

S.B. NO. 2708

JAN 25 2010

A BILL FOR AN ACT

RELATING TO THE HAWAII LABOR RELATIONS BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 377-9, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:
3 "(d) After the final hearing, the board shall promptly
4 make and file an order or decision, incorporating findings of
5 fact upon all the issues involved in the controversy and the
6 determination of the rights of the parties. Pending the final
7 determination of the controversy the board may, after hearing,
8 make interlocutory orders which may be enforced in the same
9 manner as final orders. Final orders may dismiss the complaint
10 or require the person complained of to cease and desist from the
11 unfair labor practices found to have been committed, suspend the
12 person's rights, immunities, privileges, or remedies granted or
13 afforded by this chapter for not more than one year, and require
14 the person to take affirmative action, including reinstatement
15 of employees and make orders in favor of employees making them
16 whole, including back pay with interest, costs, and attorneys'
17 fees. Any order in favor of an employer may require the payment
18 of costs and attorneys' fees to that employer. Any order may

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1 further require the person to make reports from time to time
2 showing the extent to which the person has complied with the
3 order. Furthermore, an employer [~~e~~], employee, or labor
4 organization who wilfully or repeatedly commits unfair or
5 prohibited practices that interfere with the statutory rights of
6 an employer or employees or discriminates against an employer or
7 employees for the exercise of protected conduct shall be subject
8 to a civil penalty not to exceed \$10,000 for each violation. In
9 determining the amount of any penalty under this section, the
10 board shall consider the gravity of the unfair or prohibited
11 practice and the impact of the practice on the charging party,
12 on other persons seeking to exercise rights guaranteed by this
13 section, or on public interest."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: _____


BY REQUEST

Report Title:

Labor Unions; Private Sector

Description:

Allows the Hawaii Labor Relations Board to award costs and attorneys' fees to employers, and provides that an employer, employee, or labor organization that commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees or discriminates against an employer or employees for the exercise of protected conduct shall be subject to civil penalties.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAII LABOR RELATIONS BOARD.

PURPOSE: To allow the Hawaii Labor Relations Board to award costs and attorneys' fees to employers, and to provide that an employer, employee, or labor organization that commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees or discriminates against an employer or employees for the exercise of protected conduct shall be subject to civil penalties.

MEANS: Amend section 377-9(d), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Act 6, First Special Session Laws of Hawaii 2009 (Act 6), amended section 377-9, HRS, by modifying the remedial powers of the Hawaii Labor Relations Board (HLRB) to include the authority to award interest on pay, plus costs and attorneys' fees in favor of employees. Section 89-14, HRS, provides that any controversy concerning prohibited practices may be submitted to the HLRB in the same manner and with the same effect as provided in section 377-9, HRS. Section 89-13 provides that it is unlawful for either employers or unions to engage in prohibited practices either against one another or against individual employees. Complaints alleging prohibited practices may be lodged by a union against an employer on behalf of one or more union members, by an employer against a union, or by an individual employee against his union, employer, or both.

However, Act 6 only enables unions or employees to recover attorneys' fees and costs from employers upon prevailing in

prohibited practices complaints, as employers are provided with no reciprocal right. As this lack of reciprocity is unfair to employers, this bill amends the law to allow the HLRB to award costs and attorneys' fees to employers when they prevail in prohibited practices complaints.

Additionally, Act 6 amended section 377-9, HRS, to provide for the mandatory imposition by the HLRB of a civil penalty not to exceed \$10,000 in the event that an employer or employee is found to have "wilfully or repeatedly" committed a prohibited practice.

This amendment unaccountably fails to provide for civil penalties against a union if the HLRB finds it has committed prohibited practices against an employer or employee. This amendment also fails to provide for the imposition of a civil penalty in the event that a union has been found to have committed prohibited practices against one of its own members. In short, this Act 6 amendment gives unions an unfair advantage over both employers and individual employees who are union members. Therefore, this bill provides for penalties against unions.

Impact on the public: This bill benefits the public by enabling employers to recover costs and attorneys' fees when they prevail in prohibited practices complaints, which will decrease their overall costs.

Impact on the department and other agencies: This bill benefits the HLRB by improving the current process used to address unfair labor practices.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2010.