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## A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES.

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

1           SECTION 1. The legislature finds that Hawaii's collective  
2 bargaining in public employment law, chapter 89, Hawaii Revised  
3 Statutes, was enacted to promote labor management harmony in the  
4 public sector by:

- 5           (1) Establishing guidelines for employment relations  
6 relating to wages, hours, and working conditions;  
7           (2) Providing a method for dealing with disputes and work  
8 stoppages; and  
9           (3) Maintaining a favorable political and social  
10 environment.

11           The legislature further finds that the policy to promote  
12 harmonious and cooperative relations between government and its  
13 employees rests on the right of public employees to organize for  
14 the purpose of collective bargaining in accordance with article  
15 XIII, section 2, of the Constitution of the State of Hawaii.

16           The legislature also finds that changes in federal  
17 constitutional law could have a major impact on public employee



1 collective bargaining in Hawaii. In *Friedrichs v. California*  
2 *Teachers Ass'n, et al.*, 2013 WL 892547 (D. Cal. C.D. 2013),  
3 *aff'd* 204 WL 10076847 (Mem.) (9th Cir. 2014), *aff'd* 136 S.Ct.  
4 1083 (Mem.), 194 L.Ed. 2d 255 (2016) the petitioners had asked  
5 the United States Supreme Court to overrule *Abood v. Detroit Bd.*  
6 *of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52 L.Ed.2d 261 (1977)  
7 (allowing public sector agency fees). An equally-divided United  
8 States Supreme Court upheld the status quo established in the  
9 *Abood* case. Many commentators considered that, but for the  
10 sudden death of supreme court justice Antonin Scalia, *Friedrichs*  
11 would have overruled *Abood*.

12 In June 2017, the petitioner in *Janus v. American Fed'n of*  
13 *State, County, and Mun. Employees, Council 31*, 851 F.3d 746 (7th  
14 *Cir. 2017)*, *cert. granted*, 138 S.Ct. (Mem), 198 L.Ed. 2d 780  
15 (2017) again asked the United States Supreme Court to overrule  
16 *Abood*. The court has accepted the case, and a decision is  
17 expected by the end of June 2018. Most commentators again  
18 expect that *Abood* will be overruled, and traditional agency fees  
19 will be banned.

20 The legislature finds that should the United States Supreme  
21 Court strike down laws requiring the payment of union dues by



1 public sector employees, such a ruling would fundamentally  
2 undermine the legislature's consistent efforts to bar "free  
3 riders," and ensure labor management peace. Furthermore, not  
4 only would such a ruling undercut the collective bargaining  
5 representative's ability to collect resources from its  
6 bargaining unit, it would greatly diminish public employees'  
7 ability to negotiate with management and cause government to  
8 lose the advantages envisioned under the collective bargaining  
9 in public employment law.

10 The purpose of this Act is to ensure that public employees  
11 are able to effectively bargain collectively with their public  
12 employers by establishing a mechanism, consistent with the  
13 United States Constitution, that will provide exclusive  
14 bargaining representatives with the resources necessary to  
15 adequately represent public employees and will remove economic  
16 incentives to "free ride" so that Hawaii law will not be biased  
17 for or against employee membership in the bargaining unit's  
18 exclusive representative.

19 SECTION 2. Section 89-1, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) The legislature declares that it is the public policy  
 2 of the State to promote harmonious and cooperative relations  
 3 between government and its employees and to protect the public  
 4 by assuring effective and orderly operations of government.

5 These policies are best effectuated by:

6           (1) Recognizing the right of public employees to organize  
 7           for the purpose of collective bargaining;

8           (2) Requiring public employers to negotiate with and enter  
 9           into written agreements with exclusive representatives  
 10           on matters of wages, hours, and other conditions of  
 11           employment, while, at the same time, maintaining the  
 12           merit principle pursuant to section 76-1; [and]

13           (3) Enabling exclusive representatives to maintain  
 14           financial viability and organizational capacity, and  
 15           the ability to effectively represent public employees;  
 16           and

17           ~~[(3)]~~ (4) Creating a labor relations board to administer  
 18           the provisions of chapters 89 and 377."

