

MAR 07 2014

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII LABOR RELATIONS BOARD TO CONDUCT AN  
INVESTIGATION INTO THE GRIEVANCE ARBITRATION PROCESS IN  
PUBLIC COLLECTIVE BARGAINING.

1           WHEREAS, 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 and  
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7           WHEREAS, the present legalistic, time consuming nature and  
8 status of labor arbitration have become an antithetical  
9 counterpoint to the intended form, purpose, and operation of the  
10 grievance arbitration process; and  
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12           WHEREAS, in October 2013, a workshop on improving the  
13 grievance handling process was held and sponsored by the  
14 American Arbitration Association; Labor and Employment Relations  
15 Association, Hawaii Chapter (formerly known as the Industrial  
16 Relations Research Association, Hawaii Chapter); United Public  
17 Workers AFSCME Local 646 AFL-CIO; Hawaii Employers Council;  
18 Center for Process Labor Education and Research; and Hawaii  
19 State Teachers Association; and  
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21           WHEREAS, at the workshop, Ted T. Tsukiyama, Claude  
22 Matsumoto, Randy Perriera, and Tommy Trask were honored for  
23 their substantial and extensive contributions to the field of  
24 labor management; and  
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26           WHEREAS, Mr. Tsukiyama delivered the workshop's keynote  
27 address, reflecting over five decades of his involvement in  
28 Hawaii's labor and management history and stating, "The biggest  
29 problem burdening the institution and practice of arbitration is  
30 its advancing formalism and legalism resulting from its  
31 dominance and control by the legal industry and profession.  
32 From over 50 years ago, labor arbitration was engaged in an



1 internal struggle over its basic identity and purpose between  
2 the concept of a simple, informal, in-house 'problem solving  
3 process' advocated by former War Labor Board Chair George Taylor  
4 and a more formal and structured dispute resolving process  
5 advocated by the American Arbitration Association, which was  
6 ultimately resolved in favor of the latter approach. In the  
7 ensuing decades, labor arbitration gradually evolved toward (1)  
8 an increased legalistic practice, procedure and perspective, (2)  
9 resulting in increased use of attorneys as advocates and  
10 arbitrators, (3) which was largely as a result of the parties'  
11 preference and choice motivated and fuelled by a 'must win' or  
12 'win at all cost' complex, (4) prolonging and complicating the  
13 hearing time and process, and (5) producing a more competitive,  
14 adversarial process often no different than contested litigation  
15 in the courts. The net result was the loss or erosion of the  
16 basic objectives and advantages of the arbitration process of  
17 speed, informality, economy, mutual control and good will"; and  
18

19 WHEREAS, today, the almost exclusive advocacy by attorneys  
20 during the grievance arbitration process unnecessarily  
21 formalizes the entire hearing process, complicating and  
22 lengthening its completion time with attendant increased costs  
23 and a more adversarial environment; and  
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25 WHEREAS, a recent Hawaii public collective bargaining  
26 grievance arbitration case involving attorneys has resulted in a  
27 cost to the parties of over \$100,000 in arbitrator fees for  
28 disposition of preliminary motions that does not include more  
29 preliminary motions, such as a motion to compel and the  
30 arbitration hearing; and  
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32 WHEREAS, in 2001, the Legislature enacted Act 265, Session  
33 Laws of Hawaii 2001, known as the Uniform Arbitration Act, which  
34 included grievance arbitration under a public collective  
35 bargaining agreement; and  
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37 WHEREAS, the grievance arbitration process under a public  
38 collective bargaining agreement should be restored to a  
39 simplified system that provides a quick, just, and cost-  
40 effective resolution to conflicts between public employers and  
41 employees; and  
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1 WHEREAS, labor arbitrations can be made better and more  
2 effective only when the process can be made less formal, less  
3 technical, and less adversarial; now, therefore,  
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5 BE IT RESOLVED by the Senate of the Twenty-seventh  
6 Legislature of the State of Hawaii, Regular Session of 2014, the  
7 House of Representatives concurring, that the Hawaii Labor  
8 Relations Board is requested to conduct an investigation on  
9 public sector collective bargaining grievance arbitrations,  
10 including but not limited to the costs incurred by public  
11 employers and public sector unions in the State, the length of  
12 time it takes from the filing of a grievance to the selection of  
13 an arbitrator, the length of time between the selection of an  
14 arbitrator to the commencement of hearing, the average number of  
15 days it takes to hear a case, types of issues that are presented  
16 to the arbitrator, the average amount of time it takes  
17 arbitrators to render decisions, how often an arbitration award  
18 is appealed and on what basis, hourly fees and other fees of  
19 arbitrators, and the average daily cost of court reporters; and  
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21 BE IT FURTHER RESOLVED that the public employers in the  
22 State provide information requested by the Hawaii Labor  
23 Relations Board for the purposes of this measure; and  
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25 BE IT FURTHER RESOLVED that the Hawaii Labor Relations  
26 Board is requested to report its findings and recommendations,  
27 including any proposed legislation, to the Legislature no later  
28 than twenty days prior to the convening of the Regular Session  
29 of 2016; and  
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31 BE IT FURTHER RESOLVED that certified copies of this  
32 Concurrent Resolution be transmitted to the Governor,  
33 Chairperson of the Hawaii Labor Relations Board, Mayor of the  
34 County of Hawaii, Mayor of the City and County of Honolulu,  
35 Mayor of the County of Kauai, Mayor of the County of Maui, Chief  
36 Justice of the Hawaii Supreme Court, Board of Education, Board  
37 of Regents of the University of Hawaii, Board of Directors of  
38 the Hawaii Health Systems Corporation, Hawaii Government  
39 Employees' Association, United Public Workers, Hawaii Fire  
40 Fighters Association, Hawaii State Teachers Association,  
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# S.C.R. NO. 110

1 University of Hawaii Professional Assembly, and State of Hawaii  
2 Organization of Police Officers.

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OFFERED BY:



