

MAR 09 2018

SENATE RESOLUTION

URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

1 WHEREAS, Hawaii's collective bargaining in public
2 employment law, chapter 89, Hawaii Revised Statutes, was enacted
3 to promote labor-management harmony in the public sector by:

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- 5 (1) Establishing guidelines for employment relations
6 relating to wages, hours, and working conditions;
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- 8 (2) Providing a method for dealing with disputes and work
9 stoppages; and
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- 11 (3) Maintaining a favorable political and social
12 environment; and
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14 WHEREAS, the policy to promote harmonious and cooperative
15 relations between government and its employees rests on the
16 right of public employees to organize for the purpose of
17 collective bargaining in accordance with article XIII, section
18 2, of the Hawaii State Constitution; and
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20 WHEREAS, in the interest of labor peace and viability of
21 the collective bargaining enterprise, the Legislature has
22 consistently required all public employees in bargaining units
23 to bear the pro rata costs of their duly-elected exclusive
24 representatives' collective bargaining function, in accord with
25 *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52
26 L.Ed.2d 261 (1977) (allowing public sector agency fees) (*Abood*);
27 and
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29 WHEREAS, in *Janus v. American Fed'n of State, County, and*
30 *Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert.
31 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*) the



1 petitioner is asking the United States Supreme Court to overrule
2 *Abood*, and the Court has accepted the case, arguments have been
3 submitted and presented, and a decision is expected by the end
4 of June, 2018; and

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6 WHEREAS, most commentators expect that *Abood* will be
7 overruled and traditional agency fees will be banned; and

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9 WHEREAS, should the United States Supreme Court strike down
10 laws requiring the payment of agency fees by public sector
11 employees, such a ruling would fundamentally undermine the
12 Legislature's consistent efforts to bar "free riders", and
13 ensure labor management peace; undercut the collective
14 bargaining representative's ability to collect resources from
15 its bargaining unit; and greatly diminish public employees'
16 ability to negotiate with management thus causing the government
17 to lose the advantages envisioned under the collective
18 bargaining in public employment law; and

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20 WHEREAS, the intent of the Legislature is to ensure that
21 public employees are able to effectively bargain collectively
22 with their public employers by establishing a mechanism,
23 consistent with the United States Constitution, that provides
24 exclusive bargaining representatives with the resources
25 necessary to adequately represent public employees, and removes
26 economic incentives to "free ride" so that Hawaii law will not
27 be biased for or against employee membership in the bargaining
28 unit; and

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30 WHEREAS, the United States Supreme Court may issue a ruling
31 in *Janus* after the Legislature has adjourned, leaving public
32 sector employees and the State and counties of Hawaii uncertain
33 of their rights without immediate legislative recourse; and

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35 WHEREAS, under such circumstances the Hawaii Labor
36 Relations Board, or other agencies or judicial bodies, may be
37 called upon to interpret, adapt, or conform chapter 89, Hawaii
38 Revised Statutes, to the result in *Janus*, through rules or
39 decisions, perhaps pending later legislative action; now,
40 therefore,

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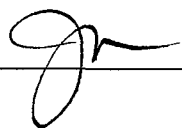


S.R. NO. 69

1 BE IT RESOLVED by the Senate of the Twenty-ninth
 2 Legislature of the State of Hawaii, Regular Session of 2018,
 3 that the Hawaii Labor Relations Board, and other concerned
 4 agencies or judicial bodies, are urged to take notice of this
 5 body's intent to enable exclusive representatives to maintain
 6 financial viability and organizational capacity and effectively
 7 represent public employees, and to remove or reduce financial
 8 incentives for employees to "free ride"; and
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10 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
 11 Board is requested to submit a report of its findings and
 12 recommendations on the status and consequences of *Janus*,
 13 including any proposed legislation, to this body no later than
 14 twenty days prior to the convening of the Regular Session of
 15 2019; and
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17 BE IT FURTHER RESOLVED that certified copies of this
 18 Resolution be transmitted to the Governor, Chairperson of the
 19 Hawaii Labor Relations Board, and Chief Justice of the Supreme
 20 Court of Hawaii.
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 23

OFFERED BY: 






~~Clarence K. Fukushima~~
