

On My Mind
6/01/07

At this past Tuesday night's public hearing on House Bill 15-38, Committee Substitute 1, the "Commonwealth Employment Act of 2007," Representative Cinta Kaipat, chairperson of the hearing, acknowledged that the present labor system is broken. But where is the corollary that says if something is broken, the way to fix it is by using all the same parts again? As Alex Sablan, former Chamber of Commerce president said, many attempts have been made to fix the system over the years, and the same promises made again and again, all to no avail. It's time to look outside the box.

And though Kaipat, Chairperson of the Committee on Judiciary and Government Operations, not only served as Hearing Officer in the Labor Department but worked for nearly a year to put the draft bill together, it was clear from the testimony at the hearing that her bill, in its present form, does not yet provide the needed fix.

At the risk of being declared a heretic, if not a persona non grata, let me propose a scenario: an open labor market where employers seeking employees are free to advertise openings where they choose and as often as they see fit, and are free to hire whoever they believe is qualified to do the job. The pay is in keeping with the competition: if there are many applicants, the pay is low. If there are few applicants, the pay is higher. If people don't like their jobs, they can quit and go elsewhere. If they only want to work part-time, they can do that too. A relatively simple process, right?

Those seeking jobs and finding themselves not qualified would have a choice: either find training so that they become qualified, or look for jobs for which they do qualify. Promotion to higher positions would come as a person gained experience, gained the trust of the employer, developed new skills.

Of course, this would all have to be done within the framework of the Fair Labor Standards Act, a fair minimum wage, etc., etc. But it takes place without all the artificial restrictions that are spelled out in such punitive detail in the 63 pages of House Bill 15-38, CS-1.

Businesses would flourish and workers would be content - both good for the economy. With the assurance that if they were qualified, not only would they be employed, but employed at a fair rate, ideally those left out of the market would be motivated to seek training, education, experience. With the resultant demand for training and education, the schools - and NMC - might actually offer useful courses in how to join the labor market, and other training opportunities would proliferate.

Unrealistic? Too ideal? Maybe. But it is good to think, once in a while, about what the labor system is supposed to do, what it should look like, how it should operate. It is not a job entitlement program. In theory, the purpose is to offer qualified people meaningful work at a fair wage in exchange for the efficient production of goods and services at a price people can afford to pay. This means, among other things, that production must be cost-efficient, competitive, of good quality if the system is to work. Conversely, if the system is hampered by artificial barriers it won't work - which is what has been happening in the CNMI.

Under House Bill 15-38, CS-1, businesses are restricted and prohibited and controlled

and restrained every which way to Sunday, so to speak. Requirements for bonds, for insurance, for paperwork, for time frames for this and that, for when and where and how many times to advertise their openings, for staff quotas, requirements to give their employees six months forced vacation every 3½ to 4½ years, restrictions on whom they can hire, and for how long, limits as to how job responsibilities are defined, ad infinitum.

Certain jobs are off-limits for some people, job categories are arbitrary, and interwoven throughout are exceptions from one or another of the many onerous requirements, regardless of how many qualified candidates there may or may not be for any of the jobs being offered.

One of the most onerous requirements, and most often mentioned by business sector representatives at the hearing, including the Saipan Chamber of Commerce and the Hotel Association of the NMI, was the mandatory six-month departure for employees after 3 ½ to 4½ years of employment. House legal counsel Ian Cattlet explained that the purpose of this requirement was to "defeat de facto residency," in other words, to circumvent the provision in the U.S. Congress' proposed immigration bill that entitles foreign workers who've worked in the CNMI for five years to permanent residency - by disrupting Congress' required five *consecutive* year requirement. But at what cost to businesses! The provision is punitive, regardless of how one looks at it. For the employee, it would be costly, and disruptive to families. For the employer, especially if the employee holds a position of some responsibility, it could be devastating. How could companies operate without key personnel - particularly if the firms were small?

It is unclear whether the legislature fears that CNMI's foreign workers will all leave if they are given permanent residency - a fear the administration echoes - or whether they fear that permanent residency status would eventually lead to CNMI citizenship status for the workers. The concern about citizenship would appear premature - at the moment Congress' bill does not offer this status to CNMI workers. It does seem likely, though, that a significant number of foreign workers would want to leave the CNMI once they acquired permanent residency status. But wouldn't that be a good thing - opening more jobs to locals? And if Congress' bill passes, wouldn't its terms take priority over CNMI's local provision in any case?

The CNMI economy depends heavily on its private sector economy. To lay the burden imposed by HB 15-38 CS-1 on anyone rash enough to want to take up business in the CNMI, much less on those already in business on island, is totally counterproductive. Imagine wanting to open a business here and being confronted with a 63-page law that spells out one unreasonable and costly restriction after another. Who would be willing to undergo such pain and torture - just to do business in the CNMI?

It should be noted that the few representing the local work force who spoke up at the hearing were in favor of the bill. Some supported it whole-heartedly, some had a few reservations, but all thought it good overall.

The sense of entitlement reflected in this response was clear - and most disturbing. Until people are willing to confront the truth that the function of the private sector is not to provide jobs to everyone who wants one, but to effectively provide goods and services, it will be very difficult to turn the labor situation around.

Much as it pains me to have to disagree with Representative Kaipat, of whom I think very

highly and whom I respect greatly, in my opinion this bill does not provide the answers that the CNMI labor system needs, does not solve its problems. In the first place, this bill attempts to repair the "broken" system with more of the same. It is time, as Alex Sablan said, to think outside the box. Rather than rely on quotas, or the chimera of training the workforce, or more punitive and restrictive controls, it might be far more fruitful to pursue the suggestion broached by the labor and immigration consultant mentioned in last week's column, who believed that the solution to a surplus of unemployed locals in the face of an abundance of foreign workers was to bring in fewer workers and ease the present tight control of the internal labor market.

The bill is also poorly timed. Though it is admittedly difficult to know when U.S. Congressional action will produce its "federalization" bill, it is bound to come, and it might be better to take a "wait and see" attitude than to create a whole new set of labor regulations. If anything, it would be more appropriate to propose reform measures that are more forward-looking, more in line with the expectations of what Congress is considering.

Nor does the bill address another pervasive problem: the reportedly extensive graft and corruption within the labor department. More of the same will not solve this problem. An entirely new approach must be taken.

To accomplish this, island policymakers might do well to follow the hope held out by *Saipan Tribune* editor Jayvee Vallejera in his column this week: that they learn the value of history, the wisdom of hindsight and the consequences of ignoring the law of unintended consequences.

Short takes:

Kudos to Dr. Khorram for providing the CNMI with the long-needed calendar of on-going events in the CNMI! See < www.SaipanThisWeek.blogspot.com >.

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Not yet posted there: American Memorial Park's Summer Canteen: free showings of WWII-era films every Sunday, with trailers, cartoons, news shown at 1:30 p.m., the main feature at 2:00 p.m. This Sunday: "Action in the North Atlantic," a 1941 film about the Merchant Marines with Humphrey Bogart and Raymond Massey. There is limited seating, so go a little early!

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Posted there, but a reminder nonetheless: Nahal Navidar's production of "Stuck" at the AMP Theater on Sunday, June 3, and Friday and Saturday, June 8 and 9, all at 7:00 p.m. Tickets, available at the door, are \$5.00.

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New movies: 2 R's, "28 Weeks Later" and "Georgia Rule" for a total of 2 PG-13's, one PG, the two R's, and one non-rated.