopping at discount stores and cutting coupons due to the rising costs. There has been a 7.5 percent jump in the price

of food consumed at home over the past 12 months. Prices for all foods and beverages are up an average of 5.9 percent. (Oct. 3, 2008 Gannett News Service).

The simple fact is that unionization would increase the cost of locally produced food, impair the growth and survival of Hawaii's shrinking agricultural industry and block new efforts to grow food locally.[1]

After decades of decline, unions have now turned to the Legislature to help them recover what is the natural progression of progressive management.

The pending Legislation will impose fast track unionization on all Hawaii agricultural operations and very small businesses[2] and non-profits not subject to the National Labor Relations Act, as well as submit their business assets and operational procedures to the dictates of a government appointed arbitrator. That is not right nor fair, and we ask that in these difficult economic times further costs not be imposed on Hawaii's businesses, particularly those affected by the proposed legislation.

To summarize, the following are key points as to why The Chamber of Commerce of Hawaii is strongly opposed to SB 1621, the "Card Check" bill.

- The heart of the current representation framework lies with the secret ballot. The bill would effectively disenfranchise thousands of Hawaii employees overnight, while we are simultaneously fighting for more democracy in the representation process overseas.

- There are rarely any "secrets" in connection with card-signing campaigns. Employees can easily be intimidated to sign a card to avoid confrontation with a union organizer. Employees cannot be expected to make a reasoned choice if they have heard only one side of the issue. The proposed legislation offers no safeguards for collateral investigation into signature authenticity, fraud, revocation and coercion.

- There is no corresponding provision extending card check to the decertification process. If it is fair for unions to win representation rights in this fashion, it's fair for them to lose those rights the same way.

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[1] Unionization can affect cost of production through increases in compensation, through shifts in technologies, and through deviations from the least-cost combination of inputs. Working Paper 8701 "Unionization And Cost Of Production: Compensation,Productivity, And Factor-Use Effects by Randall W. Eberts and Joe A. Stone, (Working papers of the Federal Reserve Bank of Cleveland January 1987). Union work rules and employment restrictions have the primary effect of distortions from the least-cost combination of inputs, or in other words, labor unions increase firms' costs of equity by decreasing their operating flexibility. "Labor Unions, Operating Flexibility, and the Cost of Equity", Huafeng (Jason) Chen, Marcin Kacperczyk, and Hernán Ortiz-Molina (May 2008).

[2] The NLRB's current jurisdictional limit for retailers is $500,000.00. Hawaii's law is going to affect a large number of small businesses.

- There is little if any evidence to suggest that the current framework is broken to begin with. The Canadian model on which this kind of legislation is based has been a failure in its own country. In response, a majority of Canadian provinces have shifted back to a secret ballot model over the past twenty years. Half of the Provinces that retain card check require a supermajority of cards prior to certification.

- This represents the first occasion in peace-time history that our State government would convey authority to a third party to essentially decide what a private sector employer must provide in terms of wages and benefits, free from the checks and balances of unit ratification.

- Dictated terms of an initial agreement give rise to the likelihood of decreased stability, as employers seek to recoup losses during renewal bargaining, only to be met with increased strike probability.

- There is a dearth of any legislative guidance pertaining to the proposed arbitration process, the method for choosing an appropriate arbitrator, and the manner for challenging any rendered decision.

- The arbitrary deadline for imposing interest arbitration is unreasonable in light of numerous surveys establishing the average length of first-contract negotiations.

- This is a time when local establishments need the flexibility with their business plans to adjust to the current economic climate. This measure will be counter-productive in the effort to stay afloat and save jobs.

- This measure unfairly removes private property rights if the union wants to trespass and picket.

- The provision that requires the Federal Mediation and Conciliation Service (FMCS) to order anyone to arbitration is probably unenforceable. We do not believe the State has the power to order a federal agency to act in any manner.

- Finally, the measure does an injustice to working men and women who are mislead or lied to by creating legal immunity for unions in actions relating to collective bargaining. No other group in our State has obtained legal immunity for their wrongful actions that harm others.

