CONCURRING OPINION OF ACOBA, J.

I agree with Justice Ramil that Section 2 of Act 100, 1999 Haw. Sess. L. (Section 2), violates the core of Article XIII, Section 2 of the Hawai‘i Constitution, inasmuch as relevant history confirms that the right to organize and bargain collectively was to remain inviolate.[1]

---

[1] Because this opinion construes the constitution, I agree with its publication. See e.g., Mich. Ct. R. 7.215(A)-(B) ("A court opinion must be published if it involves a legal issue of continuing public interest."); 4th Cir. R. 36(a) (an opinion will be published if it involves a legal issue of continuing public interest); 5th Cir. R. 47.5.1 (an opinion is published if it "concerns or discusses a factual or legal issue of significant public interest").

In that regard, Justice Ramil has recommended a rule which would require publication of a case at the request of one justice. See Doe v. Doe, 99 Hawai‘i 1, 15, 52 P.3d 255, 269 (2002) (Ramil, J., dissenting). As one commentator has said of this rule,

> the "one justice publication" rule, unlike the "majority rules" rule, faithfully abides by the premises upon which [summary disposition orders] and memorandum opinions were based, promotes judicial accountability, and facilitates a judge or justice's role in the legal system — without sacrificing judicial economy.

N.K. Shimamoto, Justice is Blind, But Should She be Mute?, 6 Hawai‘i B.J. 6, 12 (2002).

Nothing highlights the inefficacy or undermines the rationalization of a "majority rules" approach to publication more than the proposal submitted to this court on June 14, 2002, by the Hawai‘i Chapter of the American Judicature Society (AJS), to permit (1) citation to unpublished opinions as persuasive authority and (2) petitions for publication of unpublished cases based on "a problem perceived by the legal community with the continued use of summary disposition orders and . . . memorandum opinions." Report of AJS Special Committee on Unpublished Judicial Opinions Hawai‘i Chapter of American Judicature Society § IV (2002) (emphasis added).

Also, the dissatisfaction with the number of unpublished opinions is one reason why the State legislature authorized two additional judges on the Intermediate Court of Appeals (ICA) level in 2001. See Stand. Comm. Rep. No. 1460, in 2001 House Journal, at 1495 (finding that the procedures and processes employed to deal with the appellate case load have "caus[ed] some litigants to question whether the parties are getting due process[]" and as an example, stating that "a large number of cases were decided by summary disposition orders instead of opinion, and oral argument has become rare").

Justice Ramil and I have agreed and will continue to agree to a recommendation by one of the other justices to publish a case even if the majority will not adhere to such a policy. We do so because we support and respect the opinion of any one of our colleagues that a decision warrants publication and that the views raised in the opinion should be disseminated

(continued...)

I.

As conceded by Plaintiffs at oral argument, Plaintiffs' claim for injunctive relief has become moot. From June 30, 1999, the effective date of Act 100, see 1999 Haw. Sess. L. Act 100, § 9, at 370, through August 4, 2000, the date the circuit court issued its injunction, no wage increases were honored by Defendants, except the arbitration award issued to the State of Hawai'i Organization of Police Officers (SHOPO).[2] When Act 100 expired on July 1, 2001, there was no longer any restriction on the employees' rights to collectively bargain or any reason to maintain the status quo for contracted cost items.

Since the legislature prohibited negotiations over cost items only for the biennium 1999 to 2001 and not for any other period, see id., § 2, at 368-69 [hereinafter Section 2], the parties were free to negotiate over cost items after July 1, 2001. Furthermore, the freezing of cost items, in effect on June 30, 1999, was removed after July 1, 2001. The statutory impediment to negotiations and the mandate to freeze cost items no longer exists. Therefore, there is presently nothing to be

---

[1](...continued)
and that a one justice rule best makes use of the wisdom and experience of each justice.

[2] The circuit court found that "[o]n and after July 1, 1999, some police officers, depending on their anniversary dates, began receiving wage adjustments" and that "[o]n January 1, 2000, police officers in bargaining unit 12 received an across the board increase of 1 percent in wages . . . ." Plaintiffs claim that Section 2 of Act 100, see 1999 Haw. Sess. L. Act 100, § 2, at 368-69, was discriminatorily enforced because Defendants granted SHOPO wage increases after the effective date of the Act, in violation of their right to equal protection of the laws.

enjoined. The employers and public employees are no longer statutorily prevented from negotiating on cost items. Consequently, the injunctive relief claim is moot.

II.

A.

