

**"CHAPTER 377
HAWAII EMPLOYMENT RELATIONS ACT**

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

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

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

"Collective bargaining" is the negotiating by an employer and a majority of the employer's employees in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

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

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

"Employee" includes any person, other than an independent contractor, working for another for hire in the State, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise. "Employee" includes any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and who has not:

- (1) Refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or the employee's representative;
- (2) Been found to be committing or a party to any unfair labor practice hereunder;
- (3) Obtained regular and substantially equivalent employment elsewhere; or

- (4) Been absent from the individual's employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout.

"Employee" does not include any individual employed in the domestic service of a family or person at the family's or person's home or any individual employed by the individual's parent or spouse, or any person employed in an executive or supervisory capacity, or any individual employed by any employer employing less than two individuals, or any individual subject to the jurisdiction of the Federal Railway Labor Act or the National Labor Relations Act, as amended from time to time.

"Employee" includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction.

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

"Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

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

"Representative" includes any person chosen by an employee to represent the employee.

"Secondary boycott" includes combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by:

- (1) Withholding patronage, labor, or other beneficial business intercourse;
 - (2) Picketing;
 - (3) Refusing to handle, install, use, or work on particular materials, equipment, or supplies; or
 - (4) Using any other unlawful means,
- in order to bring one against one's will into a concerted plan to coerce or inflict damage upon another.

"Unfair labor practice" means any unfair labor practice as defined in sections 377-6 to 377-8. [L 1945, c 250, §3; am L 1955, c 11, §1; RL 1955, §90-2; am L 1961, c 31, §1; am L 1963, c 53, §1; am L 1965, c 244, §1; am L 1967, c 253, §2; HRS §377-1; am L 1971, c 91, §1; am L 1985, c 251, §12; gen ch 1985; am L 2016, c 55, §5]

Revision Note

Numeric designations deleted and definitions rearranged pursuant to §23G-15.

Case Notes

Employee: Individual subject to N.L.R.A. excluded, 49 H. 426, 428, 421 P.2d 294 (1966). Applies to employees of East-West Center. 5 H. App. 37, 677 P.2d 477 (1984).

" **§377-2 Administration by Hawaii labor relations board.** The Hawaii labor relations board provided for in chapter 89 shall administer the Hawaii employment relations act.

The board shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words "Hawaii Labor Relations Board--Seal". [L 1945, c 250, §4; am L 1951, c 249, §1; RL 1955, §90-3; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; am L 1964, c 56, §2; am L 1965, c 244, §2; HRS §377-2; am L 1985, c 251, §13]

Cross References

Generally, see §§26-20 and 26-34.

" **§377-3 Conciliator.** In the event the board receives information that a labor dispute exists and determines that the dispute is within its jurisdiction and that the possibility of

settlement and termination of the dispute may be increased by conciliation, the board shall so notify the governor.

Upon receipt of the notice, the governor shall appoint, as conciliator with respect to the dispute, a person who is well-known in the community as being impartial to both labor and industry, and shall so notify the board. The position of conciliator shall not be subject to chapters 76 and 89.

Upon receipt of notice of the appointment of a conciliator, the board shall forthwith refer the dispute to the conciliator. The conciliator shall use the conciliator's best efforts to terminate the dispute by conciliation within the ten days immediately succeeding the reference of the dispute to the conciliator or within such additional time, not to exceed ten days, as is agreed upon by all parties to the dispute. If, within the ten days, or the additional time, if any, the conciliator succeeds in terminating the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall then end. If, within the ten days, or the additional time, if any, the conciliator fails to terminate the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall then end. Upon the termination of the appointment of the conciliator, the board shall so notify the governor. [L 1945, c 250, §5; am L 1951, c 249, §2; RL 1955, §90-4; HRS §377-3; am L 1985, c 251, §14; gen ch 1985; am L 2002, c 148, §42]

Cross References

Appointment of mediator, §371-10.

" **§377-4 Rights of employees.** Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall also have the right to refrain from any and all such activities, provided that employees may be required to join a union under an all-union agreement as provided in section 377-6(3). [L 1945, c 250, §6; RL 1955, §90-5; HRS §377-4]

Case Notes

Does not grant professional employees an automatic right to constitute a bargaining unit separate from clerical and administrative employees. 5 H. App. 158, 681 P.2d 587 (1984).