It is simply the wrong time for such legislation to be imposed on Hawaii. It would be wiser to await legislation on the federal level to evolve so that Hawaii's system would at least resemble the process used on the national level and benefit from the greater time and effort and developing a workable model that protects the rights of workers and employers alike.

Thus, The Chamber respectfully requests SB 1621 be held.

Thank you for the opportunity to testify.

Hawaii Chapter

Senate Committee on Labor
Tuesday, February 17th, 2009
Conference Room 224

OPPOSITION TO

Senate Bill 1621--Relating to Collective Bargaining

Chair and Members of the Committee:

I am Karl Borgstrom, President of Associated Builders and Contractors Hawaii, a company-based organization of construction contractors, service providers, and suppliers dedicated to the free enterprise approach to construction contracting and the rights of construction employees to freely choose whether or not and by whom to be represented in a labor negotiation.

Associated Builders and Contractors Hawaii strongly OPPOSES Senate Bill 1621 for the following reasons:

1. The proposal to use an arbitration panel to render a binding settlement in a dispute in a collective bargaining process would act as a disincentive to the full and fair commitment of the parties to achieve agreement through that process.
2. The granting of the privilege of virtual immunity to any collective bargaining organization from public or legal scrutiny of its actions runs counter to accepted practice in the Sarbanes-Oxley era, in which corporate, non-profit, and government organizations and agencies are being held to higher standards of transparency in their operations as a matter of public policy.
3. As with other "card check legislation," SB 1621 mandates a shortcut to the labor union certification process to facilitate labor union organizing for virtually all workers in Hawaii not currently covered under the provisions of the National

Labor Relations Act; this would include those employed by for-profit and non-profit small businesses that fall in size below the NLRA threshold, and other workers not within the purview of the NLRB. (In our own organization, approximately 30-40% of the members of ABC Hawaii would likely be impacted by SB 1621) In effect, this bill selects out these workers and denies them the right, granted to employees of larger enterprises and other NLRA-covered activities, to vote by secret ballot in choosing whether or not to be represented by a collective bargaining agent. In so doing, the bill precludes the application of one of our most fundamental of democratic principles. In its place would be a petition or "card check" system that would allow a simple majority of signers in an employee group to "certify" a bargaining representative when there are no other competing individuals or labor organizations seeking to represent employees.

The rationale sounds simple enough--why bother to hold an election when there is no competition? This ignores the fact that the petitioning process may, and will likely, occur without the employer being aware of it; employees may never hear the employer's position or be allowed to consider whether or not they want to be represented by a union at all. This is a choice a worker will only be able to express by refusing to sign the petition. There is no place to vote "No" in a petition or "card check" process, but the possibilities for manipulation and abuse of employee rights are manifestly obvious. Lacking confidentiality, employees may for any number of reasons feel compelled to sign a petition personally circulated by an agent of either management or a labor organization, to protect their jobs or relationships with their peers.

The certification of the petitioning process by the board does not stipulate any standards of conduct for petitioners or any measures by which the board will objectively assess whether or not the "majority of the employees . . . (who) have signed valid authorizations" have done so freely and without coercion. It appears that validation of the petition process will consist of simply counting signatures to

determine if the number of those signed is more than 50% of the employees in an eligible employee unit.

For more than seventy years the NLRB rules and procedures for determining employee labor affiliation and collective bargaining representation have resulted in a fair and winning solution for labor, management and employees covered under the Act. The legislature's apparent intention to abandon the time-honored and fundamental democratic principle of the secret ballot in promoting labor organizing among employees not currently covered is unwarranted and a disservice to the rights of employees who would be impacted, throughout the State of Hawaii.

ABC Hawaii urges you to vote NO on SB 1621!

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB1621 "Relating to Collective Bargaining"

Hearing date: February 17, 2009
Time: 2:45 p.m.
Place: Conference Room 224.

Chair Takamine, Vice-Chair Taniguchi and Members of the Committee on Labor:

I am Roy Ogawa, an attorney, small businessperson and taxpayer.

