IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

---o0o---

HAWAIʻI STATE TEACHERS ASSOCIATION,
Petitioner/Union-Appellant,

vs.

UNIVERSITY LABORATORY SCHOOL,
EDUCATION LABORATORY PUBLIC CHARTER SCHOOL LOCAL SCHOOL BOARD,
Respondent/Employer-Appellee.

SCWC-12-0000295

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000295; S.P. NO. 11-1-0411)

February 27, 2014

CONCURRING OPINION BY ACOBA, J.

First, I agree with the majority that the primary jurisdiction doctrine does not apply in this case. See Pacific Lightnet, Inc. v. Time Warner Telecom, Inc., --- Hawaiʻi ---, --- P.3d ---, 2013 WL 6669334, at *9 (Dec. 18, 2013). Briefly, here, the applicability and interpretation of arbitration agreements is well "'within the conventional experience of judges.'" Id. at

*16 (quoting Far East Conference v. U.S., 342 U.S. 570, 574 (1952)). Further, "there is no indication that applying the primary jurisdiction doctrine would promote [] uniformity and consistency" "in [any] policy-making decisions that [an agency] must make." Id. at *17. For, in the instant case, the question of whether the arbitration agreement should be enforced "does not require the exercise of administrative discretion, and furthermore, a result in this case would not impact the result in any other cases, inasmuch as the facts and circumstances are unique to these parties[.]" Id. at *19.

Second, while the question of the applicability of Hawaiʻi Revised Statutes (HRS) § 89-10.8 to this case is not directly addressed, this court has long recognized the strong public policy supporting arbitration. Cf. Lee v. Heftel, 81 Hawaiʻi 1, 4, 911 P.2d 721, 724 (1996). In light of the parties' express agreement to have "'the arbitrator . . . first determine the question of arbitrability[,]'" Majority Opinion at 12, it does not appear the agreement would contravene public policy. "The public policy exception to the general deference given to arbitration awards" is that "[a] court will not enforce any contract that is contrary to public policy." Inlandboatmen's Union v. Sause Brothers, 77 Hawaiʻi 187, 193-94, 881 P.2d 1255, 1261-62 (1983) (internal quotation marks omitted). Inlandboatmen's Union adopted the test in [United Paperworkers

International Union v. Misco, Inc., 484 U.S. 29 (1987)] in which the Supreme Court established that for application of the public policy exception, a court must determine that "(1) the [arbitration] award would violate some explicit public policy that is well defined and dominant, and that is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests, and (2) the violation of the public policy is clearly shown." Id. at 193-94, 881 P.2d at 1261-62 (internal quotation marks omitted). It does not appear on this record nor did any party argue that enforcement of the arbitration contract would contravene some "clearly shown" "well-defined and dominant public policy." Accordingly, I concur.

/s/ Simeon R. Acoba, Jr.