
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 Perreira, 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
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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, not including additional
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:

- 11 (1) The costs incurred by public employers and public
12 sector unions in the State;
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- 14 (2) The length of time it takes from the filing of a
15 grievance to the selection of an arbitrator;
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- 17 (3) The length of time between the selection of an
18 arbitrator and the commencement of hearing;
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- 20 (4) The average number of days it takes to hear a case;
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- 22 (5) The types of issues that are presented to the
23 arbitrator;
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- 25 (6) The average amount of time it takes arbitrators to
26 render decisions;
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- 28 (7) How often an arbitration award is appealed and on what
29 basis;
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- 31 (8) The hourly fees and other fees of arbitrators; and
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- 33 (9) The average daily cost of court reporters; and
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36 BE IT FURTHER RESOLVED that the public employers in the
37 State provide information requested by the Hawaii Labor
38 Relations Board for the purposes of this measure; and
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40 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
41 Board is requested to report the findings and recommendations of
42 its investigation, including any proposed legislation, to the
43 Legislature no later than twenty days prior to the convening of
44 the Regular Session of 2016; and



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2 BE IT FURTHER RESOLVED that certified copies of this
3 Concurrent Resolution be transmitted to the Governor,
4 Chairperson of the Hawaii Labor Relations Board, Mayor of the
5 County of Hawaii, Mayor of the City and County of Honolulu,
6 Mayor of the County of Kauai, Mayor of the County of Maui, Chief
7 Justice of the Hawaii Supreme Court, Board of Education, Board
8 of Regents of the University of Hawaii, Board of Directors of
9 the Hawaii Health Systems Corporation, Hawaii Government
10 Employees' Association, United Public Workers, Hawaii Fire
11 Fighters Association, Hawaii State Teachers Association,
12 University of Hawaii Professional Assembly, and State of Hawaii
13 Organization of Police Officers.
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