
A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

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

1 SECTION 1. The purpose of this Act is to implement and
2 promote the right to organize for the purpose of collective
3 bargaining, as recognized in article XIII of the Hawaii state
4 constitution.

5 SECTION 2. Chapter 377, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§377- Facilitation of initial collective bargaining
9 agreements. Whenever collective bargaining is for the purpose
10 of establishing an initial agreement following certification or
11 recognition, the following procedure shall apply:

12 (1) Not later than ten days after receiving a written
13 request for collective bargaining from an individual
14 or labor organization that has been newly organized or
15 certified as a representative, pursuant to sections
16 377-5(a) and 377-5(e), or within a further period as
17 the parties agree upon, the parties shall meet and



1 commence to bargain collectively and shall make every
2 reasonable effort to conclude and sign a collective
3 bargaining agreement;

4 (2) If, after the expiration of the ninety-day period
5 beginning on the date on which bargaining commenced,
6 or an additional period as the parties may agree upon,
7 the parties have failed to reach an agreement, either
8 party may notify the Federal Mediation and
9 Conciliation Service of the existence of a dispute and
10 request mediation. Whenever a request is received, it
11 shall be the duty of the Federal Mediation and
12 Conciliation Service promptly to put itself in
13 communication with the parties and to use its best
14 efforts, by mediation and conciliation, to bring them
15 to agreement; and

16 (3) If, after the expiration of the thirty-day period
17 beginning on the date on which the request for
18 mediation is made under paragraph (2), or an
19 additional period as the parties may agree upon, the
20 Federal Mediation and Conciliation Service is not able
21 to bring the parties to agreement by mediation or
22 conciliation, the Federal Mediation and Conciliation



1 Service shall refer the dispute to an arbitration
2 panel established in accordance with regulations as
3 may be prescribed by the Federal Mediation and
4 Conciliation Service. The arbitration panel shall
5 render a decision settling the dispute, and the
6 decision shall be binding upon the parties for a
7 period of two years, unless amended during that period
8 by written consent of the parties."

9 SECTION 3. Chapter 380, Hawaii Revised Statutes, is
10 amended by adding two new sections to be appropriately
11 designated and to read as follows:

12 "§380- Payment for union representational activities.

13 (a) A labor organization that provides representational
14 services related to collective bargaining may bring a civil
15 action in circuit court for nonpayment of union dues by members
16 and agency fees by persons covered by a collective bargaining
17 agreement.

18 (b) The court in any action brought under this section
19 shall order payment of back dues or agency fees, or both, with
20 interest and allow for costs and reasonable attorneys' fees to
21 be paid by the defendant.



1 §380- Protected activity for union organization
2 activities; private property. Any person engaged in union
3 organization activities, shall have the right to take part in
4 such activities including holding placards, and passing out
5 literature, on the pathways, sidewalks, and areas adjacent to
6 the entry ways or exits used by customers or employees,
7 including on private property; provided that this right shall
8 not be extended to union activity inside the premises of an
9 individual retail establishment."

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

12 "**§377-5 Representatives [and]; elections [-]; employee free**
13 **choice.** (a) Representatives chosen for the purposes of
14 collective bargaining by a majority of the employees voting in a
15 collective bargaining unit shall be the exclusive
16 representatives of all of the employees in such unit for the
17 purposes of collective bargaining. [~~Any individual employee or~~
18 ~~any minority group of employees in any collective bargaining~~
19 ~~unit shall have the right at any time to present grievances to~~
20 ~~their employer in person or through representatives of their own~~
21 ~~choosing.]~~



1 (b) Whenever a question arises concerning the
2 determination of a collective bargaining unit, as defined in
3 section 377-1, the Hawaii labor relations board, [~~in order~~] to
4 assure to employees the fullest freedom in exercising the rights
5 guaranteed by this chapter, shall conduct an appropriate hearing
6 upon due notice and it shall decide in each case the unit
7 appropriate for the purpose of collective bargaining.

