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# A BILL FOR AN ACT

RELATING TO THE HAWAII LABOR RELATIONS BOARD.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that changes in federal  
2 and state law may require immediate alterations to Hawaii's  
3 collective bargaining in public employment statutes, rules, or  
4 agency practices. The legislature further finds that the United  
5 States Supreme Court is currently reviewing a case that may  
6 alter the foundations of public sector collective bargaining:  
7 *Janus v. American Fed'n of State, Cty and Mun. Employees,*  
8 *Council 31*, U.S. Supreme Court Docket No. 16-1466. The issue in  
9 question is whether *Abood v. Detroit Board of Education* should  
10 be overruled and public-sector "agency shop" arrangements  
11 invalidated under the First Amendment of the United States  
12 Constitution. The outcome and disposition of this landmark case  
13 may require public employee unions to restructure their  
14 financing and may have a serious effect on the application of  
15 Hawaii's collective bargaining in public employment law codified  
16 under chapter 89, Hawaii Revised Statutes.



# H.B. NO. 1929

1           The legislature also finds that future Supreme Court  
2 decisions may impact Hawaii's public employment relations at any  
3 time, including when the legislature is not in session.

4 Analyzing the impact of these decisions requires:

5           (1) Specialized skill in interpreting state law,  
6                       specifically Hawaii's collective bargaining in public  
7                       employment law; and

8           (2) Urgency to prevent the impairment of important rights.

9           The purpose of this Act is to promote harmonious and  
10 cooperative relations between government and its employees by  
11 requiring the Hawaii labor relations board to adopt emergency  
12 rules if the board finds that Hawaii's collective bargaining in  
13 public employment law, or the application thereof, is  
14 inconsistent with any federal or state law and the adoption of  
15 an emergency rule is urgently needed. Emergency rules enacted  
16 by the Hawaii labor relations board pursuant to this Act may  
17 stabilize public employment relations until the legislature or  
18 board establishes a permanent solution after appropriate  
19 deliberation.

20           SECTION 2. Section 89-5, Hawaii Revised Statutes, is  
21 amended by amending subsection (i) to read as follows:



# H.B. NO. 1929

1           "(i) In addition to the powers and functions provided in  
2 other sections of this chapter, the board shall:

3           (1) Establish procedures for, investigate, and resolve,  
4           any dispute concerning the designation of an  
5           appropriate bargaining unit and the application of  
6           section 89-6 to specific employees and positions;

7           (2) Establish procedures for, resolve disputes with  
8           respect to, and supervise the conduct of, elections  
9           for the determination of employee representation;

10          (3) Resolve controversies under this chapter;

11          (4) Conduct proceedings on complaints of prohibited  
12          practices by employers, employees, and employee  
13          organizations and take such actions with respect  
14          thereto as it deems necessary and proper;

15          (5) Hold such hearings and make such inquiries, as it  
16          deems necessary, to carry out properly its functions  
17          and powers, and for the purpose of such hearings and  
18          inquiries, administer oaths and affirmations, examine  
19          witnesses and documents, take testimony and receive  
20          evidence, compel attendance of witnesses and the  
21          production of documents by the issuance of subpoenas,



## H.B. NO. 1929

- 1           and delegate such powers to any member of the board or  
2           any person appointed by the board for the performance  
3           of its functions;
- 4           (6) Determine qualifications and establish, after  
5           reviewing nominations submitted by the public  
6           employers and employee organizations, lists of  
7           qualified persons, broadly representative of the  
8           public, to be available to serve as mediators or  
9           arbitrators;
- 10          (7) Establish a fair and reasonable range of daily or  
11          hourly rates at which mediators and arbitrators on the  
12          lists established under paragraph (6) are to be  
13          compensated;
- 14          (8) Conduct studies on problems pertaining to public  
15          employee-management relations, and make  
16          recommendations with respect thereto to the  
17          legislative bodies; request information and data from  
18          state and county departments and agencies and employee  
19          organizations necessary to carry out its functions and  
20          responsibilities; make available to all concerned  
21          parties, including mediators and arbitrators,



# H.B. NO. 1929

- 1 statistical data relating to wages, benefits, and  
2 employment practices in public and private employment  
3 to assist them in resolving issues in negotiations;
- 4 (9) Adopt rules relative to the exercise of its powers and  
5 authority and to govern the proceedings before it in  
6 accordance with chapter 91; [~~and~~]
- 7 (10) Adopt emergency rules, in accordance with sections 91-  
8 3 and 91-4, if the board finds that any section under  
9 chapter 89, or the application thereof, is  
10 inconsistent with any federal or state law, and the  
11 adoption of an emergency rule is urgently needed to:
- 12 (A) Conform chapter 89 or board rules with any  
13 requirements under federal or state law;
- 14 (B) Implement rights pursuant to federal or state  
15 law;
- 16 (C) Clarify chapter 89;
- 17 (D) Stabilize public employment relations;
- 18 (E) Avoid disruption of governmental operations;
- 19 (F) Facilitate a board or legislative study on the  
20 impact of federal or state law;



# H.B. NO. 1929

- 1            (G) Reinforce or preserve the public policy of the
- 2            State as stated in section 89-1; or
- 3            (H) Temporarily resolve a practical problem; and
- 4            [~~(10)~~] (11) Execute all of its responsibilities in a timely
- 5            manner so as to facilitate and expedite the resolution
- 6            of issues before it."