However, Plaintiffs' claim for declaratory judgment is not moot.[3] "In the words of [Hawai'i Revised Statutes (HRS)] § 632-1, the dispositive question is whether 'the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.' This is a question of law." Island Ins. Co. v. Perry, 94 Hawai'i 498, 502, 17 P.3d 847, 851 (App. 2000). In

---

[3] Hawai'i Revised Statutes (HRS) § 632-1 (1993) authorizes actions for declaratory judgments. It provides in pertinent part as follows:

> In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for; provided that declaratory relief may not be obtained in any district court . . . .
>
> Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

(Emphases added.)

determining whether parties "still retain sufficient interests and injury as to justify the award of declaratory relief[,] . . . [the] question is 'whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant . . . a declaratory judgment.'" Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 122 (1974) (quoting Maryland Cas. Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941)). As a matter of law, there manifestly remains a substantial controversy in this case.

At the heart of this appeal is the scope of the constitutional right afforded to public employees to collectively bargain,[4] as well as the extent of the legislature's power to limit that right. On appeal, Plaintiffs have argued, among other things, that: (1) "the lower court erred by failing to recognize Article XIII, section 2 rights as 'fundamental' [and] refusing to apply [a] strict scrutiny [construction] to [that section]"; (2) "because [SHOPO] was not subjected to the enforcement of Section 2, that law was enforced in violation of Plaintiffs' equal protection rights[,]" see supra note 2; (3) "prohibiting the executive branch to negotiate cost items and imposing a freeze on wages[, as imposed by section 2,] violates the separation of powers doctrine"; and (4) "legislation [such as

[4] Article XIII, section 2 of the Hawai'i Constitution reads, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law."

section 2] adopted with a broad title and containing multiple and separate subjects is unconstitutional."

B.

At this stage in our jurisprudence, our appellate courts have merged two, sometimes overlapping, yet distinct exceptions to the mootness doctrine: the "public interest" exception and the "capable of repetition, yet evading review" exception.

An allusion to the "public interest" exception first appeared in our jurisprudence in Johnston v. Ing, 50 Haw. 379, 441 P.2d 138 (1968). There, this court stated that

> [t]here is a well settled exception to the rule that appellate courts will not consider moot questions. When the question involved affects the public interest, and it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court can be made, the exception is invoked.
>
> > Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.

Id. at 381, 441 P.2d at 140 (internal quotation marks and citations omitted) (emphases added). The foregoing quote was taken from In re Brooks, 205 N.E.2d 435, 437-38 (Ill. 1965). In that case, the Supreme Court of Illinois acknowledged that the issue there was moot but said that, "when the issue presented is of substantial public interest, a well-recognized exception exists to the general rule that a case which has become moot will

be dismissed upon appeal." Id. (emphasis added) (citing M.A. Leffingwell, Annotation, Public Interest as Ground for Refusal to Dismiss an Appeal, Where Question has Become Moot, or Dismissal is Sought by One or Both Parties, 132 A.L.R. 1185 (1941) [hereinafter Public Interest as Ground for Refusal]). The Brooks court established three criteria for the public interest test, stating that there must be "[(1)] the existence of the requisite degree of public interest [in] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question." Id. at 438. "Applying these criteria," the Brooks court decided the merits of the case. Id. Later, seemingly in dicta, the Brooks court observed that "the very urgency which presses for prompt action by public officials makes it probable that any similar case arising in the future will likewise become moot by ordinary standards before it can be determined by this court." Id. A review of the annotation cited by the Brooks court indicates that the mootness doctrine was "modified or abrogated [when] the appeal involve[d] questions of public interest." Leffingwell, Public Interest as Grounds for Refusal, supra, at 1185-86 (emphasis added).

In Johnston, this court melded the "public interest" criteria with the observation by the Brooks court that a similar case may become moot before review was possible. See 50 Haw. at

381, 441 P.2d at 139. This approach was followed in subsequent cases. See Alfapada v. Richardson, 58 Haw. 276, 277-28, 567 P.2d 1239, 1241 (1977); Wong v. Board of Regents, University of Hawai‘i, 62 Haw. 391, 395, 616 P.2d 201, 204 (1980); Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 87-88, 734 P.2d 161, 165-66 (1987); cf. State v. Cullen, 86 Hawai‘i 1, 13, 946 P.2d 955, 967 (1997) ("Our affirmance of Cullen's conviction moots the prosecution's points on cross-appeal. However, this court has long recognized the exception to the mootness doctrine that arises with respect to matters affecting the public interest." (Citations omitted.)). None of these cases contained the "capable of repetition, yet evading review" language.