I am strongly opposed to SB1621, "Relating to Collective Bargaining" (also referred to as the **"Omnibus Union Rights Law"**) because of the increased burden that it places upon businesses at a time when they can least afford it while giving unions unfair and extraordinary powers and rights.

SB 1621is highly objectionable because:

1. It provides unions with legal immunity and authorizes unions to engage in criminal conduct if engaging in a labor dispute.

The proposed § 380- Defenses for protected activity in a labor dispute provides immunity against and ***authorizes the following criminal activities***:

a. Criminal Trespass in the First Degree, § 708-813, a misdemeanor;
b. Criminal Trespass in the Second Degree, § 708- 814, a petty misdemeanor;
c. Disorderly Conduct, § 711-1101, a petty misdemeanor;
d. Failure to Disperse, § 711-1102, a misdemeanor;
e. Obstructing, § 711-1105, a petty misdemeanor.

There is no valid public purpose in authorizing criminal activity. Under this bill a reasonable request or order from a law enforcement officer can be defied with impunity, thereby allowing labor activity to obstruct walkways and driveways and totally restrict any public access. At the same time the general public will be subject to criminal penalties if they try to gain public access that has been blocked.

This provision will be subject to court challenge as an illegal and unconstitutional protection of certain private interests at the expense of the general public. Would the Legislature even begin to give a free pass to anyone else to engage in criminal activity?

2. It allows for union secrecy in the collective bargaining process.

The proposed § 380- Union representation provides for secrecy and union immunity from actions of the courts, administrative agencies, arbitrators, legislative bodies and other tribunals. This union secrecy provision will hinder a fair collective bargaining process and allow for secret abuses of the law "as long as it is not criminal". How will that be determined if neither the courts, executive branch or the legislature have any rights to see this information? It will give unions absolute power in disclosure issues and as the old saying goes "absolute power corrupts absolutely".

3. It provides for broad civil immunity unions is engaging in or participating in a labor dispute.

The proposed addition of § 380-6 (b) gives total immunity for any claims while engaging in collective bargaining activities or participating in a labor dispute. As written there can be no civil action brought by anyone against a union, its officers, employees, members, etc. Untruthful smear campaigns; libel and slander; torts will all be protected union activity within this context.

4. It does away with the employees' right to a secret ballot and is tilted in favor of union certification.

The proposed addition of § 377- Facilitation of initial collective bargaining agreements allows and encourages organizers to pressure employees to sign up against their will. To ignore this factor is to ignore the right of ***freedom of choice*** of every citizen. In effect the Legislature would be repealing the provision in HRS §377-4 giving employees to chose and if so to "..refrain from any and all such activities."

If the majority will of the employees favor organization then they will vote that way in a secret ballot. The right of self organization is thus preserved without taking away the right of those who wish to refrain.

The Bill as written is also very broad and would apply to every business large or small. It would apply to Wal Mart and Costco with thousands of employees and also to every other small business in town with a handful of employees that want to organize against the small business. It would also compel arbitration and a contract binding for two years if the business lasts that long. It is also unclear who will have to pay for an expensive binding arbitration to determine the contract terms.

As written, this is a very detrimental law to small business. In these challenging economic times when businesses are just trying to survive you will have imposed another burden that will accelerate the economic downturn. Don't you think that employees who may be laid off because a business can't afford them won't try to organize? What is a "unit appropriate for bargaining"? Three employees? Please analyze this point carefully as you may be responsible and accountable for broadening the economic recession. .

5. It gives a union the right to sue its members for union dues and get attorney's fees and costs.

The proposed § 380- Payment for union representational activities is one of the stranger provision of this bill and shows the true self interests behind this bill. If it was being proposed by the rank and file would such a provision be contained in this "Omnibus Union Rights Bill"

6. It provides for a substantial civil penalty of $20,000 against Employers but no corresponding civil penalty against the union.

I respectfully request that this bill be held.

Thank you for the opportunity to share my insights with you.

/s/ Roy Ogawa