

EXECUTIVE CHAMBERS

HONOLULU

April 14, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2974

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2974, entitled "A Bill for an Act Relating to Labor."

This bill would change the union certification process by eliminating the secret ballot system, mandating timelines for collective bargaining, and imposing binding arbitration in labor negotiations.

Current law provides that when a question arises concerning the collective representation of employees, the Hawaii Labor Relations Board ("Board") conducts a secret ballot of employees to determine whether a majority of the employees desire collective representation. Under this bill, rather than holding an election, the Board would conduct an investigation to determine if a majority of the employees opted to be collectively represented. This new procedure is commonly referred to as a "card check." If the Board finds the majority of the employees signed "card check" authorizations, the Board must certify the individual or labor organization as the employees' representative.

This bill also directs that the employer and the newly certified employees' representative must meet and begin to bargain collectively within ten days. Conciliation under section 377-3, Hawaii Revised Statutes, may be requested if no agreement can be reached by the parties after the expiration of

at least a ninety-day bargaining period. If, after the expiration of at least an initial thirty-day conciliation period, the conciliator is not able to bring the parties to agreement, the conciliator shall refer the dispute to binding arbitration. The agreement rendered by the arbitration panel established by the Board shall be binding for at least a two-year period unless amended by the parties.

This bill is objectionable because the "card check" procedure envisioned by this bill is a poor substitute for the secret ballot and is ripe for abuse. Article XIII, Sections 1 and 2 of the Hawaii State Constitution grant Hawaii's employees the constitutional right to "organize for the purpose of collective bargaining." Based on this right, employees have the freedom to elect to participate or not participate in collective bargaining through a confidential ballot process. Chapter 377, HRS, was enacted to protect the rights of both employees and employers.

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. Lacking confidentiality, employees may for any number of reasons feel compelled to sign a petition personally circulated by an agent of management or a labor organization to protect their jobs or relationships with their peers.

Further, the legislative language specifically

precludes the use of a secret ballot to subsequently validate petition results by mandating that the Hawaii Labor Relations Board shall not direct an election if a petition signed by a simple majority is submitted.

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 employer of the various advantages and disadvantages of being collectively represented. 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. Secret ballots are the cornerstone of any truly democratic system. 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.

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. With the prospect of mandatory mediation, bargaining may become more unrealistic as labor representatives push for very high wages in negotiations and during mediation, while employers counter that union demands would put them out of business.

This bill takes away the rights of unions and employers to bargain in good faith and interjects an arbitration

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panel to write the contract terms of the two parties. This undermines the purpose of a collective bargaining process. As a result, this bill unnecessarily shifts power to arbitration panels by mandating that the panel's decision remain in effect for two years. It is important to note that under the National Labor Relations Act, interest arbitration may not be legally imposed upon a party absent its consent.

All Hawaii workers deserve the right to a secret ballot to ensure that their true voice is heard. It would be wrong to afford that right to some workers but not others. This bill discriminates against agricultural workers; employees of non-profit organizations; employees of smaller retailers; day care workers; employees who work in museums, restaurants, and bars; small law firms; legal aid programs; and numerous other employees in the State. It strips them of their right to a secret ballot, while allowing employees of larger firms, still covered by the National Labor Relations Act, the right to maintain a secret ballot.

For the foregoing reasons, I am returning House Bill No. 2974 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written over the printed name.

LINDA LINGLE
Governor of Hawaii