



The Senate Committee on Labor, and Technology
March 13, 2023
3:00 PM
Room 224 & Videoconference

RE: HB 1205, HD 1, Relating to Collective Bargaining

Attention: Chair Sharon Moriwaki, Vice Chair Chris Lee and
Members of the Committee

The University of Hawaii Professional Assembly (UHPA) **strongly supports the passage of HB1205, HD1.**

This amendment to HRS, Chapter 89, §89-8, addresses the impact of the US Supreme Court case in *Janus v American Federation of State, County, and Municipal Employees Council 31, ET. AL.* and the instability in the financial integrity of any given public sector exclusive bargaining representative. Since bargaining unit members are not required to pay any fees to support the exclusive bargaining representative, there is a negative financial impact on the ability of the exclusive bargaining representative to provide appropriate representation on contractual matters to their members.

HB 1205, HD 1, specifies that the exclusive bargaining representatives of public employees are not required to provide grievance representation, to include grievance arbitration, to collective bargaining unit members who neither pay dues nor dues equivalents; and who decline to pay reasonable costs of the representation.

UHPA has the most diverse bargaining unit in the state, not only in type of work performed, but also the terms and conditions of employment, including compensation. The proposed legislation is an essential tool to address the unique demands of a bargaining unit that historically has a significant percentage of non-members, while simultaneously providing all public sector bargaining units with the same essential tools.

Hawai'i has a mature, unique and distinct collective bargaining law that governs collective bargaining for public sector employees. UHPA is seeking clarity in the law that recognizes the changed circumstances and challenges. This measure seeks to provide

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the flexibility necessary for an alternative approach with a modification of the duty of fair representation. There is nothing in the Janus decision that states that individuals get something for nothing. In fact, there is a basis for this approach that is found in the Janus decision under footnote 6. This measure does not mandate the exclusive bargaining representatives to take any action. It simply provides an option for the exclusive bargaining representatives to consider as a solution for long term viability.

Thank you for the opportunity to provide testimony in **strong support of HB 1205 HD 1.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. L. Fern".

Christian L. Fern
Executive Director
University of Hawaii Professional Assembly

University of Hawaii
Professional Assembly

SHOPO **LATE**



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

March 9, 2023

VIA ONLINE

The Honorable Sharon Y. Moriwaki
Chair
The Honorable Chris Lee
Vice-Chair
Senate Committee on Labor and Technology
Hawaii State Capitol, Room 215, 219
415 South Beretania Street
Honolulu, HI 96813

Re: **HB 1205 HD1– Relating to Collective Bargaining.**

Dear Chair Moriwaki, Vice-Chair Lee, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers (“SHOPO”) and write to you on behalf of our Union in **strong support** of HB 1205 HD1, subject to it being effective upon approval as originally proposed. This bill amends HRS § 89-8 to make clear that a public union is not required to provide grievance representation to employees within the bargaining unit that the union represents if that employee declines or refuses to pay for the membership dues which in turn pays for such services or who declines to pay the reasonable costs of that representation.

Under Hawaii law, all public employees that fall within one of the 15 bargaining units enumerated under HRS § 89-6 are represented by the employee organization certified by the Hawaii Labors Relation Board pursuant to section 89-8 for the purpose of negotiating and dealing with public employers. The union’s extensive work involves grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, and other terms and conditions of employment. The certified employee organization is the “exclusive” representative of all employees in a bargaining unit under HRS § 89-6 and in turn, the exclusive employee organization is responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

The Honorable Sharon Y. Moriwaki, Chair
The Honorable Chris Lee, Vice-Chair
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In order to pay for the various services that the exclusive representatives provide to the employees in its bargaining unit, HRS § 89-4 authorizes the exclusive representative to deduct union dues from the employee’s payroll through the employee’s public employer. Prior to 2018, regardless of whether an employee within a bargaining unit elected to become a member of the exclusive employee organization, because that employee still reaped the benefits and services provided by the organization to all employees, non-member employees in the bargaining unit still had to pay their fair share for services and benefits they enjoyed because of the exclusive employee organization. Indeed, a nonmember employee had the right to object to the payment of dues used for activities of a political or ideological nature unrelated to terms and conditions of employment and would be entitled to a refund for the percentage of dues used for those purposes. Importantly, these laws were promulgated and/or were consistent with the United States Supreme Court’s 1977 decision in Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) which held that a public union may charge nonmembers a fee to cover union expenditures attributable to activities “germane” to the union’s collective-bargaining activities but not to cover the union’s political and ideological project.

