
A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Chapter 377, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:
4 "§377-A Streamlining union certification. Whenever a
5 petition shall have been filed by an employee or group of
6 employees or any individual or labor organization acting on
7 their behalf alleging that a majority of employees in a unit
8 appropriate for the purpose of collective bargaining wish to be
9 represented by an individual or labor organization for that
10 purpose, the board shall investigate the petition. If the board
11 finds that a majority of the employees in a unit appropriate for
12 bargaining have signed valid authorizations designating the
13 individual or labor organization specified in the petition as
14 their bargaining representative, and that no other individual or
15 labor organization is currently certified or recognized as the
16 exclusive representative of any of the employees of the unit,
17 the board shall certify the individual or labor organization as
18 the representative.



1 §377-B Facilitating initial collective bargaining

2 agreements. (a) Not later than ten days after receiving a
3 written request for collective bargaining from an individual or
4 labor organization that has been newly organized or certified as
5 a representative, the parties shall meet and commence to bargain
6 collectively and shall make every reasonable effort to conclude
7 and sign a collective bargaining agreement.

8 (b) If, after the expiration of the ninety-day period
9 beginning on the date on which bargaining commenced, or such
10 additional period as the parties may agree upon, the parties
11 have failed to reach an agreement, either party may notify the
12 board of the existence of a dispute and request conciliation
13 under section 377-3.

14 (c) If, after the expiration of the thirty-day period
15 beginning on the date on which the request for conciliation is
16 made under subsection (b), or such additional period as the
17 parties may agree upon, the conciliator is not able to bring the
18 parties to agreement by conciliation, the conciliator shall
19 refer the dispute to an arbitration panel established in
20 accordance with rules as may be adopted by the board. The
21 arbitration panel shall render a decision to settle the dispute,
22 and the decision shall be binding upon the parties for a period



1 of two years, unless amended during that period by written
2 consent of the parties."

3 SECTION 2. Section 377-1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§377-1 Definitions.** When used in this chapter:

6 (1) "Person" includes one or more individuals,
7 partnerships, associations, corporations, legal
8 representatives, trustees, or receivers.

9 (2) "Employer" means a person who engages the services of
10 an employee, and includes any person acting on behalf
11 of an employer, but shall not include the State or any
12 political subdivision thereof, or any labor
13 organization or anyone acting in behalf of such
14 organization other than when it is acting as an
15 employer in fact.

16 (3) "Employee" includes any person, other than an
17 independent contractor, working for another for hire
18 in the State, and shall not be limited to the
19 employees of a particular employer unless the context
20 clearly indicates otherwise; and includes any
21 individual whose work has ceased solely as a
22 consequence of or in connection with any current labor



1 dispute or because of any unfair labor practice on the
2 part of an employer and (A) who has not refused or
3 failed to return to work upon the final disposition of
4 a labor dispute or a charge of an unfair labor
5 practice by a tribunal having competent jurisdiction
6 of the same or whose jurisdiction was accepted by the
7 employee or the employee's representative, (B) who has
8 not been found to be committing or a party to any
9 unfair labor practice hereunder, (C) who has not
10 obtained regular and substantially equivalent
11 employment elsewhere, or (D) who has not been absent
12 from the individual's employment for a substantial
13 period of time during which reasonable expectancy of
14 settlement has ceased (except by an employer's
15 unlawful refusal to bargain) and whose place has been
16 filled by another engaged in the regular manner for an
17 indefinite or protracted period and not merely for the
18 duration of a strike or lockout; but shall not include
19 any individual employed in the domestic service of a
20 family or person at the family's or person's home or
21 any individual employed by the individual's parent or
22 spouse, or any person employed in an executive or



1 supervisory capacity, or any individual employed by
2 any employer employing less than two individuals, or
3 any individual subject to the jurisdiction of the
4 Federal Railway Labor Act or the National Labor
5 Relations Act, as amended from time to time; provided
6 that the term "employee" includes any individual
7 subject to the jurisdiction of the National Labor
8 Relations Act, as amended from time to time, but over
9 whom the National Labor Relations Board has declined
10 to exercise jurisdiction or has indicated by its
11 decisions and policies that it will not assume
12 jurisdiction[-]; provided further that "employee"
13 includes any agricultural laborer whose employer's
14 business generates \$10,000,000 or more in total annual
15 revenue.