The evading review exception was first expressly stated in this jurisdiction in Life of the Land v. Burns, 59 Haw. 244, 580 P.2d 405 (1978). In that case, this court initially referred to the public interest exception, quoting Johnston, then related that there was a "similar" exception described as "capable of repetition, yet evading review":

> A similar view was stated in Valentino v. Howlett, 528 F.2d 975[,] 979-980 (7th Cir. 1976):
>
> > There is an exception to this precept, however, that occurs in cases involving a legal issue which is capable of repetition yet evading review. The phrase, "capable of repetition, yet evading review," means that a court will not dismiss a case on the grounds of mootness where a challenged governmental action would evade full review because of the passage of time would prevent any single plaintiff from remaining subject to the restriction complained of for the period necessary to complete the lawsuit.

Id. at 251, 580 P.2d at 409-10 (emphases added).

While the evading review language has been applied without discussion of a public interest exception, see In re Application of Thomas, 73 Haw. 233, 227, 832 P.2d 253, 255 (1992); Ariyoshi v. Hawaii Pub. Employment Relations Bd., 5 Haw. App. 533, 535 n.3, 704 P.2d 917, 921 n.3 (1985), several cases have either treated the public interest exception as part of the "capable of repetition" exception or have not clarified a distinction between the two. See Okada Trucking v. Board of Water Supply, 99 Hawai'i 191, 196, 53 P.3d 799, 804 (2002) ("[W]e have repeatedly recognized an exception to the mootness doctrine in cases involving questions that affect the public interest and are 'capable of repetition yet evading review.'" (Citations omitted.)); Carl Corp. v. State, 93 Hawai'i 155, 165, 997 P.2d 567, 577 (2000) (outlining the "capable of repetition exception," then stating that "the present case clearly involves matters of public concern"); McCabe Hamilton & Renny Co. v. Chung, 98 Hawai'i 107, 120, 43 P.3d 244, 257 (App. 2002) ("In sum, we believe that this is not the exceptional situation, affecting the public interest, that is capable of repetition, yet evading review." (Internal quotation marks and citations omitted.)). Also, the public interest language has been utilized without reference to the evading review phrase. See Kona Old Hawaiian Trails, 69 Haw. at 87, 734 P.2d at 165; Cullen, 86 Hawai'i at 13, 946 P.2d at 967.

III.

A.

Despite this jurisdiction's apparent merger of the two exceptions, other jurisdictions continue to recognize the exceptions as separate and distinct. Thus, courts recognize the public interest test as a separate exception to the general rule regarding mootness. See, e.g., State v. Roman, 2002 WL 1974061, *5 (Me. Super. Ct. Aug. 1, 2002) ("The Law Court . . . has recognized three exceptions to mootness where a defendant has already been released from custody: (1) where collateral consequences will result; (2) where questions of great public interest may be addressed; and (3) where the issues are capable of repetition yet escape appellate review." (Emphasis added.) (Citations omitted.)); Shah v. Richland Mem'l Hosp., 564 S.E.2d 681, 687 (S.C. Ct. App. 2002) (explaining that, in civil cases, three exceptions may apply to the mootness doctrine, and listing them as issues that are "capable of repetition yet evading review[,]" "questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest[,]" and "decision[s] by the trial court [which] may affect future events, or have collateral consequences for the parties" (citation omitted)); Fraternal Order of Police v. City of Philadelphia, 789 A.2d 858, 860 (Pa. Commw. Ct. 2002) ("Exceptions are made, however, where the conduct complained of is capable of repetition yet likely to evade review, where the

case involves issues important to the public interest or where a party will suffer some detriment without the court's decision." (Emphasis added.) (Citation omitted.)); DeCoteau v. Nodak Mut. Ins. Co., 636 N.W.2d 432, 437 (N.D. 2001) ("Issues characterized as moot may nonetheless be decided by this Court if the controversy is capable of repetition, yet evading review, or if the controversy is one of great public interest and involves the power and authority of public officials." (Emphasis added.) (Citation omitted.)); In re Brooks, 548 S.E.2d 748, 751 (N.C. Ct. App. 2001) (reporting that five exceptions to mootness have been recognized by the North Carolina appellate courts, and listing two of them as the "'capable of repetition yet evading review' exception" and the "public interest exception" (citations omitted)).

B.

