
HOUSE CONCURRENT RESOLUTION

RECOGNIZING THE FIFTIETH ANNIVERSARY OF THE ENACTMENT OF CHAPTER 89, HAWAII REVISED STATUTES, AND URGING THE HAWAII LABOR RELATIONS BOARD TO CONSTRUE CHAPTER 89, HAWAII REVISED STATUTES, IN ACCORDANCE WITH TRADITION.

1 WHEREAS, fifty years ago, the Legislature passed and
2 Governor John A. Burns signed into law Act 171, Session Laws of
3 Hawaii (SLH) 1970, which was codified as chapter 89, Hawaii
4 Revised Statutes (HRS), Collective Bargaining in Public
5 Employment Law; and

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7 WHEREAS, chapter 89, HRS, recognized and implemented the
8 right of public employees to organize for the purpose of
9 collective bargaining pursuant to article XIII, section 2, of
10 the Hawaii State Constitution; and

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12 WHEREAS, under Act 171, SLH 1970, the Legislature declared:
13 "[i]t is the public policy of the State to promote harmonious
14 and cooperative relations between government and its employees
15 and to protect the public by assuring effective and orderly
16 operations of government."; and

17
18 WHEREAS, the philosophy of chapter 89, HRS, is that
19 granting employees the right to share in the decision making
20 process affecting their wages and working conditions leads to a
21 better exchange of ideas and information on operations, and
22 making government more effective. In addition, creating a
23 rational method for dealing with work disputes helps to maintain
24 a favorable political and social environment; and

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26 WHEREAS, in passing Act 171, SLH 1970, the Legislature
27 recognized that in order to secure the foregoing beneficial
28 results, along with ease and consistency of administration,
29 employees' bargaining units should be entitled to select a



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1 single and exclusive bargaining representative by majority vote
2 for the purpose of negotiating a single collective bargaining
3 agreement that is applicable to all employees in the bargaining
4 unit; and
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6 WHEREAS, the Legislature recognized that because employees'
7 collective bargaining efforts are self-funded, any employee who
8 uses collective resources must contribute to the collective
9 effort, lest the system be rendered unworkable by free riders
10 imposing their costs on co-workers; and
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12 WHEREAS, the Legislature established the agency fee system
13 by which members would pay dues, and non-members would pay via
14 agency fee, the pro-rata costs of contract negotiation and
15 administration; and
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17 WHEREAS, in *Janus v. AFSCME*, 138 S.Ct. 1338, (2018), the
18 United States Supreme Court reversed four decades of precedent
19 and held that employees cannot be compelled by law to pay agency
20 fees; however, the Supreme Court also noted that to avoid free-
21 ridership while imposing only a minor burden on First Amendment
22 rights, exclusive bargaining representatives need not supply
23 individual representation services to employees who decline to
24 pay the reasonable cost thereof; now, therefore,
25

26 BE IT RESOLVED by the House of Representatives of the
27 Thirtieth Legislature of the State of Hawaii, Regular Session of
28 2020, the Senate concurring, that on the occasion of the
29 Fiftieth Anniversary of the enactment of chapter 89, HRS, this
30 body commends and reasserts the goals and philosophy of chapter
31 89, HRS, as amended, including the avoidance of free riders, and
32 notes that *Janus v. AFSCME* does not require co-employees or
33 their bargaining representatives to fund personal representation
34 of non-paying employees; and
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36 BE IT FURTHER RESOLVED that the Hawaii Labor Relations
37 Board is urged to interpret chapter 89, HRS, after *Janus v.*
38 *AFSCME*, such that:
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40 (1) As before, each employee may choose to be, or decline
41 to be, a member of a bargaining organization;



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- 1 (2) A non-member may refuse to pay any fees to the
- 2 bargaining organization;
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- 4 (3) Exclusive bargaining representatives need not provide
- 5 personal representation services to non-member
- 6 employees who do not pay the reasonable cost thereof;
- 7 and
- 8
- 9 (4) Exclusive bargaining representatives may allow non-
- 10 members to voluntarily pay dues equivalents in the
- 11 pre-*Janus v. AFSCME* manner, securing to themselves
- 12 rights to personal representation consistent with
- 13 bargaining organization rules; and
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15 BE IT FURTHER RESOLVED that certified copies of this
 16 Concurrent Resolution be transmitted to the Attorney General,
 17 Executive Director of the Hawaii Labor Relations Board, and each
 18 certified exclusive bargaining representative operating under
 19 chapter 89, HRS.

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OFFERED BY:

FEB 26 2020

