

STAND. COM. REP. NO. 3827

Honolulu, Hawaii

JUL 08 2020

RE: GOV. MSG. NO. 751

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred Governor's Message No. 751, submitting for study and consideration the nomination of:

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

G.M. No. 751 DAMIEN ELEFANTE,
for a term to expire 06-30-2030,

begs leave to report as follows:

Your Committee has reviewed the personal history, resume, and statement submitted by Damien Elefante for service as Chairperson of the Labor and Industrial Relations Appeals Board.

Your Committee received testimony in support of the consideration and confirmation of Damien Elefante from the Department of Labor and Industrial Relations; Department of Agriculture; Department of Hawaiian Home Lands; Department of Taxation; Department of Defense; Department of Accounting and General Services; Hawaii State Energy Office; Office of Enterprise Technology Services; Department of Transportation, Harbors Division; Matson; and nine individuals. Your Committee received testimony in opposition of the consideration and confirmation of Damien Elefante from the Hawaii Government Employees Association; State of Hawaii Organization of Police Officers; Hawaii State Teachers Association; United Public Workers, Local 646, AFSCME, AFL-CIO; International Longshore & Warehouse Union, Local 142; International Alliance of Theatrical Stage Employees, Local 665; International Union of Elevator Constructors, Local 126; Pride at Work - Hawaii; and one individual.

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Your Committee finds that Mr. Elefante's experience as an arbitrator, compliance coordinator, and deputy attorney general illustrate his expertise, commitment, and dedication to public service and demonstrates his capacity to serve at the most senior leadership level. Your Committee notes that Mr. Elefante has been an attorney since 1999. His extensive education and experience as an attorney in private practice presents a grounded and unique understanding of the law.

Mr. Elefante is currently an employer trustee, with the Hawaii Employer-Union Health Benefits Trust Fund. As trustee, Mr. Elefante serves in a fiduciary capacity making the trust property productive and authorizing policies and administrative procedures. Additionally, your Committee finds that he is concurrently serving as the deputy director of the Department of Taxation. His knowledge and experience in administration and management is evident in his representation of the State's interest.

Your Committee finds that a position on the Labor and Industrial Relations Appeals Board fulfills a critical function in adjudicating workers' compensation appeals. Decisions made by the Board have major ramifications and a distinct financial bearing on workers and employers. Pursuant to section 371-4, Hawaii Revised Statutes, cumulative experience and continuity are essential to appropriately handling appeals subject to workers' compensation and other labor laws.

Your Committee has reviewed the background, information, and testimony submitted and finds that Mr. Elefante is skilled as an attorney, deputy director, trustee, and arbitrator. He is a dedicated public servant who brings valuable experience and integrity to the State and community especially in the area of taxation. Mr. Elefante's personal and professional achievements and experience are impressive. Your Committee intends no disrespect to the nominee; however, your Committee has serious concerns about whether Mr. Elefante is the best nominee to fulfill the responsibilities and duties as the chairperson of the Labor and Industrial Relations Appeals Board.

Your Committee finds that throughout the State of Hawaii, there were 21,388 reported work injury cases in 2018, according to the 2018 Annual Report of the Department of Labor and Industrial Relations. These cases had an aggregate value of \$358 million.



Your Committee contends that the voluminous caseload requires prior extensive knowledge in workers' compensation law to properly determine the outcomes of the appeals presented. On-the-job-training would not be appropriate and a conspicuous lack of experience in the relevant subject matter for the chairperson who undertakes this demanding position could unduly burden the existing members.

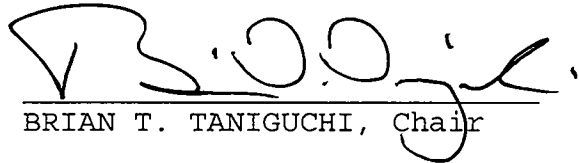
The Labor and Industrial Relations Appeals Board is a quasi-judicial agency. Your Committee notes that historically members on the board have substantial experience to properly and expeditiously determine fair and just outcomes. Current members began their appointment highly competent and extensively experienced in labor law with specialization in workers' compensation. Your Committee also observes that of the two Board members currently serving, one previously represented employers and insurance carriers and the other was the Director of the Department of Human Resources Development. Your Committee notes that traditionally the Labor and Industrial Relations Appeals Board has had balanced representation from management, government, and labor, and has generally had one representative from each of these sectors to secure the required balance needed to process claims and decide appeals. Your Committee submits that in accordance with historic Board practice, the third board member should be a representative of labor and injured workers.

Respectfully, your Committee submits that Mr. Elefante does not have a substantive background or experience in labor, labor rights, workers' compensation, boiler and elevator safety, occupational health and safety, or wages and benefits law and cases. Your Committee also understands that familiarity and experience with the challenges of the complex areas of law and workers' rights and benefits are needed of all members of the Labor and Industrial Relations Appeals Board. Your Committee recommends that a more qualified and experienced nominee is necessary, specifically for the position of chairperson, due to the complexity of the interrelated areas of law and medicine. Conclusively, Mr. Elefante lacks the necessary skill set required.

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, recommends that the Senate not advise and consent to the nomination.



Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,


BRIAN T. TANIGUCHI, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Labor, Culture and the Arts
LCA
Advise and Consent

Governor's Message No.:* <div style="font-size: 1.5em; font-family: cursive;">751</div>	Committee Referral: <div style="font-size: 1.2em;">LCA</div>	Date: <div style="font-size: 1.5em; font-family: cursive;">7/07/2020</div>		
<input type="checkbox"/> The Committee is reconsidering its decision				
The Recommendation is: <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Advise and Consent 2340 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Not Advise and Consent 2345 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)		✓		
CHANG, Stanley	✓			
GABBARD, Mike	✓			
FEVELLA, Kurt	✓			
TOTAL	4	1	0	0
Recommendation: <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> Distribution: Original File with Committee Report </div> <div style="text-align: center;"> Yellow Clerk's Office </div> <div style="text-align: center;"> Pink Drafting Agency </div> <div style="text-align: center;"> Goldenrod Committee File Copy </div> </div>				

*Only one Governor's Message per Record of Votes