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



1 conclusive unless an appeal is taken therefrom under this
2 chapter.

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

20 (e) Notwithstanding any other provision of this section,
21 whenever a petition is filed by an employee or group of
22 employees, or any individual or labor organization acting in



1 their behalf alleging that a majority of employees in a unit
2 appropriate for the purposes of collective bargaining wish to be
3 represented by a labor organization for the purpose of
4 collective bargaining, the board shall investigate the petition.
5 If the board finds that a majority of the employees in a unit
6 appropriate for bargaining has signed valid authorizations
7 designating the individual or labor organization specified in
8 the petition as their bargaining representative and that no
9 other individual or labor organization is currently certified or
10 recognized as the exclusive representative of any of the
11 employees in the unit, the board shall not direct an election
12 but shall certify the individual or labor organization as the
13 bargaining representative of the employees.

14 (f) The board shall develop guidelines and procedures for
15 the designation by employees of a bargaining representative in
16 the manner described in subsection (e). The guidelines and
17 procedures shall include:

18 (1) Model collective bargaining authorization language
19 that may be used to make the designations described in
20 subsection (e); and

21 (2) Procedures to be used by the board to establish the
22 validity of signed authorizations designating



1 bargaining representatives pursuant to subsection
2 (e)."

3 SECTION 5. Section 377-9, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

5 "(d) After the final hearing, the board shall promptly
6 make and file an order or decision, incorporating findings of
7 fact upon all the issues involved in the controversy and the
8 determination of the rights of the parties. Pending the final
9 determination of the controversy the board may, after hearing,
10 make interlocutory orders which may be enforced in the same
11 manner as final orders. Final orders may dismiss the complaint
12 or require the person complained of to cease and desist from the
13 unfair labor practices found to have been committed, suspend the
14 person's rights, immunities, privileges, or remedies granted or
15 afforded by this chapter for not more than one year, and require
16 the person to take [~~such~~] affirmative action, including
17 reinstatement of employees [~~with or without pay, as the board~~
18 ~~may deem proper.~~] and make whole orders in favor of employees,
19 including back pay with interest, costs, and attorneys' fees.
20 Any order may further require the person to make reports from
21 time to time showing the extent to which the person has complied
22 with the order. Furthermore, an employer who wilfully or



1 repeatedly commits unfair or prohibited practices that interfere
2 with the statutory rights of employees or discriminate against
3 employees for the exercise of protected conduct shall be subject
4 to a civil penalty not to exceed \$20,000 for each violation. In
5 determining the amount of any penalty under this section, the
6 board shall consider the gravity of the unfair or prohibited
7 practice and the impact of the practice on the charging party,
8 on other persons seeking to exercise rights guaranteed by this
9 section, or on public interest."

10 SECTION 6. Section 380-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§380-6 Liability of association, officers, members.** (a)

13 No officer or member of any association or organization, and no
14 association or organization participating or interested in a
15 labor dispute, shall be held responsible or liable in any court
16 of the State for the unlawful acts of individual officers,
17 members, or agents, except upon clear proof of actual
18 participation in, or actual authorization of, such acts or of
19 ratification of such acts after actual knowledge thereof.

20 (b) In accordance with the constitutional right to
21 organize for the purpose of collective bargaining, no
22 association or organization, its officers, employees, agents,



1 members, or designated representatives shall be responsible or
2 liable in any court or agency to any other person for engaging
3 in lawful collective bargaining activities or for lawfully
4 participating in a labor dispute, as defined in
5 section 380-13(3)."

6 SECTION 7. If any provision of this Act, or the
7 application thereof to any person or circumstance is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act, which can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect on July 1, 2010.



Report Title:

Collective Bargaining

Description:

Provides a union representation privilege to protect the functions of the union as an exclusive bargaining representative to allow the union to perform its role in negotiations and contract enforcement; allows certification of union representatives through a card-check authorization; 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. (SB1621 HD1)

