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## Labor lawsuit argued as Guam reaches 'critical mass'

John O'Connor | Post News Staff | Jan. 18, 2017 13 hrs ago



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LAWSUIT: From left, John Robertson, president of Amorient; James Martinez, president of the Guam Contractors Association; and legal counsel Jeff Joseph speak to media after a hearing at the District Court of Guam on Jan. 17. John O'Connor/Post

It may be just two more months before Guam reaches "critical mass" between projects that need to be completed and the number of H-2B workers still on island to help complete them, according to attorney Jeff Joseph, who represents various local companies and the Guam Contractors Association in a lawsuit against federal labor authorities.

Counsels for both parties met yesterday in the District Court of Guam to argue their cases regarding preliminary injunction motion filed on behalf of local companies, which could force federal officials to provide some initial relief to the H-2B issue on Guam.

Since December 2015, there have been little to no federal approvals of temporary worker petitions.

Approval rates have declined from nearly 100 percent in years past to just about 4 percent in 2016, according to Joseph.



The majority of the discussion between the parties and District Court Judge Joaquin Manibusan, who presided over the case, revolved around the issue of "temporary need" and whether Guam employees met that definition with their petitions.

### **Labor shortage**

Joseph argued there was a shortage of skilled labor in Guam, and that temporary workers are necessary to augment local workers in order to meet the various projects for the military buildup. Some of these projects may need to proceed by February or March, he later told media outside the court room.

The recent denials of H-2B petitions come without precedent and are arbitrary, Joseph argued in court, noting that history favored higher approval rates.

The situation in Guam is also unique, he added, given the long distance between the island and the nearest U.S. state, Hawaii. Wages are also not as competitive in Guam, making it difficult to attract U.S. workers from off-island, according to the lawsuit.

The federal government has recognized this uniqueness, according to Joseph, as evidenced by Guam's exception to an annual cap on temporary foreign labor visas.

Joseph said the local labor department has commented on the need for temporary labor and, as the local agency, should be more aware of the specific needs of the island than a federal regulator

situated miles away.

"There's no way someone sitting in (the United States Citizenship and Immigration Services) California service center can understand the situation here," Joseph added.

But the federal government, represented by Glenn Girdharry, said the ultimate authority on H-2B petitions rests with federal powers. Guam's historically high approval rate is not an indicator of decisions to come, he said, and the consistent use of H-2B workers places suspicion on whether Guam employers are meeting the definition of "temporary need," which typically doesn't last for more than a year.

But Manibusan questioned Girdharry on how Guam could fulfill its mandate for the upcoming military buildup if workers were not made available to local companies. While Girdharry said that question may be better reserved for Congress, Manibusan pressed on with whether denials could be justified if it meant Guam could not go through with the buildup.

"What is really disturbing, though ... is Congress has said, 'We're going to relocate Marines ... and we don't have workers. How are we going to do this?'" Manibusan said.

The discussion between the judge and the attorneys lasted for a few hours while court chambers were packed with stakeholders from various local companies. Manibusan made no decision on the preliminary injunction motion at the end of the proceedings. Instead, he said he would prepare a report and recommendation to the District Court chief judge.

## **Settlement**

Meanwhile attorneys told Manibusan that discussions on a potential settlement were also progressing. Manibusan gave the parties until the end of January to see if the matter could be resolved out of court.

"We do have something on the table that we think will be beneficial to both parties," Joseph told media.

"It would serve the interest of the government, so I'm hopeful that we could work something out in lieu of continuing to litigate this for the next year while jobs are at a stand still."

Joseph could not disclose the nature of the potential settlement.

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**John O'Connor**

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