" **§377-4.5 Religious exemption from labor organization membership.** Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that an employee may be required in a contract between an employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code, chosen by an employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If any employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using the procedure. [L 1982, c 102, §2; am L 1983, c 124, §9]

" **[§377-4.6] Streamlining union certification.** (a) When an employee, group of employees, or any individual or labor organization acting on their behalf, files a petition alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for those purposes, the board shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative, and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the board shall certify the individual or labor organization as the representative without directing an election similar to that under section [377-1].

(b) The board shall adopt rules governing the certification of an exclusive representative under this section and shall have the final determination on any controversy concerning the eligibility of an employee to sign an authorization card and the validity of an employee's signature on an authorization card.

(c) For the purposes of this section, the term "employee" means an employee as defined in section 377-1; provided that the employee is employed by an employer with an annual gross revenue of more than \$5,000,000. [L Sp 2009, c 6, pt of §1]

" **[\$377-4.7] Facilitating initial collective bargaining agreements.** (a) No later than ten days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

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

(c) If, after the expiration of the twenty-day period beginning on the date on which the request for conciliation is made under subsection (b), or such additional period as the parties may agree upon, the conciliator is not able to bring the parties to agreement by conciliation, the board shall refer the dispute to an arbitration panel established in accordance with section 89-11(e)(2)(A) and rules as may be prescribed by the board. The arbitration panel shall render a decision settling the dispute, and the decision shall be binding upon the parties for a period of two years, unless amended during that period by written consent of the parties. [L Sp 2009, c 6, pt of §1]

" **§377-5 Representatives and elections.** (a) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining. Any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing.

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

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

(d) Questions concerning the representation of employees may be raised by petition of any employee, or group of employees, or the employee's representative, or labor organization acting in their behalf, or by petition of the employee's employer in the case of jurisdictional disputes, or in any case after a union has requested recognition. Where it appears by the petition that an emergency exists requiring prompt action, the board shall act upon the petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the board that sufficient reason therefor exists. In any election where the choices on the ballot do not receive a majority, a run off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election. [L 1945, c 250, §7; RL 1955, §90-6; am L 1965, c 244, §3; HRS §377-5; am L 1985, c 251, §15; gen ch 1985]

" **§377-6 Unfair labor practices of employers.** It shall be an unfair labor practice for an employer individually or in concert with others:

- (1) To interfere with, restrain, or coerce the employer's employees in the exercise of the rights guaranteed in section 377-4;
- (2) To initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at

their prevailing wage rate for time spent conferring with the employer, nor from cooperating with representatives of at least a majority of the employer's employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where the activities or use create no additional expense to the employer;

- (3) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representative of the employer's employees in a collective bargaining unit, unless the board has certified that at least a majority of the employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one year preceding the date of the agreement. No employer shall justify any discrimination against any employee for nonmembership in a labor organization if the employer has reasonable grounds for believing that:
 - (A) Such membership was not available to the employee on the same terms and conditions generally applicable to other members;
 - (B) Or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership;
- (4) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit provided that if the employer has good faith doubt that a union represents a majority of the employees, the employer may file a representation petition for an election and shall not be deemed guilty of refusal to bargain;
- (5) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in paragraph (3);
- (6) To violate the terms of a collective bargaining agreement;
- (7) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment

- relations the final determination of the board or of any tribunal of competent jurisdiction;
- (8) To discharge or otherwise discriminate against an employee because the employee has filed charges or given information or testimony under the provisions of this chapter;
 - (9) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;
 - (10) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter;
 - (11) To make, circulate, or cause to be circulated a blacklist;
 - (12) To offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute; or
 - (13) Based on employment or willingness to be employed during a labor dispute, to give employment preference to one person over another who:
 - (A) Was an employee at the commencement of the dispute;
 - (B) Exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization engaged in the dispute; and
 - (C) Continues to work for or has unconditionally offered to return to work for the employer. [L 1945, c 250, pt of §8; RL 1955, §90-7; am L 1959, c 210, §1; am L 1965, c 79, §1; HRS §377-6; am L 1985, c 251, §16; gen ch 1985; am L 1992, c 214, §2]

Case Notes

Trial court erred in affirming Hawaii labor relations board's determination that employer violated paragraph (3), where employer's conduct of putting forward a threatening bargaining proposal did not effect any change in the terms or conditions of the union members' employment, nor involve any discharge or failure to hire union members, and as such, the conduct did not "discriminate", as no employees were treated differently than any others with respect to their employment conditions. 112 H. 489, 146 P.3d 1066 (2006).