On the other hand, in applying the evading review exception, courts in general require only two elements: "[(1)] the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and [(2)] there was a reasonable expectation that the same complaining party would be subject to the same action again." C. Wright, Law of Federal Courts § 12 (4th ed. 1983) (citing Murphy v. Hunt, 455 U.S. 478 (1982); Weinstein v. Bradford, 423 U.S. 147 (1975)); see also Roe v. Wade, 410 U.S. 113, 125 (1973); State v.

Fernald, 723 A.2d 1145, 1146 (Vt. 1998) (noting the two elements); Matter of Woodruff, 567 N.W.2d 226, 228 (S.D. 1997) (expressing the two elements for the "capable of repetition, yet evades review" exception); Board of Educ. v. City of New Haven, 602 A.2d 1018, 1019 (Conn. 1992) (stating the two elements for "capable of repetition, yet evades review" exception); see, e.g., 5 Am. Jur. 2d Appellate Review § 646 (2002) (in the absence of a class action, only two elements are required for the evading review exception) and cases cited therein.

IV.

In light of the fact that we are a state court, as to which review of moot cases is restricted only by self-imposed prudential considerations, see H. Hershkoff, State Courts and the "Passive Virtues": Rethinking the Judicial Function, 114 Harv. L. Rev. 1833, 1861 (2001) [hereinafter State Courts and the "Passive Virtues"] (state courts treat mootness as "a principle of judicial restraint" without "constitutional jurisdictional underpinnings[]" (citations and footnotes omitted)), I believe it is appropriate that we distinguish between the public interest and the evading review exceptions inasmuch as they encompass different considerations.

I see no reason why our mootness exceptions should be stricter than that controlling in the federal courts, which are expressly limited by the article III "case or controversy"

requirement in the United States Constitution. See Crane v. Indiana High Sch. Athletic Ass'n, 975 F.2d 1315, 1318 (7th Cir. 1992) ("Under Article III of the Constitution, our jurisdiction extends only to actual cases and controversies. We have no power to adjudicate disputes which are moot." (Citations omitted.)). There is no basis in the Hawai'i State Constitution[5] for such an approach, nor, in the interest of substantial justice, should we impose such prudential restraints upon this court. See Hershkoff, State Courts and the "Passive Virtues", supra, at 1837 ("State courts more typically find it their duty to resolve constitutional questions that federal courts would consider moot, elaborating constitutional norms as 'a matter of public interest' on the view that the other branches will benefit from receiving 'authoritative adjudication for further guidance.'" (Citations and footnotes omitted.)); Carroll County Ethics Comm'n, 703 A.2d 1338, 1342 (Md. Ct. Spec. App. 1998) ("Unlike the Article III constitutional constraints on the federal courts . . . our mootness doctrine is based entirely on prudential considerations. As a result, we may decide a case, even though it is moot, where

---

[5] For instance, the most relevant section of article VI states:

> **Judicial Power**
> **Section 1.** The judicial power of the State shall be vested in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with their rules.

Haw. Const. art. VI, § 1 (1993) (boldfaced font in original).

there is an imperative and manifest urgency to establish a rule of future conduct in matters of important public concern[.]" (Citations omitted.)). In my view, both exceptions apply in the instant case.

V.

A.

To reiterate, a public interest exception implicates a three-pronged test requiring that: (1) there is a public interest at stake, (2) determination of the matter would assist public officers in the future, and (3) the question is likely to recur. Undoubtedly, the public interest is involved in this case. During oral argument, Plaintiffs' counsel explained that the plaintiffs in this case are four unions representing 48,000 workers. As Plaintiffs report in their Opening Brief, "over a period of nearly thirty years[,] employee representatives and their employer counter parts [sic] in the executive branch have freely engaged in bargaining over wages, hours, and other terms and condition of employment[.]"

This court has said that collective bargaining affects the public interest, inasmuch as "good faith bargaining or negotiation is fundamental in bringing to fruition the legislatively declared policy 'to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.'" Board of Educ. v. Hawaii Pub. Employees Rel.

Bd., 56 Haw. 85, 87, 528 P.2d 809, 811 (1974). The "legislatively declared policy" outlined in HRS § 89-1 (1993), the statement of findings and policy regarding collective bargaining in public employment, includes the legislature's judgment that "government is made more effective" if "public employees have been granted the right to share in the decision-making process affecting wages and working conditions[.]" Disruption of government services caused by collective bargaining disputes can have a substantial impact on the public in general. Between 1990 and 2000, there were approximately twenty work stoppages in this state, totaling more than 235,771 days of lost work and services. See The State of Hawai'i Data Book 2000: A Statistical Abstract 415 (2001). Plainly, the issues in this case affect significant public interests.