19           SECTION 3. Section 89-2, Hawaii Revised Statutes, is  
 20 amended by amending the definition of "exclusive representative"  
 21 to read as follows:



1 "Exclusive representative" means the employee organization  
2 certified by the board under section 89-8 as the collective  
3 bargaining agent to represent all employees in an appropriate  
4 bargaining unit [~~without discrimination and without regard to~~  
5 ~~employee organization membership~~]."

6 SECTION 4. Section 89-3, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§89-3 Rights of employees. Employees shall have the  
9 right of self-organization and the right to form, join, or  
10 assist any employee organization for the purpose of bargaining  
11 collectively through representatives of their own choosing on  
12 questions of wages, hours, and other terms and conditions of  
13 employment, and to engage in lawful, concerted activities for  
14 the purpose of collective bargaining or other mutual aid or  
15 protection, free from interference, restraint, or coercion. An  
16 employee shall have the right to refrain from any or all of such  
17 activities, except for having a payroll deduction equivalent to  
18 regular dues remitted to an exclusive representative or  
19 charitable organization as provided in [~~section~~] sections 89-3.5  
20 and 89-4."



1 SECTION 5. Section 89-4, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3 "§89-4 Payroll deductions. (a) Upon receiving from an  
4 exclusive representative a written statement specifying the  
5 amount of regular dues required of its members in the  
6 appropriate bargaining unit, the employer shall deduct this  
7 amount from the payroll of every member employee in the  
8 appropriate bargaining unit, and remit the amount to the  
9 exclusive representative. Additionally, the employer shall  
10 deduct an amount equivalent to the regular dues from the payroll  
11 of every nonmember employee in the appropriate bargaining unit,  
12 except for employees who object under section 89-3.5, and shall  
13 remit the amount to the exclusive representative; provided that  
14 the deduction from the payroll of every nonmember employee shall  
15 be made only for an exclusive representative which provides for  
16 a procedure for determining the amount of a refund to any  
17 employee who demands the return of any part of the deduction  
18 which represents the employee's pro rata share of expenditures  
19 made by the exclusive representative for activities of a  
20 political and ideological nature unrelated to terms and  
21 conditions of employment. If a nonmember employee objects to



1 the amount to be refunded, the nonmember employee may petition  
2 the board for review thereof within fifteen days after notice of  
3 the refund has been received. The employer shall deduct an  
4 amount equivalent to the periodic dues and initiation fees from  
5 the payroll of every employee who objects under section 89-3.5  
6 in a bargaining unit with a published policy that so requires  
7 and shall remit the amount to the charitable organization  
8 designated in writing by the employee who objects under section  
9 89-3.5. If an employee organization is no longer the exclusive  
10 representative of the appropriate bargaining unit, the deduction  
11 from the payroll of members ~~and~~, nonmembers, and employees who  
12 object under section 89-3.5 shall terminate.

13 (b) The employer shall, upon written authorization by an  
14 employee, executed at any time ~~[after the employee's joining an~~  
15 ~~employee organization]~~, deduct from the payroll of the employee  
16 the amount of membership dues, initiation fees, representation  
17 or service fees, group insurance premiums, ~~and~~ or other  
18 association benefits, and shall remit the amount to the employee  
19 organization designated by the employee.

20 (c) The employer shall continue all payroll assignments  
21 authorized by an employee prior to July 1, 1970, and all



1 assignments authorized under subsection (b) until notification  
2 is submitted by an employee to discontinue the employee's  
3 assignments.

4 (d) The exclusive representative may establish:

5 (1) Dues, rates, or charges to support its activities and  
6 other programs it chooses to provide to its members;  
7 and

8 (2) Rates or charges for services or other programs it  
9 chooses to provide to nonmembers and employees who  
10 object under section 89-3.5.

11 (e) The public employer shall be entitled to rely on, and  
12 shall not be liable for accurately implementing, reports of  
13 employee deductions supplied by the exclusive representative.

14 Any challenge to rates or charges for services shall be within  
15 the exclusive original jurisdiction of the board as a prohibited  
16 practice."

