

HCR 122

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".

HOUSE CONCURRENT 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:

- 4
- 5 (1) Establishing guidelines for employment relations
6 relating to wages, hours, and working conditions;
7
- 8 (2) Providing a method for dealing with disputes and work
9 stoppages; and
- 10
- 11 (3) Maintaining a favorable political and social
12 environment; and
13

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
19

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
28



1 WHEREAS, in *Janus v. American Fed'n of State, County, and*
2 *Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert.
3 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*) the
4 petitioner is asking the United States Supreme Court to overrule
5 *Abood*, and the Court has accepted the case, arguments have been
6 submitted and presented, and a decision is expected by the end
7 of June, 2018; and

8
9 WHEREAS, most commentators expect that *Abood* will be
10 overruled and traditional agency fees will be banned; and

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

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

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

37
38 WHEREAS, under such circumstances the Hawaii Labor
39 Relations Board, or other agencies or judicial bodies, may be
40 called upon to interpret, adapt, or conform chapter 89, Hawaii
41 Revised Statutes, to the result in *Janus*, through rules or



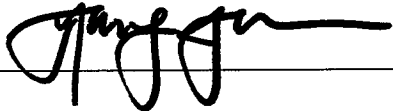
1 decisions, perhaps pending later legislative action; now,
2 therefore,

3
4 BE IT RESOLVED by the House of Representatives of the
5 Twenty-ninth Legislature of the State of Hawaii, Regular Session
6 of 2018, the Senate concurring, that the Hawaii Labor Relations
7 Board, and other concerned agencies or judicial bodies, are
8 urged to take notice of this body's intent to enable exclusive
9 representatives to maintain financial viability and
10 organizational capacity and effectively represent public
11 employees, and to remove or reduce financial incentives for
12 employees to "free ride"; and

13
14 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
15 Board is requested to submit a report of its findings and
16 recommendations on the status and consequences of *Janus*,
17 including any proposed legislation, to this body no later than
18 twenty days prior to the convening of the Regular Session of
19 2019; and

20
21 BE IT FURTHER RESOLVED that certified copies of this
22 Concurrent Resolution be transmitted to the Governor,
23 Chairperson of the Hawaii Labor Relations Board, and Chief
24 Justice of the Supreme Court of Hawaii.

25
26
27

OFFERED BY: 

MAR 09 2018



HR 122

TESTIMONY

DAVID Y. IGE
GOVERNOR

DOUG S. CHIN
LIEUTENANT GOVERNOR

LEONARD HOSHIJO
DIRECTOR, DLIR



MARCUS R. OSHIRO
CHAIR

SESNITA A.D. MOEPONO
HLRB MEMBER

J N. MUSTO
HLRB MEMBER

STATE OF HAWAII
HAWAII LABOR RELATIONS HLRB
830 PUNCHBOWL STREET, ROOM 434
HONOLULU, HAWAII 96813
TELEPHONE 586-8610/ FAX 586-8613
E-MAIL dlir.laborHLRB@hawaii.gov

March 23, 2018

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Thursday, March 27, 2018
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Hawaii Labor Relations HLRB (HLRB)
Dept. of Labor and Industrial Relations (DLIR)

Re: HCR 122/HR 106

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".

I. OVERVIEW OF PROPOSED LEGISLATION

These resolutions request the HLRB to submit a report of its findings and recommendations on the status and consequences of *Janus v. American Fed'n of State, County, and 2 Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert. 3 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*), including any proposed legislation, to this body no later than twenty days prior to the convening of the Regular Session of 2019.

II. COMMENTS

The Hawaii Labor Relations Board's jurisdiction is set forth in Hawaii Revised States (HRS) Chapter 89, §89-5 (a), (i) (1) through (10). The Board's authority extends to the implementation of collective bargaining under Chapter 89 and the orderly resolution of disputes that arise under the statute.

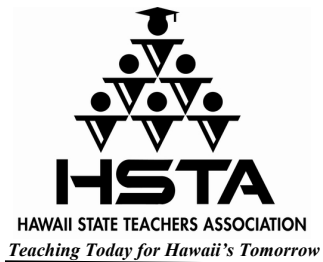
HRS §26-7, sets forth that the Department of the Attorney General "...shall administer and render state legal services, including furnishing of *written legal opinions to the governor, legislature, and such state departments and officers as the governor may direct...*" (*emphasis added*).

Therefore, the Board recommends that HCR No. 122 and HR No. 106 should be amended by the inclusion of the Attorney General in its title, and the substitution of the Department of the Attorney General for the Hawaii Labor Relations Board with respect to the report to the Legislature prior to the 2019 legislative session with respect to the decision of the United States Supreme Court in the *Janus* case. See the proposed changes listed below.

TITLE: URGING THE ATTORNEY GENERAL, 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".

Page 3, line 14-19. BE IT FURTHER RESOLVED that the [~~Hawaii Labor Relations Board~~] Department of the Attorney General is requested to submit a report of its findings and recommendations on the status and consequence of *Janus*, including any proposed legislation, to this body no later than twenty days prior to the convening of the Regular Session of 2019; and

Page 3, line 21-24. BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor, Attorney General, Chairperson of the Hawaii Labor Relations Board, and Chief Justice of the Supreme Court of Hawaii.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President
Justin Hughey
Vice President
Amy Perruso
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

RE: HCR 122/ HR 106 - 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"

TUESDAY, MARCH 27, 2018

COREY ROSENLEE, EXECUTIVE DIRECTOR
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **supports HCR 122/HR 106**, urging the Hawai'i 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."