Second, in this context, it is eminently desirable that authoritative guidance be established for the benefit of public officers. First, as stated infra, counsel for the State urged this court to define the legislature's power in limiting the right to collectively bargain. The executive branch, which engages in bargaining with public worker unions,[6] as well as the

[6] HRS § 89-9(a) (Supp. 2001), outlining the scope of negotiations between public employees and the government, states that "[t]he employer and the exclusive representative shall meet at reasonable times . . . and shall negotiate in good faith[.]" For purposes of the Collective Bargaining in Public Employment Act, "employer" includes

> [t]he governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai, the board of education in the case of the department of education, and the board of regents in the case of the University of

(continued...)

chief negotiator for the state,[7] would obviously profit from instructions by this court as to the parameters of the law. Similarly, the labor relations board, vested with the power to resolve labor disputes, see HRS § 89-5 (Supp. 2001), and the legislature, which must approve or reject cost items in collective bargaining agreements, see HRS § 89-10 (1993), would gain from the direction provided by this court.

Thirdly, as discussed infra, it reasonably can be said that the issues raised are likely to reoccur. Limitations on collective bargaining as exemplified by Section 2 are potentially raised whenever fiscal crises arise in state and county government. Cf. Schulz v. Silver, 212 A.2d 293, 294, 295 n.1 (N.Y. 1995) (explaining that "this litigation has its genesis in the recurring failure of the Legislature to adopt a budget on or before April 1, the commencement of the State's fiscal year" and determining that, "[t]o the extent that it could be asserted that the passage of the State budget has rendered this matter moot, we find, under the circumstances present here, that an exception to the mootness doctrine would lie (citation omitted)); New Haven v. State Bd. of Educ., 638 A.2d 589, 591 n.2 (Conn. 1994) (in case

---

[6](...continued)

> Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the judiciary, the governor shall be the employer for the purposes of this chapter.

HRS § 89-2 (1993).

[7] HRS § 89A-1 (Supp. 2001) established the "office of collective bargaining and managed competition" and the position of chief negotiator, both of which assist the governor in collective bargaining policy. See HRS § 89A-1(a)-(c).

where question was whether a town met statutory minimum expenditure requirements in its appropriation of funds to board of education, holding that the issue was not moot, despite town's compliance with injunction order, because it was "apt to evade review because it involves an annual budget"). The fact that this state has been in intermittent financial crises since the 1990's is not a matter that escapes judicial notice. In the nature of things, it is unreasonable to conclude that questions concerning the collective bargaining process and limitations on, or the deferral of, government expenditures would not appear again.

B.

That the issues raised in the instant case are likely to reoccur was the unanimous position of the parties. All parties to this suit at oral argument maintained that this case is not moot, inasmuch as these issues will arise in the future.[8]

---

[8] In this case, we had the invaluable benefit of oral argument. As stated in Blair v. Harris, 98 Hawai'i 176, 45 P.3d 798 (2002),

> [i]n deciding cases such as this one, the benefit of oral argument is evident. "Oral arguments can assist judges in understanding issues, facts, and arguments of the parties, thereby helping judges decide cases appropriately." (Quoting R.J. Martineau, The Value of Appellate Oral Argument: A Challenge to the Conventional Wisdom, 72 Iowa L. Rev. 1, 4 (1986)). . . . A dialogue among the members of the court and counsel, which is the essence of oral argument, enlivens the written briefs, heightens our awareness of what is significant to the parties, and invigorates our analytical senses.
>
> . . . .
>
> . . . It has been observed that "the principal purpose of the argument before the [United States Supreme Court] Justices is . . . to communicate to the country that the Court has given each side an open opportunity to be heard

(continued...)

Cf. Philipsburg-Osceola Educ. Ass'n by Porter v. Philipsburg-Osceola Area Sch. Dist., 633 A.2d 220, 222 n.5 (Pa. 1993) (explaining that, while issue on appeal was arguably moot, appellate court would not dismiss case as moot, in part because "neither party has raised the issue of mootness and we did not have the opportunity to present the issue to them; although this case was originally to be heard at oral argument, the parties chose instead to submit it on briefs"). For example, Plaintiffs' counsel maintained that the controversy "by its very nature" is likely to re-emerge in the future, and that this court must take the opportunity to declare the rights of public employees to collectively bargain.