17 SECTION 6. Section 89-8, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) The employee organization which has been certified by  
20 the board as representing the majority of employees in an  
21 appropriate bargaining unit shall be the exclusive





1 representative of all employees in the unit. As exclusive  
2 representative, it shall have the right to act for and negotiate  
3 agreements covering all employees in the unit and shall be  
4 responsible for representing the interests of all such employees  
5 without discrimination and without regard to employee  
6 organization membership[-], except that in the, grievance-  
7 arbitration procedure, it need not represent employees who do  
8 not pay reasonable costs of representation. Any other provision  
9 herein to the contrary notwithstanding, whenever two or more  
10 employee organizations which have been duly certified by the  
11 board as the exclusive representatives of employees in  
12 bargaining units merge, combine, or amalgamate or enter into an  
13 agreement for common administration or operation of their  
14 affairs, all rights and duties of such employee organizations as  
15 exclusive representatives of employees in such units shall inure  
16 to and shall be discharged by the organization resulting from  
17 such merger, combination, amalgamation, or agreement, either  
18 alone or with such employee organizations. Election by the  
19 employees in the unit involved, and certification by the board  
20 of such resulting employee organization shall not be required."




# H.B. NO. 1930

1           SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 8. This Act shall take effect upon its approval.

4

INTRODUCED BY:  \_\_\_\_\_  
JAN 19 2018



# H.B. NO. 1930

**Report Title:**

Public Employment; Collective Bargaining

**Description:**

Amends collective bargaining law to ensure that exclusive bargaining representatives retain the resources necessary to adequately represent public employees and remove economic incentive to free ride.

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

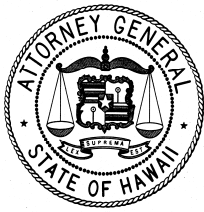


**HB 1930**

**RELATING TO  
PUBLIC EMPLOYEES**

**HB 1930**

**TESTIMONY**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. 1930, RELATING TO PUBLIC EMPLOYEES.

**BEFORE THE:**

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

**DATE:** Thursday, February 8, 2018                      **TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Jeffrey A. Keating, Deputy Attorney General

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Chair Johanson and Members of the Committee:

The Department of the Attorney General would note for the Committee that the wording of this bill could potentially be problematic based upon how the United States Supreme Court rules in the Mark Janus v. AFSCME Council 31, a case that is set for oral argument on February 26, 2018. This bill allows the union to not represent employees who do not pay union dues and allows the union to charge non-paying employees the reasonable costs of representation. This part of the bill would likely be unaffected by the Janus ruling.

However, the bill also requires the employer to deduct the equivalent of union dues from non-members and give it to a charitable organization of the employee's choosing. This is currently allowed under section 89-3.5, Hawaii Revised Statutes, for employees with a religious objection to paying union dues. This wording may be problematic depending on the Janus ruling and this involuntary extraction of the equivalent of union dues going to a charitable entity may still be unconstitutional.

In the case of Jensen v. Yonamine, 437 F.Supp. 368 (United States District Court, D. Hawaii 1977), the plaintiffs were public school teachers in Hawaii who did not belong to the state teachers' association (union) and challenged the payment of mandatory union dues deducted from their wages. The Court applied the United States Supreme Court ruling in Abood v. Detroit Board of Education, 431 U.S. 209, 97 S.Ct. 1782 (1977), and held that mandatory union dues for "collective bargaining purposes"

was constitutional, however mandatory union dues for “political purposes” for those who object was unconstitutional.

The Court, citing Abood noted “The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one’s beliefs should be shaped by his mind and his conscience rather than coerced by the State ...” Jensen, 437 F.Supp at 375.

Further, “The freedom to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. The government cannot require an individual to relinquish his or her First Amendment rights as a condition to public employment.” Jensen, 437 F.Supp at 375.

Based upon the above, and if the United States Supreme Court in the Janus case rules that mandatory union dues for public sector employees is unconstitutional, the wording of the present bill that requires a public employee to pay the equivalent of union dues to a charitable organization would likely also be unconstitutional.



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

RE: **HB 1930 Relating to Public Employees**

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

The University of Hawaii Professional Assembly (UHPA) **strongly encourages the committee to support HB 1930** as a means to ensure the financial integrity of UHPA so that it may fulfill its statutory duty to represent faculty members. On February 26, 2018, the United State Supreme Court will hear *Janus v. American Federation of State, County and Municipal Employees Council 31, et al.*, which could result in no longer requiring all unionized employees to financially support the costs of collective bargaining and maintenance of benefits and protections that are provided thereby.

