

MAR 07 2014

SENATE 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
33 internal struggle over its basic identity and purpose between
34 the concept of a simple, informal, in-house 'problem solving
35 process' advocated by former War Labor Board Chair George Taylor



1 and a more formal and structured dispute resolving process
2 advocated by the American Arbitration Association, which was
3 ultimately resolved in favor of the latter approach. In the
4 ensuing decades, labor arbitration gradually evolved toward (1)
5 an increased legalistic practice, procedure and perspective, (2)
6 resulting in increased use of attorneys as advocates and
7 arbitrators, (3) which was largely as a result of the parties'
8 preference and choice motivated and fuelled by a 'must win' or
9 'win at all cost' complex, (4) prolonging and complicating the
10 hearing time and process, and (5) producing a more competitive,
11 adversarial process often no different than contested litigation
12 in the courts. The net result was the loss or erosion of the
13 basic objectives and advantages of the arbitration process of
14 speed, informality, economy, mutual control and good will"; and
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16 WHEREAS, today, the almost exclusive advocacy by attorneys
17 during the grievance arbitration process unnecessarily
18 formalizes the entire hearing process, complicating and
19 lengthening its completion time with attendant increased costs
20 and a more adversarial environment; and
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22 WHEREAS, a recent Hawaii public collective bargaining
23 grievance arbitration case involving attorneys has resulted in a
24 cost to the parties of over \$100,000 in arbitrator fees for
25 disposition of preliminary motions that does not include more
26 preliminary motions, such as a motion to compel and the
27 arbitration hearing; and
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29 WHEREAS, in 2001, the Legislature enacted Act 265, Session
30 Laws of Hawaii 2001, known as the Uniform Arbitration Act, which
31 included grievance arbitration under a public collective
32 bargaining agreement; and
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34 WHEREAS, the grievance arbitration process under a public
35 collective bargaining agreement should be restored to a
36 simplified system that provides a quick, just, and cost-
37 effective resolution to conflicts between public employers and
38 employees; and
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40 WHEREAS, labor arbitrations can be made better and more
41 effective only when the process can be made less formal, less
42 technical, and less adversarial; now, therefore,
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1 BE IT RESOLVED by the Senate of the Twenty-seventh
 2 Legislature of the State of Hawaii, Regular Session of 2014,
 3 that the Hawaii Labor Relations Board is requested to conduct an
 4 investigation on public sector collective bargaining grievance
 5 arbitrations, including but not limited to the costs incurred by
 6 public employers and public sector unions in the State, the
 7 length of time it takes from the filing of a grievance to the
 8 selection of an arbitrator, the length of time between the
 9 selection of an arbitrator to the commencement of hearing, the
 10 average number of days it takes to hear a case, types of issues
 11 that are presented to the arbitrator, the average amount of time
 12 it takes arbitrators to render decisions, how often an
 13 arbitration award is appealed and on what basis, hourly fees and
 14 other fees of arbitrators, and the average daily cost of court
 15 reporters; and

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 17 BE IT FURTHER RESOLVED that the public employers in the
 18 State provide information requested by the Hawaii Labor
 19 Relations Board for the purposes of this measure; and

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 21 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
 22 Board is requested to report its findings and recommendations,
 23 including any proposed legislation, to the Legislature no later
 24 than twenty days prior to the convening of the Regular Session
 25 of 2016; and

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 27 BE IT FURTHER RESOLVED that certified copies of this
 28 Resolution be transmitted to the Governor, Chairperson of the
 29 Hawaii Labor Relations Board, Mayor of the County of Hawaii,
 30 Mayor of the City and County of Honolulu, Mayor of the County of
 31 Kauai, Mayor of the County of Maui, Chief Justice of the Hawaii
 32 Supreme Court, Board of Education, Board of Regents of the
 33 University of Hawaii, Board of Directors of the Hawaii Health
 34 Systems Corporation, Hawaii Government Employees' Association,
 35 United Public Workers, Hawaii Fire Fighters Association, Hawaii
 36 State Teachers Association, University of Hawaii Professional
 37 Assembly, and State of Hawaii Organization of Police Officers.

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OFFERED BY: 