Trial court properly affirmed Hawaii labor relations board's determination that employer refused to bargain in good faith in

violation of paragraph (4), where elements of employer's final offer, which the board found to be a take-it-or-leave-it proposition, as well as the context of the negotiations, were sufficient evidence upon which the board could have concluded that the employer did not bargain in good faith. 112 H. 489, 146 P.3d 1066 (2006).

Trial court properly affirmed Hawaii labor relations board's determination that employer's conduct had a reasonable tendency to intimidate employees, in violation of paragraph (1), where employer's threatening letter required that the union withdraw its unfair labor practice charge as a condition of agreement, or involved layoffs without any benefits beyond those already in the collective bargaining agreement. 112 H. 489, 146 P.3d 1066 (2006).

Circuit court correctly affirmed the Hawaii labor relations board's ruling that employer did not meet its good faith bargaining obligation under paragraph (4); the board's findings were supported by credible evidence in the record that, inter alia, because the employer's bargaining committee was given "marching orders" from the corporate office, the union's cost proposals could not be considered in a meaningful way, and another employer offer that was good for only one day was the type of take-it-or-leave-it cost proposal inconsistent with an employer's duty to bargain in good faith. 128 H. 289, 287 P.3d 190 (2012).

The law does not require employers to furnish all eight types of information identified in the Hawaii labor relations board's (HLRB) order, or bargain over the subject matter of that information in every instance of effects bargaining accompanying a plant closure; however, this did not foreclose the possibility that a particular factor may be relevant, and thus appropriate for the HLRB to take into consideration in evaluating the totality of an employer's conduct in an effects bargaining case. 128 H. 289, 287 P.3d 190 (2012).

Does not prohibit "agency shop" agreements. 5 H. App. 158, 681 P.2d. 587 (1984).

" **§377-7 Unfair labor practices of employees.** It shall be an unfair labor practice for an employee individually or in concert with others:

- (1) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed in section 377-4;
- (2) To coerce, intimidate, or induce any employer to interfere with any of the employer's employees in the enjoyment of their legal rights, including those guaranteed in section 377-4, or to engage in any

- practice with regard to the employer's employees which would constitute an unfair labor practice if undertaken by the employer on the employer's own initiative;
- (3) To violate the terms of a collective bargaining agreement;
 - (4) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the board or of any tribunal of competent jurisdiction;
 - (5) To cooperate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed freedom of speech), boycotting or any other overt act accompanying a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;
 - (6) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;
 - (7) To engage in a secondary boycott; or to hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or service. Nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft;
 - (8) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike;
 - (9) To fail to give the notice of intention to strike provided in section 377-12. [L 1945, c 250, pt of §8; RL 1955, §90-8; HRS §377-7; am L 1985, c 251, §17; gen ch 1985]

Cross References

Practices of government employees, see chapter 89.

" **§377-8 Unfair labor practices of any person.** It shall be an unfair labor practice for any person to do or cause to be done, on behalf or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by sections 377-6 and 377-7. [L 1945, c 250, pt of §8; RL 1955, §90-9; HRS §377-8]

" **§377-9 Prevention of unfair labor practices.** (a) Any controversy concerning unfair labor practices may be submitted to the board in the manner and with the effect provided in this chapter, but nothing herein shall prevent the pursuit of relief in courts of competent jurisdiction.

(b) Any party in interest may file with the board a written complaint, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice. The board shall serve or require the complainant to serve a copy of the complaint upon the person charged, hereinafter referred to as the respondent. If the board has reasonable cause to believe that the respondent is a member of or represented by a labor union, then service upon an officer of the union shall be deemed to be service upon the respondent. Service may be by delivery to the person, or by mail or electronic service through a company designated by the board, to the person's last known address. Any other person claiming interest in the dispute or controversy, as an employer, an employee or their representative, shall be made a party upon proof of the interest. The board may bring in additional parties by service of a copy of the complaint. Only one complaint shall issue against a person with respect to a single controversy, but any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order based thereon. The respondent may file an answer to the original or amended complaint but the board may find to be true any allegation in the complaint in the event either no answer is filed or the answer neither specifically denies nor explains the allegation nor states that the respondent is without knowledge concerning the allegation. The respondent shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. The hearing on the complaint shall be before either the board or a hearings officer of the board, as the board may determine.

