

JAN 19 2018

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 finds that changes in federal constitutional law
17 could have a major impact on public employee collective



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



1 dues by public sector employees, such a ruling would
2 fundamentally undermine this legislature's consistent efforts to
3 bar "free riders", and ensure labor management peace. Not only
4 would such a ruling undercut the collective bargaining
5 representative's ability to collect resources from its
6 bargaining unit, it would greatly diminish the public employees'
7 ability to negotiate with management. This, in turn, would
8 cause the government to lose the advantages envisioned in
9 section 89-1(a), Hawaii Revised Statutes.

10 Accordingly, the purpose of this Act is to accommodate
11 employees' political and sincere religious First Amendment-based
12 objections to supporting exclusive representatives, while
13 ensuring that public employees are able to effectively bargain
14 collectively with the public employer. This Act, consistently
15 with the Constitution of the United States, 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. It will also provide exclusive
19 bargaining representatives with the resources necessary to
20 adequately represent public employees.



1 SECTION 2. Section 89-3.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§89-3.5 ~~[Religious exemption from support of employee~~
4 ~~organization. Notwithstanding any other provision of law to the~~
5 ~~contrary, any employee who is a member of and adheres to~~
6 ~~established and traditional tenets or teachings of a bona fide~~
7 ~~religion, body, or sect which has historically held~~
8 ~~conscientious objections to joining or financially supporting~~
9 ~~employee organizations shall not be required to join or~~
10 ~~financially support any employee organization as a condition of~~
11 ~~employment, except that an employee may be required in a~~
12 ~~contract between an employee's employer and employee~~
13 ~~organization in lieu of periodic dues and initiation fees, to~~
14 ~~pay sums equal to the dues and initiation fees to a~~
15 ~~nonreligious, nonlabor organization charitable fund exempt from~~
16 ~~taxation under section 501(c)(3) of the Internal Revenue Code,~~
17 ~~chosen by the employee from a list of at least three funds,~~
18 ~~designated in the contract or if the contract fails to designate~~
19 ~~any funds, then to any fund chosen by the employee. If an~~
20 ~~employee who holds conscientious objections pursuant to this~~
21 ~~section requests the employee organization to use the grievance~~



1 ~~arbitration procedure on the employee's behalf, the employee~~
2 ~~organization is authorized to charge the employee for the~~
3 ~~reasonable cost of using the procedure.]~~ Exemption from support
4 of exclusive representative. Notwithstanding any other law to
5 the contrary, any employee who, based on sincerely-held
6 religious principles, or political choice, and in exercise of
7 First Amendment rights, objects to joining an employee
8 organization or financially supporting the exclusive
9 representative, shall not be required to join or financially
10 support the exclusive representative as a condition of
11 employment; except that the exclusive representative may require
12 the employee, in lieu of periodic dues and initiation fees, to
13 pay, by payroll deduction and pursuant to published policy, sums
14 equal to the dues and initiation fees to a charitable fund
15 exempt from taxation under section 501(c)(3) of the Internal
16 Revenue Code. The charitable fund shall be chosen by the
17 employee but shall not be one dealing with religious or
18 collective bargaining issues. If an employee who objects
19 pursuant to this section requests the exclusive representative
20 to use the grievance-arbitration procedure on the employee's



1 behalf, the exclusive representative is authorized to charge the
2 employee for the reasonable cost of using the procedure."

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

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

6

INTRODUCED BY: _____

Jim
Ronald L. Bell
Heather J.



S.B. NO. 2370

Report Title:

Public Employees; Political Exemption; Collective Bargaining;
Union Fees

Description:

Broadens an employee's exemption from support of a bargaining unit's exclusive representative to include political objection. Permits the exclusive representative to require an employee, in lieu of union fees, to pay an equivalent amount to a non-profit charitable fund.

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

