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January 26, 2010

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor & Public Employment

Date: January 26, 2010

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

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

**H.B. 2103 - Relating to Employment Security**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. 2103 proposes to streamline union certification for non-supervisory legislative employees through card check and expedited bargaining process.

**II. HOUSE BILL 2103**

1. The Department strongly opposes this bill 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.
  - g. Finally, to have the legislative process potentially crippled by the collective bargaining process, shows the kind of unintended consequence that the enactment of this bill will have the future.



LINDA LINGLE  
GOVERNOR

MARIE C LADERTA  
CHIEF NEGOTIATOR

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January 26, 2010

TESTIMONY to the  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
For Hearing on Tuesday, January 26, 2010  
9:00 a.m., Conference Room 309

By

MARIE C. LADERTA  
CHIEF NEGOTIATOR

**House Bill No. 2103  
Relating to Collective Bargaining**

**WRITTEN TESTIMONY ONLY**

CHAIRPERSON RHOADS AND MEMBERS OF THE HOUSE COMMITTEE ON  
LABOR AND PUBLIC EMPLOYMENT:

The purpose of H. B. No. 2103 is to authorize nonsupervisory legislative employees to unionize through the card check and expedited bargaining process and to create a separate collective bargaining unit for those employees.

The Office of Collective Bargaining has **concerns** with the proposed amendments to Chapter 89, HRS.

First, under the current law, each employee subject to collective bargaining is included in one of the existing bargaining units 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, and 13. Section 89-6(c), which this bill does not amend, specifically provides that "the classification systems of each jurisdiction shall be the bases for differentiating" which employees belong to which units. However, this bill would create a new bargaining unit 14 exclusively for nonsupervisory legislative employees, regardless of

their job classification or profession.<sup>1</sup> As applied, the public employer would face the unwieldy task of having to negotiate with a single bargaining unit the wages, hours, and conditions of work of nonsupervisory legislative employees such as clerical staff, librarians, researchers, IT specialists, and attorneys. Should this concept be extended to other jurisdictions, bargaining units would become function-specific (i.e., separate units for the police department, fire department, department of public safety) as opposed to classification or profession-specific.

Second, since the proposed section (c)(5) does not provide the governor with a single vote, this would create a whipsaw effect whereby any cost items or management rights concessions by the Legislature to the unit 14 exclusive representative would be vigorously pursued against the State for the other units. In order to maintain consistency among bargaining units, fiscal control over cost items, and ensure the continued viability of management rights, the governor should have a majority vote on collective bargaining negotiations.

Finally, this bill unnecessarily includes card check language from Act 6 (1st Spec. Sess. 2009), which applies to private employers. Section 89-7, HRS, already provides a certification and election process under which the existing 13 bargaining units selected their exclusive representatives. This statute is supplemented by a set of existing Hawaii Labor Relations Board rules of practice on procedure detailing the process of selecting an exclusive representative and conducting an election. Section 12-42-16, et seq., Hawaii Administrative Rules. If there is a need for a new bargaining unit 14, we see no reason why their exclusive representative certification and election process should be different from those of their colleagues in units 01 through 13.

Thank you for the opportunity to testify on this measure.

Respectfully Submitted,

  
for MARIE C. LADERTA

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<sup>1</sup> "Staff of the legislative branch of the State" were among several classifications of employees specifically excluded from collective bargaining when Chapter 89 was first amended by Act 36 (1973) and have remained so to the present.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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**The Twenty-Fifth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Labor & Public Employment**

**Testimony by  
Hawaii Government Employees Association  
January 26, 2010**

**H.B. 2103 – RELATING TO  
COLLECTIVE BARGAINING**

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO supports the concept of allowing legislative employees to unionize, but opposes the creation a new bargaining unit, as proposed in H.B. 2103 – Relating to Collective Bargaining.

When employees are allowed the right to share in the decision-making process affecting their working conditions, they are more responsive and better able to effectively communicate with their supervisor, which increases government efficiency and effectiveness. Therefore, HGEA strongly supports granting all employees the right to organize and to collectively bargain wages, hours, terms and conditions of employment, especially those in the public sector.

Chapter 89-6, Hawaii Revised Statutes categorizes bargaining units for all employees throughout the State. Non-supervisory legislative employees can be placed with an existing bargaining unit, either unit 3 for non-supervisory employees in white collar positions, or unit 13 for professional and scientific employees. It would be more practicable to grant legislative employees the right to be covered under existing bargaining units than to create additional, separate bargaining unit.

We appreciate the opportunity to testify in support of H.B. 2103, with the suggested amendment to utilize existing bargaining units.

Respectfully submitted,

**Nora A. Nomura**  
Deputy Executive Director