The board shall fix a time for the hearing on the complaint, which shall be not less than ten nor more than forty

days after the filing of the complaint or amendment thereof. Notwithstanding section 91-9.5, in any hearing conducted by the board, all parties shall be given written notice of the hearing by first class mail or by electronic service through a company designated by the board at least fifteen days before the scheduled date of the hearing. In case a party in interest is located without the State and has no known address within the State and no known electronic mail address, a copy of the complaint and copies of all notices shall be filed in the office of the lieutenant governor and shall also be sent by first class mail to the last known address of the party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon a party located within the State. The hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate.

In all proceedings under this chapter before the board, each member of the board may issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by law. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture under the laws of the State, but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify or produce evidence, documentary or otherwise, in such proceedings. Such person so testifying shall not be exempt, however, from prosecution and punishment for perjury committed in so testifying.

Any person who wilfully and unlawfully fails or neglects to appear or to testify or to produce books, papers, and records as required, shall, upon application to a circuit judge, be ordered to appear before the board, and failure to obey the order may be punished as a contempt of court.

Each witness who appears before the board by subpoena shall receive for the witness' attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the board.

(c) A full and complete record shall be kept of all proceedings had before the board and all testimony and proceedings shall be taken down by a reporter engaged for such purpose or by use of a mechanical recording device. It shall not be necessary to transcribe the record unless requested for

purposes of rehearing or court review. In the proceedings the board shall not be bound by technical rules of evidence. No hearsay evidence, however, shall be admitted or considered.

(d) After the final hearing, the board shall promptly make and file an order or decision, incorporating findings of fact upon all the issues involved in the controversy and the determination of the rights of the parties. Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders. Final orders may dismiss the complaint or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend the person's rights, immunities, privileges, or remedies granted or afforded by this chapter for not more than one year, and require the person to take affirmative action, including reinstatement of employees and make orders in favor of employees making them whole, including back pay with interest, costs, and attorneys' fees. Any order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. Furthermore, an employer or employee who wilfully or repeatedly 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 a civil penalty not to exceed \$10,000 for each violation. In determining the amount of any penalty under this section, the board shall consider the gravity of the unfair or prohibited practice and the impact of the practice on the charging party, on other persons seeking to exercise rights guaranteed by this section, or on public interest.

(e) If any person fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge of the judicial circuit wherein the person resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order, and shall certify and file in the court the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the person by mailing a copy to the person's last known post office address, and thereupon the judge shall have jurisdiction in the premises.

(f) Any person aggrieved by the decision or order of the board may obtain a review thereof as provided in chapter 91 by instituting proceedings in the circuit court of the judicial circuit in which the person or any party resides or transacts

business, subject, however, to the general provisions of law for a change of the place of trial or the calling in of another judge. Where different parties in the same proceeding file petitions for review in two or more courts having proper jurisdiction, the jurisdiction of the judge first petitioned shall be exclusive and the other petitions shall be transferred to the judge. The petition shall state the grounds upon which a review is sought and copies thereof shall be served upon the other parties and the board. Service may be made by mailing such copies to the last known post office address of the parties concerned. When the proceedings are at issue, they may be brought on for hearing before the court upon the record by any party on ten days' written notice to the others. Upon the hearing, the court may confirm, modify, or set aside the decision or order of the board and enter an appropriate decree. No objection that has not been urged before the board shall be considered by the court unless the failure or neglect to urge the objection shall be excused because of extraordinary circumstances.

(g) In any proceedings for review of a decision or order of the board, the judge shall disregard any irregularity or error unless it is made to appear affirmatively that the complaining party was prejudiced thereby.

(h) Commencement of proceedings under subsection (f) of this section shall not stay enforcement of the board decisions or order; but the board, or the reviewing court may order a stay upon such terms as it deems proper.

(i) Petitions filed under this section shall have preference over any civil cause of a different nature pending in the circuit court, shall be heard expeditiously, and the circuit courts shall always be deemed open for the trial thereof.

(j) Any party may appeal from the judgment of a circuit court entered under this chapter, subject to chapter 602, in the manner provided for civil appeals from the circuit courts.

(k) A substantial compliance with the procedure of this chapter shall be sufficient to give effect to the decisions and orders of the board, and they shall not be declared inoperative, illegal, or void for any nonprejudicial irregularity in respect thereof.