Labor rights are human rights. This resolution clarifies the Legislature's intent to protect collective bargaining in light of *Janus v. AFSCME*, a case that could alter the application of chapters 76 and 89, Hawai'i Revised Statutes. In *Janus v. AFSCME*, the petitioners asked the United States Supreme Court to determine if *Abood v. Detroit Board of Education* should be overruled and public-sector agency shop arrangements invalidated under the First Amendment, and, additionally, if the First Amendment prohibits the practice of requiring public employees to affirmatively opt-out of subsidizing nonchargeable speech, rather than to affirmatively consent to such speech.

If the Supreme Court strikes down laws requiring the payment of union dues by public sector employees, the ruling would fundamentally undermine Hawai'i's dedication to labor management peace by constraining collective bargaining representatives' ability to collect resources from their members and, in turn, diminishing public employees' ability to negotiate with management and represent their members' interests. Put simply, the ability hardworking families to fight for fair treatment from their employers would be endangered and their livelihoods would be placed at risk.

Collective bargaining is especially important to public school teachers. It is in the best interest of both the employer and the union to ensure that bargaining occurs in a way that supports an employee's ability to enhance their professionalism, leads to a workplace free from health and safety risks, and is conducted in a fair and equitable manner. Our state's promise to protect collective bargaining is urgent under the pending threat of *Janus v. AFSCME*, which jeopardizes the union workforce that forms the heart of Hawai'i's economy.

To preserve the islands' longstanding devotion to the protection of workers' rights, the Hawaii State Teachers Association asks your committee to **support** this resolution.



The House Committee on Labor & Public Employment
Tuesday, March 27, 2018 10:00 AM, Conference Room 309

RE: **HCR 122/HR 106 Urging 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) strongly encourages the committee to support H.C.R NO.122. Support affirms that the purpose of Chapter 89, Hawai'i Revised Statutes should continue to ensure exclusive representatives have the financial resources that support collective bargaining. Hawai'i has long supported the sharing of collective bargaining costs across all employees of a bargaining unit. These agency fee provisions make it possible for public sector unions to provide sufficient representation to employees in negotiations and the continuing obligations to enforce the contract.

On February 26, 2018 the United States Supreme Court heard *Janus v. American Federation of State, County, and Municipal Employees Council 31, et al.*, which could result in no longer requiring unionized employees to financially support the costs of collective bargaining and maintenance of benefits and protections that are provided through negotiations. The potential loss of agency fee means that exclusive representatives could be sufficiently wounded and their obligations to represent employees will be undermined thru a loss of financial resources.

Should the Supreme Court find that mandatory agency fees are illegal H.C.R NO.122 establishes the intent of the legislature to support adaptive changes in Hawai'i law that will maintain the financial viability of unions. The resolution notes that there are periods of time where the legislature is not in session yet there may be a need for a state agency, such as the Hawai'i Labor Relations Board, to take action that will limit the financial impact on unions where bargaining unit members refuse to pay a pro rata share of collective bargaining costs.

Janus will not change the union's obligation to represent all bargaining unit members but could harm a unions ability to do so by stripping it's financial resources through allowing "free riders". Free Riders enjoy the benefits of negotiations and expect their colleagues to pay for the costs of collective bargaining. This is an insidious manner to make unions ineffectual by stripping them of resources.

H.C.R NO. 122 attests to the Legislature's continuing commitment to support the purpose of Chapter 89 and ensuring that duly-elected exclusive representatives be able to fulfill their statutory duties. UHPA strongly urges the committee support H.C.R. NO. 122.

Respectfully submitted,

Kristeen Hanselman, Executive Director

HCR 122

**LATE
TESTIMONY**

LATE

LATE

HCR-122

Submitted on: 3/26/2018 9:53:33 PM

Testimony for LAB on 3/27/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcella Alohalani Boido	Individual	Support	No

Comments:



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

March 27, 2018

H.C.R. 122 and H.R. 106 – 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”

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO does not dispute the preamble of H.C.R. 122 and H.R. 106 nor the potential adverse impact of the U.S. Supreme Court case, *Janus v. AFSCME*, however, we find H.C.R. 122 and H.R. 106 to be unnecessary and therefore respectfully request that the Committee defer both measures.

In *Janus v. AFSCME*, the petitioner is asking the United States Supreme Court to overrule decades of past precedence by prohibiting public sector unions from collecting agency fees. While we can hope that the Supreme Court will uphold its 1977 *Abood v. Detroit Board of Education* decision, we must – and have already begun to – prepare for the worst. However, even in the worst circumstances, it is wholly inappropriate for the Hawaii Labor Relations Board (HLRB) to be charged with submitting a report of its recommendations, including proposed legislation, on the status and consequences of the *Janus v. AFSCME* decision. As delineated in Ch. 89-5, Hawaii Revised Statutes, the HLRB is empowered to adjudicate disputes and interpret collective bargaining law, therefore mandating that the HLRB also make recommendations and propose legislation blurs the line of the balance of power. Additionally, we trust that since *Janus v. AFSCME* has already garnered national and local media attention, it is unnecessary for the Legislature to urge the Hawaii Labor Relations Board and other concerned agencies or judicial bodies to take notice of the Legislature’s intent to maintain financial viability and organizational capacity. Lastly, should the Legislature feel compelled to preemptively react to *Janus v. AFSCME*, it should rest assured that the HLRB already has the authority to conduct studies and adopt rules relative to the exercise of its powers.

It is for these reasons cited that we respectfully request that the Committee defer both H.C.R. 122 and H.R. 106.

Respectfully submitted,

Randy Perreira
Executive Director