S.C.R. NO. III

MAR 0 9 2018

SENATE 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".

WHEREAS, Hawaii's collective bargaining in public employment law, chapter 89, Hawaii Revised Statutes, was enacted to promote labor-management harmony in the public sector by:

(1) Establishing guidelines for employment relations relating to wages, hours, and working conditions;

(2) Providing a method for dealing with disputes and work stoppages; and

(3) Maintaining a favorable political and social environment; and

WHEREAS, the policy to promote harmonious and cooperative relations between government and its employees rests on the right of public employees to organize for the purpose of collective bargaining in accordance with article XIII, section 2, of the Hawaii State Constitution; and

WHEREAS, in the interest of labor peace and viability of the collective bargaining enterprise, the Legislature has consistently required all public employees in bargaining units to bear the pro rata costs of their duly-elected exclusive representatives' collective bargaining function, in accord with Abood v. Detroit Bd. of Educ., 431 U.S. 209, 97 S. Ct. 1782, 52 L.Ed.2d 261 (1977) (allowing public sector agency fees) (Abood); and

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

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

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

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

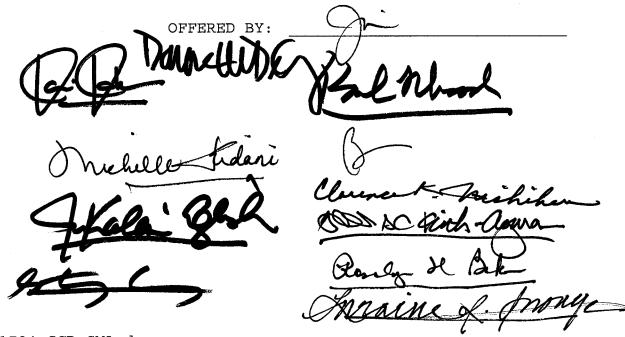
 WHEREAS, the United States Supreme Court may issue a ruling in *Janus* after the Legislature has adjourned, leaving public sector employees and the State and counties of Hawaii uncertain of their rights without immediate legislative recourse; and

WHEREAS, under such circumstances the Hawaii Labor Relations Board, or other agencies or judicial bodies, may be called upon to interpret, adapt, or conform chapter 89, Hawaii Revised Statutes, to the result in *Janus*, through rules or decisions, perhaps pending later legislative action; now, therefore.

BE IT RESOLVED by the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2018, the House of Representatives concurring, that the Hawaii Labor Relations Board, and other concerned agencies or judicial bodies, are urged to take notice of this body'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"; and

BE IT FURTHER RESOLVED that the Hawaii Labor Relations Board is requested to submit a report of its findings and recommendations on the status and consequences 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

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



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