(l) No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence. [L 1945, c 250, §9; am L 1951, c 249, §9; RL 1955, §90-10; am L 1965, c 96, §66 and c 244, §§4, 5; HRS §377-9; am L 1979, c 111, §16; am L 1985, c 251, §18; gen ch 1985; am L 2004, c 202, §37; am L 2006, c 94, §1; am L Sp 2009, c 6, §2; am L 2010, c 109, §1; am L 2016, c 191, §1]

Cross References

Administrative procedure, see chapter 91.
Jurisdiction of courts, see §380-14.
Mailing of notice, see §1-28.
Oaths, subpoenas, see §§1-21, 603-21.9, 621-1, and 621-12.

Rules of Court

Appeals, see Hawaii Rules of Appellate Procedure.
Complaint in lieu of petition, see HRCF rules 3, 81(i).
Depositions, see HRCF, pt V.
Oaths, subpoenas, see HRCF rules 43(d), 45.

Case Notes

Circuit court proceeding for enforcement of H.E.R.B. order cannot be removed to federal court. 253 F. Supp. 597 (1966).

Based on the plain meaning of this Act, the legislature has granted discretion to the Hawaii labor relations board in crafting remedial orders when an employer has committed an unfair labor practice; where board's substantive remedy did not supply the terms of an ongoing collective bargaining relationship but rather was in the nature of a one-time payout calculated to remedy the unfair labor practice that the board found employer had committed, remedy was not unreasonable or in disregard of principles of law and was not an abuse of discretion. 112 H. 489, 146 P.3d 1066 (2006).

" **§377-10 Financial reports to employees.** Every person acting as the representative of employees for collective bargaining shall keep an adequate record of the person's financial transactions and shall present annually, to such employees as may be members of the association with which the representative is connected, within sixty days after the end of the person's fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any such employee may petition the board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter. [L 1945, c 250, §10; RL 1955, §90-11; HRS §377-10; am L 1985, c 251, §19; gen ch 1985]

" **§377-11 Rules.** The board may adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91. [L 1945, c

250, §11; RL 1955, §90-12; am L 1965, c 96, §67 superseded by c 244, §6; HRS §377-11; am L 1985, c 251, §20]

" **§377-12 Strike notice.** Where the exercise of the right to strike by employees of any employer engaged in the State in the production, harvesting, or initial processing of any farm, agricultural, or dairy product produced in the State would tend to cause the destruction or serious deterioration of the product, such employees shall give to the board at least ten days' notice of their intention to strike, and the board shall immediately advise the employer of the notice. [L 1945, c 250, §12; RL 1955, §90-13; HRS §377-12; am L 1985, c 251, §21]

" **§377-13 Public records and proceedings.** The complaints, orders, and testimony relating to a proceeding instituted by the board under section 377-9 shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public. [L 1945, c 250, §13; RL 1955, §90-14; HRS §377-13; am L 1985, c 251, §22]

Cross References

Records, see chapter 92.

" **§377-14 List of labor organizations.** The board shall maintain a list of labor organizations. To be recognized as such and to be included in the list, an organization shall file with the board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every labor organization shall notify the board promptly of any change of name, or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations. [L 1945, c 250, §14; RL 1955, §90-15; HRS §377-14; am L 1985, c 251, §23]

" **§377-15 Penalty.** Any person who wilfully assaults, resists, prevents, impedes, or interferes with the conciliator or any member of the board or any of the agents or agencies of either in the performance of duties pursuant to this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both. [L 1945, c 250, §15; RL 1955, §90-16; HRS §377-15; am L 1985, c 251, §24]

" **§377-16 Construction.** Except as specifically provided in this chapter, nothing herein shall be construed so as to

interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech. [L 1945, c 250, §16; RL 1955, §90-17; HRS §377-16]

" **§377-17 Conflicting provisions.** Wherever the application of the provisions of other laws conflicts with the application of the provisions of this chapter, this chapter shall prevail, provided that in any situation where the provisions of this chapter cannot be validly enforced the provisions of such other laws shall apply. [L 1945, c 250, §18; RL 1955, §90-18; HRS §377-17]

" **§377-18 Cooperation with National Labor Relations Board.** The conciliator and the board shall cooperate with the National Labor Relations Board and its agents and representatives. [L 1945, c 250, §20; RL 1955, §90-19; HRS §377-18; am L 1985, c 251, §25]