That all changed in 2018 when the U.S. Supreme Court overruled Abood in Janus v. Am. Fed’n of State, Cnty., & Mun. Employees, Council 31, 138 S.Ct. 2448 (2018). In Janus, the Supreme Court held that public sector employee organizations are prohibited from charging nonmembers their proportionate share of union dues attributable to the union’s activities as collective-bargaining representative because that practice violates the First Amendment to the U.S. Constitution. In response to the argument that allowing “free-riders” (i.e., non-payors who reap all the benefits of the union but do not pay for the services that they benefit from and utilize) was fundamentally unfair and would bankrupt the union, the Court found that

...whatever unwanted burden is imposed by the representation of nonmembers in disciplinary matters can be eliminated “through means significantly less restrictive of associational freedoms” than the imposition of agency fees. *Harris*, 573 U.S., at —, 134 S.Ct., at 2639 (internal quotation marks omitted). **Individual nonmembers could be required to pay for that service or could be denied union representation altogether.**

Janus, 138 S.Ct. at 2468–69 (emphasis added). As such, the proposed amendments to HRS § 89-8 codify a union’s right to refuse to provide grievance representation to employees who neither pay dues nor dues equivalents or who refuse to pay reasonable costs of that representation. This is not only fair, but also prevents a union from going bankrupt, provides financial stability, and is less restrictive of associational freedoms than the imposition of mandatory agency fees.

The Honorable Sharon Y. Moriwaki, Chair
The Honorable Chris Lee, Vice-Chair
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Re: **HB 1205 HD1– Relating to Collective Bargaining.**

For these reasons, SHOPO stands in strong support of HB 1205 HD1 provided it is effective upon approval.

We thank you for allowing us to be heard on this very important issue and hope your committee will unanimously support this bill and allow this bill to take effect upon its approval.

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President

LATE

HB-1205-HD-1

Submitted on: 3/13/2023 10:36:24 AM

Testimony for LBT on 3/13/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Julie Reyes Oda	Individual	Comments	In Person

Comments:

My name is Julie Reyes Oda. I am a teacher at Nānākuli High and Intermediate School. I am providing comment on HB 1205 HD1. This measure is not going to accomplish what it was designed to do. There are unintended consequences with this bill.

I support workers and organized labor, but this going in the direction of removing the exclusive representation status of unions in Hawai‘i. Dues for Hawai‘i teachers cost as low as \$534.41 for a low paid emergency hire teacher or \$866.59 for everyone else...annually. Pay your dues or take the chance that your union won’t cover your triggered event. It makes unions a provider of individual services you can buy like an insurance company except they offer only two options, 0% or 100% coverage. In the insurance world, we get to shop around for companies who give better service, coverage, whatever. Is that what public organized labor is moving towards?

The Janus case allows public workers now to make the choice to join a union or not. What this bill ensures is that according the HRS §89, public workers are placed in a unit. Then because of that placement, there is only one union to select from. This is a monopoly, plain and simple. Who will regulate the costs? Who will decides how much dues are for average members? How much for nonmembers? How can someone challenge that? What rights do members have that fee payers won’t? What exactly is a nonmember paying for? Can the nonmember fee be \$1 less than a member to “encourage” membership? Lastly, does this mean the union would only represent paying members or paying nonmembers, thereby losing the right to say they are exclusive, and who represents the nonpaying people?

After thinking of some of those questions, is this committee willing to put enforcement with this bill to ensure the protection of working people in Hawai‘i? Give the Hawai‘i Labor Relations Board broad investigative powers so when working people lodge complaints, they are protected like workers from private companies.

Unions are there to correct the inequality of bargaining power between the employer and employee. This bill creates inequality between employee and employee AND employee and union.