7            SECTION 3. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9            SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY:  \_\_\_\_\_

JAN 19 2018



# H.B. NO. 1929

**Report Title:**

Hawaii Labor Relations Board; Emergency Rulemaking

**Description:**

Requires the Hawaii Labor Relations Board to adopt emergency rules if the Board finds that Hawaii's collective bargaining in public employment law, or the application thereof, is inconsistent with any federal or state law and the adoption of an emergency rule is urgently needed.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**HB 1929**

**RELATING TO  
HAWAII LABOR  
RELATIONS BOARD**



**HB 1929**

**TESTIMONY**



The House Committee on Labor & Public Employment  
Thursday, February 8, 2018  
10:30 AM, Conference Room 309

RE: **HB 1929 Relating to the Hawai'i Labor Relations Board**

Attention: Chair Aaron Johanson, Vice Chair Daniel Holt and members of the Committee

The University of Hawaii Professional Assembly (UHPA) **urges the committee to pass HB 1929**. HB 1929 recognizes there are circumstances that necessitate a proactive approach to allowing a duly established state entity, the Hawai'i Labor Relations Board, to have emergency rulemaking authority.

Based upon the anticipated 2018 US Supreme Court ruling in *Janus v. American Federation of State, County and Municipal Council 31*, US Supreme Court Docket No. 16-1466 the constitutional and statutory underpinnings of Hawaii public sector collective bargaining may be at risk. The proponents in *Janus* seek to undermine the financial ability of unions to effectively fulfill their statutory obligations of negotiations and representation. This outcome may also affect the ability of government to perform its duties as management and maintain an orderly set of operational policies.

Often when there are court decisions that call for statutory changes, it is the Legislature that is vested with the obligation and authority to comply with a given order. The challenge is when the Legislature is not in session and an event or series of circumstances are sufficiently harmful that immediate action to mitigate the damage is necessary. UHPA believes that the current circumstances presented by the *Janus* case, and its brethren which are making their way through the Federal Courts, may present immediate, important questions regarding the application of Chapter 89.

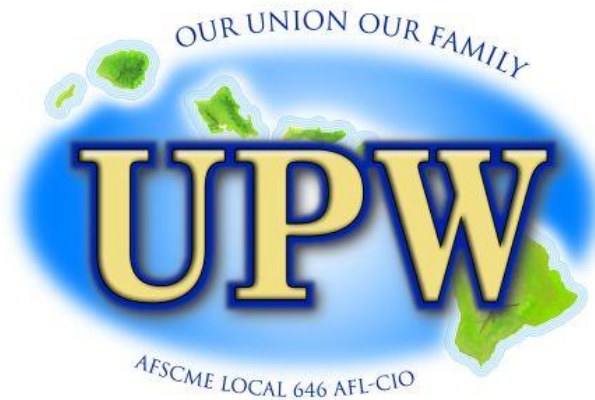
The Hawai'i Labor Relations Board is vested with resolving labor management disputes, interpreting the application of Chapter 89, and advising the legislature on matters covered by Chapter 89. It is within this context that HB 1929 requests that the HLRB be granted emergency rulemaking powers to be utilized when the need to act immediately is important to effectuating the values and goals of Hawai'i law.

Respectfully submitted,

Kristeen Hanselman  
Executive Director

University of Hawaii  
Professional Assembly

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THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Ninth Legislature  
Regular Session of 2018

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

The Honorable Aaron Ling Johansen, Chair  
The Honorable Daniel Holt, Vice Chair

DATE OF HEARING: Thursday, February 8, 2018  
TIME OF HEARING: 10:30 a.m.  
PLACE OF HEARING: State Capitol  
415 South Beretania Street  
Conference Room 309

**TESTIMONY ON HOUSE BILL 1929 RELATING TO HLRB**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers (UPW),  
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB1929 requires the Hawaii Labor Relations Board to adopt emergency rules if the Board finds that Hawaii collective bargaining in public employment law, or the application thereof, is inconsistent with any federal or state law and the adoption of an emergency rule is urgently needed.

The uncertainty of legislation in the U.S. Congress, uncertainty of the rulings by the U.S. Supreme Court with respect to labor union and employment issues, and the uncertainty of the Rulings by the National Labor Relations Board, makes HB1929 necessary for the working families of Hawaii. The UPW strongly supports HB1929.

Thank you for the opportunity to submit this testimony.



**HB-1929**

Submitted on: 2/5/2018 5:37:14 PM

Testimony for LAB on 2/8/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez		Support	No

Comments:

**HB 1929**

**LATE  
TESTIMONY**