Counsel for the State was asked whether it was in the State's interest for this case to be ruled moot. He answered, "No," and, like Plaintiffs' counsel, urged that this court define the legislature's power with respect to collective bargaining rights. Citing a pending circuit court case, he argued that "this issue arises often[.]" The State's counsel asserted that the questions surrounding collective bargaining rights "will come up again and again and it will never be resolved." Finally,

---

[8](...continued)

> [and, t]hus[,] not only is justice done, but it is publicly seen to be done." B. Schwartz & J.A. Thomson, Inside the Supreme Court: A Sanctum Sanctorium, 66 Miss. L.J. 177, 196 (1996). This consideration -- that justice should always be seen to be done -- is applicable to all appellate courts. It is our duty as the court of last resort in this state to foster and maintain this hallmark of American judicial process.

Id. at 187, 45 P.3d at 809 (Acoba, J., dissenting in part and concurring in part) (some brackets in original.)

counsel for the mayor of Kaua‘i county agreed that the instant issues are subjects of public interest likely to return in the future.

VI.

Indeed, nearly all of the public employee unions in this state, the governor, and the mayors of each county are parties to this suit and have already extensively briefed and argued this case before the circuit court. The circuit court entertained eighteen motions filed by the parties and held hearings therefor. It has issued fifty-seven extensive findings of fact and nineteen lengthy conclusions of law totaling twenty-two pages. All issues have been thoroughly briefed to this court in fourteen written briefs totaling 349 pages. Oral argument has been had before this court.

Moreover, the issues to be decided are questions of law, which (1) constitute subject matter plainly and particularly within the province and competence of this court, and (2) as the court of last resort in this state, we are responsible to decide. What we have here is not a depletion of scarce resources, but what would be a waste of substantial time and resources already expended by the parties and the judiciary were this case held to be moot. Plainly, this case falls within the public interest exception to the mootness doctrine.

VII.

A.

This case also fulfills the requirements of the "capable of repetition yet evading review" formulation, as that test was recently expounded by this court. As was clarified in Okada Trucking, this test does not demand certainty, but only the likelihood that "similar questions" arising in the future would become moot:

> [T]he exception to the mootness requirement does not require absolute certainty that the issue will evade review; all that is required is that "it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by the appellate court can be made."

Okada Trucking, 99 Hawai'i at 198 n.8, 53 P.3d at 806 n.8 (emphasis and brackets omitted) (emphasis added) (quoting Johnston, 50 Haw. at 381, 441 P.2d at 140).

Undoubtedly, the legal questions are "capable of repetition." Other jurisdictions have determined, in various circumstances, that questions related to employee-union relations qualify under this exception. See Central Dauphin Educ. Ass'n v. Central Dauphin School Dist., 792 A.2d 691, 701 n.11 (Pa. 2001) (characterizing as "capable of repetition yet likely to evade review[,]" appeal from an injunction which required school district to employ teachers in compliance with an expired collective bargaining agreement, despite fact that subsequently, new agreement was ratified); Goodson v. State, 635 A.2d 285, 289 (Conn. 1993) ("[W]e conclude that the question of whether a trial court may reinstate a discharged state employee pending the

operation of a contractual grievance procedure is a fundamental labor relations issue likely to arise again, yet apt to evade review."); Hartford Principals & Supervisors' Assn. v. Shedd, 522 A.2d 264, 265 (Conn. 1987) (where question was whether mediation is available to resolve contractual dispute between employer and employee arising during existing contract, such question is "capable of repetition" and not moot, even though collective bargaining agreements expired prior to appeal).

B.

The issues raised in this case are also likely to evade review. In Okada Trucking, we applied the evading review exception where the question was whether a city procurement contract violated the Hawai'i Public Procurement Code, even though the contract granted had already been completed. We explained that the history of the case illustrated how "the passage of time would prevent any single plaintiff from remaining subject to the restriction complained of for the period necessary to complete the lawsuit." Okada Trucking, 99 Hawai'i at 197, 53 P.3d at 805 (internal quotation marks and citation omitted). In the instant case, as in Okada Trucking, "the passage of time" has "prevent[ed] . . . [P]laintiff[s] from remaining subject to the restriction complained of for the period necessary to complete the lawsuit." Id. It has been over three years since the legislature passed the legislation at issue, three years since the suit was filed, and more than two years since the order was

entered, and the parties remain without an "authoritative judicial decision regarding the important legal questions raised . . . in [this] appeal." Id. For the foregoing reasons, the "capable of repetition, yet evading review" exception also applies.