16 (4) "Representative" includes any person chosen by an
17 employee to represent the employee.

18 (5) "Collective bargaining" is the negotiating by an
19 employer and a majority of the employer's employees in
20 a collective bargaining unit (or their
21 representatives) concerning representation or terms
22 and conditions of employment of such employees in a



1 mutually genuine effort to reach an agreement with
2 reference to the subject under negotiation.

3 (6) "Collective bargaining unit" means all of the
4 employees of one employer (employed within the State),
5 except that where the board has determined and
6 certified that such employees engaged in a single
7 craft, division, department, or plant as provided in
8 section 377-5(b) constitute a separate bargaining unit
9 they shall be so considered. Two or more collective
10 bargaining units may bargain collectively through the
11 same representative where a majority of the employees
12 or each separate unit have voted by secret ballot as
13 provided in section 377-5(c) so to do.

14 (7) "Unfair labor practice" means any unfair labor
15 practice as defined in sections 377-6 to 377-8.

16 (8) "Labor dispute" includes any controversy concerning
17 terms, tenure or conditions of employment, or
18 concerning the association or representation of
19 persons in negotiating, fixing, maintaining, changing,
20 or seeking to arrange terms or conditions of
21 employment, regardless of whether the disputants stand
22 in the proximate relation of employer and employee.



1 (9) "All union agreement" means an agreement between an
2 employer and the representative of the employer's
3 employees in a collective bargaining unit whereby all
4 of the employees in such unit are required to be
5 members of a single labor organization.

6 (10) "Board" means the Hawaii labor relations board,
7 provided for by sections 26-20, 89-5, and 377-2.

8 (11) "Election" means a proceeding in which the employees
9 in a collective bargaining unit cast a secret ballot
10 for collective bargaining representatives or for any
11 other purpose specified in this chapter and shall
12 include elections conducted by the board, or, unless
13 the context clearly indicates otherwise, by any
14 tribunal having competent jurisdiction or whose
15 jurisdiction was accepted by the parties.

16 (12) "Secondary boycott" includes combining or conspiring
17 to cause or threaten to cause injury to one with whom
18 no labor dispute exists, whether by (A) withholding
19 patronage, labor, or other beneficial business
20 intercourse, (B) picketing, (C) refusing to handle,
21 install, use, or work on particular materials,
22 equipment, or supplies, or (D) by any other unlawful



1 means, in order to bring one against one's will into a
2 concerted plan to coerce or inflict damage upon
3 another.

4 (13) "Person employed in an executive or supervisory
5 capacity" means any employee who has the authority to
6 hire or fire other employees or whose suggestions and
7 recommendations as to hiring or firing and as to the
8 advancement, promotion, or demotion of other employees
9 will be given particular weight; but shall not mean
10 registered nurses whose compensation is determined on
11 an hourly basis or who are subject to supervision by
12 any person other than the person in charge of all
13 registered nurses at the employer's premises."

14 SECTION 3. Section 377-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§377-3 Conciliator.** In the event the board receives
17 information that a labor dispute exists and determines that the
18 dispute is within its jurisdiction and that the possibility of
19 settlement and termination of the dispute may be increased by
20 conciliation, the board shall so notify the governor.

21 Upon receipt of the notice, the governor shall appoint, as
22 conciliator with respect to the dispute, a person who is well



1 known in the community as being impartial to both labor and
2 industry, and shall so notify the board. The position of
3 conciliator shall not be subject to chapters 76 and 89.

