

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PUBLIC COLLECTIVE BARGAINING.

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

1 SECTION 1. The legislature finds that the grievance
2 arbitration process under a public collective bargaining
3 agreement is meant to maintain labor stability and peace during
4 the term of a contract between public employers and employees.
5 Unfortunately, the present day legalistic nature and status of
6 labor arbitration have become an antithetical counterpoint to
7 the intended form, purpose, and operation of the arbitration
8 process. As a respected and seasoned Hawaii arbitrator
9 explains, "the biggest problem burdening the institution and
10 practice of arbitration is its advancing formalism and legalism
11 resulting from its dominance and control by the legal industry
12 and profession. . . . Labor arbitration originated as a creature
13 of the collective bargaining contract designed to be the
14 terminal point of the contractual grievance procedure as a
15 simple, informal, internal grievance resolution process within
16 the union/management relationship." Today, the almost exclusive
17 advocacy by attorneys during the grievance arbitration process
18 unnecessarily formalizes the entire hearing process,



1 complicating and lengthening its completion time with attendant
2 increased costs and a more adversarial environment. For
3 example, a recent Hawaii public collective bargaining grievance
4 arbitration case resulted in a cost to the parties of over
5 \$100,000 in arbitrator fees alone. The legislature finds that
6 labor arbitrations can be made better and more effective only
7 when the process can be made less formal, less technical, and
8 less adversarial.

9 Accordingly, the purpose of this Act is to restore the
10 grievance arbitration process under a public collective
11 bargaining agreement to a simplified system that provides a
12 quick, just, and cost-effective resolution to conflicts between
13 public employers and employees.

14 SECTION 2. Chapter 658A, Hawaii Revised Statutes, is
15 amended by adding two new sections to be appropriately
16 designated and to read as follows:

17 **"§658A- Authority of a public grievance arbitrator;**
18 **restrictions.** (a) A public grievance arbitrator shall not
19 order any discovery beyond what was requested and provided
20 pursuant to a collective bargaining agreement and prior to
21 arbitration, except for issues regarding the timeliness of the
22 arbitration notice.



1 (b) A public grievance arbitrator shall not award punitive
2 damages, attorneys' fees and costs, or interest on any monetary
3 award to either party.

4 **§658A- Public grievance arbitrator's compensation. (a)**

5 A public grievance arbitrator's total compensation shall be
6 divided equally among and paid by all parties.

7 (b) Total compensation for a grievance that involves
8 contract interpretation, non-selection matters, procedures, and
9 criteria regarding promotions, transfers, assignments or
10 demotions, and other non-disciplinary matters, excluding matters
11 regarding recruitment and examinations that are under the
12 exclusive jurisdiction of the merit appeals board pursuant to
13 section 76-14(a), shall not exceed \$5,000.

14 (c) Total compensation for a grievance that involves
15 suspensions and all other disciplinary actions not specified
16 under subsection (d) shall not exceed \$8,000.

17 (d) Total compensation for a grievance that involves
18 terminations, resignations, and discharges shall not exceed
19 \$10,000."

20 SECTION 3. Section 658A-1, Hawaii Revised Statutes, is
21 amended by adding two new definitions to be appropriately
22 inserted and to read as follows:



1 "Public grievance arbitration" means an arbitration that
2 is part of a grievance procedure under a public collective
3 bargaining agreement, excluding an arbitration pursuant to
4 section 89-11(e).

5 "Public grievance arbitrator" means an arbitrator selected
6 through a grievance procedure under a public collective
7 bargaining agreement, excluding an arbitrator selected for an
8 arbitration panel pursuant to section 89-11(e)."

9 SECTION 4. Section 658A-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§658A-3 When chapter applies.** (a) Except as provided in
12 subsection (c), this chapter governs an agreement to arbitrate
13 made on or after July 1, 2002.

14 (b) This chapter governs an agreement to arbitrate made
15 before July 1, 2002, if all the parties to the agreement or to
16 the arbitration proceeding so agree in a record. If the parties
17 to the agreement or to the arbitration do not so agree in a
18 record, an agreement to arbitrate that is made before July 1,
19 2002, shall be governed by the law specified in the agreement to
20 arbitrate or, if none is specified, by the state law in effect
21 on the date when the arbitration began or on June 30, 2002,
22 whichever first occurred.



1 (c) After June 30, 2004, this chapter governs an agreement
2 to arbitrate whenever made.

3 (d) Notwithstanding any provisions to the contrary, only
4 sections 658A-20, 658A-22, 658A-23(a)(1), (2), and (4),
5 658A-23(b), 658A-24, 658A-25(a), and 658A-28 shall apply to a
6 public grievance arbitration."

7 SECTION 5. Section 658A-22, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"[+]§658A-22[+] Confirmation of award.** After a party to
10 an arbitration proceeding receives notice of an award, and only
11 when either party refuses to abide by the issued award, the
12 party, upon showing of substantial proof, may make a motion to
13 the court for an order confirming the award at which time the
14 court shall issue a confirming order unless the award is
15 modified or corrected pursuant to section 658A-20 or 658A-24 or
16 is vacated pursuant to section 658A-23. An order confirming an
17 award in a public grievance arbitration shall not be used
18 against either party in a subsequent proceeding relating to any
19 other public grievance arbitration."

20 SECTION 6. Section 658A-25, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Upon granting an order confirming, vacating without
2 directing a rehearing, modifying, or correcting an award, the
3 court shall enter a judgment in conformity therewith. The
4 judgment may be recorded, docketed, and enforced as any other
5 judgment in a civil action. The judgment confirming an award in
6 a public grievance arbitration shall not be used against either
7 party in a subsequent proceeding relating to any other public
8 grievance arbitration."

9 SECTION 7. Section 658A-28, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) An appeal may be taken from:
12 (1) An order denying a motion to compel arbitration;
13 (2) An order granting a motion to stay arbitration;
14 (3) An order confirming or denying confirmation of an
15 award;
16 (4) An order modifying or correcting an award;
17 (5) An order vacating an award without directing a
18 rehearing; [~~or~~]
19 (6) A final judgment entered pursuant to this chapter[~~or~~];
20 or
21 (7) Any order that establishes the jurisdiction of a
22 public grievance arbitrator to arbitrate a grievance;



S.B. NO. 3098

Report Title:

Collective Bargaining; Arbitration; Public Grievance Arbitrator

Description:

Defines a public grievance arbitration as an arbitration under a public collective bargaining agreement, excluding an arbitration pursuant to section 89-11(e). Decreases a public grievance arbitrator's authority to order additional discovery. Prohibits a public grievance arbitrator from awarding punitive damages, attorneys' fees and costs, or interest on any monetary award to either party. Limits compensation owed to a public grievance arbitrator. Excepts the application of certain sections of chapter 658A, HRS, to the public grievance arbitration process. Clarifies that a court order confirming an arbitration award shall not be used against either party in a subsequent proceeding relating to any other public grievance arbitration. Clarifies that an order establishing the jurisdiction of a public grievance arbitrator shall be immediately reviewable by the circuit court de novo.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