The Supreme Court's decision may be rendered while the Legislature is in session. UHPA believes that being prepared for a ruling that may do harm is in the best interests of faculty members, the employer and the state. As an exclusive representative designated under Chapter 89, should UHPA be sufficiently wounded, the statutory requirement to bargain and represent may be undermined by insufficient financial resources. This is not what the legislature in adopting Chapter 89 or the voters adopting the state constitution envisioned for Hawai'i. There was to be a balance in the relationship between the employers, the state, and the unions. This requires the financial means to have knowledgeable staff and the ability to engage in various costly endeavors including grievance arbitration.

HB 1930 protects and advances what Hawai'i deemed to be paramount in its commitment to collective bargaining. The bill is consistent with legislative history and seeks to ensure that both the employer and union will be able to fully engage in their respective statutory roles.

Should the Supreme Court find that all activities undertaken by unions are a form of political speech, mandatory agency fees may be declared illegal. If no adaptive changes are made in Hawai'i law, employees could then choose to pay no dues equivalent or service fee, but the union would still have to expend resources to represent them in grievances. Those bargaining unit members who refuse to share in the costs of collective bargaining would essentially be expecting their colleagues to pay for them. Commonly referred to as "free riders", these employees would benefit from the work of the exclusive representative, but without contributing.

The *Janus* case does not contain any basis to change the duty of fair representation required under Hawai'i law. Its intent is more insidious, which is to defund the union while keeping the

University of Hawaii  
Professional Assembly

1017 Palm Drive ♦ Honolulu, Hawaii 96814-1928  
Telephone: (808) 593-2157 ♦ Facsimile: (808) 593-2160  
Website: [www.uhpa.org](http://www.uhpa.org)



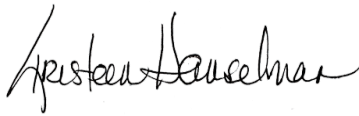
duty of fair representation intact. UHPA believes there is nothing that precludes the Hawai'i legislature from providing relief to unions by a slight alteration in the duty of fair representation, to allow unions to charge for services to those who choose not to pay agency fees.

This proposed legislation allows options for unions to adopt if they so choose. HB 1930 allows a union to require service fees for representation if an individual is not a union member, or agency fee payer. If an individual chooses not to pay a service fee the union does not have an obligation to undertake a grievance or arbitration on their behalf. The union remains the party that determines whether any grievance goes to arbitration. This authority is consistent with the current law.

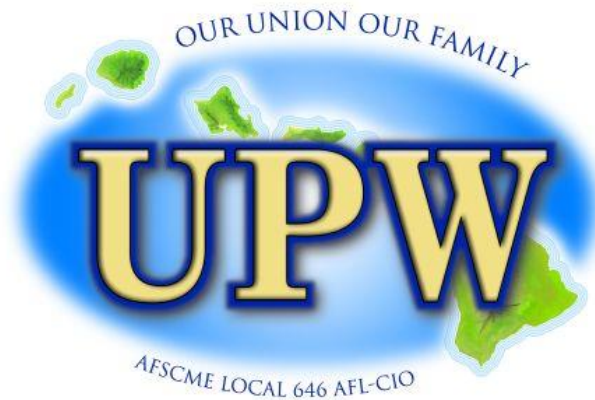
HB 1930 maintains the union as the recognized representative to negotiate on behalf of all employees in the bargaining unit with contractual provisions applied without discriminating between those employees that pay or those that are "free riders".

**UHPA strongly urges the passing of HB 1930.**

Respectfully submitted,



Kristeen Hanselman  
Executive Director



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 1930 RELATING TO PUBLIC EMPLOYEES**

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.

HB1930 amends the collective bargaining law to ensure that exclusive bargaining representatives retain the resources necessary to adequately represent public employees and remove economic incentives to free ride. Should the U. S. Supreme Court strike down laws requiring the payment of union dues by public sector employees, it would seriously undercut the collective bargaining representative's ability to negotiate with the employer as envisioned by HRS-89 policy. The exclusive representative would lose financial viability and capacity and the ability to represent public employees adequately, to the serious detriment of Hawaii public employees.

The UPW strongly supports HB1930 and requests the committee to pass the measure out.

Thank you for the opportunity to submit testimony supporting this extremely important legislation.



**HB-1930**

Submitted on: 2/5/2018 5:38:15 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 1930**

**LATE**

**TESTIMONY**