4 Upon receipt of notice of the appointment of a conciliator,
5 the board shall forthwith refer the dispute to the conciliator.
6 The conciliator shall use the conciliator's best efforts to
7 terminate the dispute by conciliation within the ten days
8 immediately succeeding the reference of the dispute to the
9 conciliator or within such additional time, not to exceed ten
10 days, as is agreed upon by all parties to the dispute. If,
11 within the ten days, or the additional time, if any, the
12 conciliator succeeds in terminating the dispute by conciliation,
13 the conciliator shall immediately certify such fact to the board
14 and the conciliator's appointment shall then end. If, within
15 the ten days, or the additional time, if any, the conciliator
16 fails to terminate the dispute by conciliation, the conciliator
17 shall immediately certify such fact to the board and the
18 conciliator's appointment shall then end. Upon the termination
19 of the appointment of the conciliator, the board shall so notify
20 the governor.

21 In the case of a labor dispute over negotiation of an
22 initial collective bargaining agreement, the conciliator is



1 allowed thirty days from the date on which the request for
2 conciliation is made under section 377-B(b) or such additional
3 period as the parties may agree upon, to resolve the dispute."

4 SECTION 4. Section 377-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§377-5 Representatives and elections.** (a)

7 Representatives chosen for the purposes of collective bargaining
8 by a majority of the employees voting in a collective bargaining
9 unit shall be the exclusive representatives of all of the
10 employees in such unit for the purposes of collective
11 bargaining. Any individual employee or any minority group of
12 employees in any collective bargaining unit shall have the right
13 at any time to present grievances to their employer in person or
14 through representatives of their own choosing.

15 (b) Whenever a question arises concerning the
16 determination of a collective bargaining unit as defined in
17 section 377-1, the board, [~~in order~~] to assure to employees the
18 fullest freedom in exercising the rights guaranteed by this
19 chapter, shall conduct an appropriate hearing upon due notice
20 and it shall decide in each case the unit appropriate for the
21 purpose of collective bargaining.



1 (c) Whenever a question arises concerning the
2 representation of employees in a collective bargaining unit, the
3 board shall determine the representatives thereof by taking a
4 secret ballot of employees and certifying in writing the results
5 thereof to the interested parties and to their employer. There
6 shall be included on any ballot for the election of
7 representatives the names of all persons submitted by an
8 employee or group of employees participating in the election,
9 except that the board may in its discretion exclude from the
10 ballot one who, at the time of the election, stands deprived of
11 one's rights under this chapter by reason of a prior
12 adjudication of one's having engaged in an unfair labor
13 practice. The ballot shall be so prepared as to permit of a
14 vote against representation by anyone named on the ballot. The
15 board's certification of the results of any election shall be
16 conclusive unless an appeal is taken therefrom under this
17 chapter.

18 (d) Questions concerning the representation of employees
19 may be raised by petition of any employee, or group of
20 employees, or the employee's representative, or labor
21 organization acting in their behalf, or by petition of the



1 employee's employer in the case of jurisdictional disputes, or
2 in any case after a union has requested recognition. Where it
3 appears by the petition that an emergency exists requiring
4 prompt action, the board shall act upon the petition forthwith
5 and hold the election requested within such time as will meet
6 the requirements of the emergency presented. The fact that one
7 election has been held shall not prevent the holding of another
8 election among the same group of employees, if it appears to the
9 board that sufficient reason therefor exists. In any election
10 where the choices on the ballot do not receive a majority, a run
11 off shall be conducted, the ballot providing for a selection
12 between the two choices receiving the largest and second largest
13 number of valid votes cast in the election.

14 (e) For agricultural laborers only, the procedure as
15 outlined in section 377-A shall apply."

16 SECTION 5. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

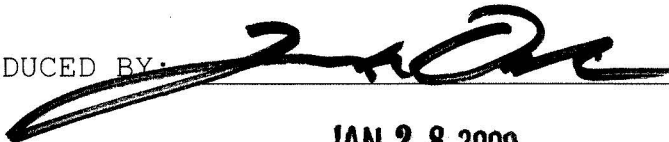


1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2009.

4

INTRODUCED BY:

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JAN 28 2009



Report Title:

Card Check; Collective Bargaining

Description:

Establishes procedures by which employees, including agricultural laborers, may certify union representation for collective bargaining purposes.

