

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

PATRICK J. GALLAGHER,

Complainant,

and

BOARD OF WATER SUPPLY, CITY
AND COUNTY OF HONOLULU,

Respondent.

CASE NO(S). 19-CE-03-931

ORDER NO. 3553

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE TO RESPONDENT(S) OF AMENDED PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE OF FILING REQUIREMENTS;
- (3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (4) PRETRIAL STATEMENT;
- (5) NOTICE OF HEARING ON THE MERITS; AND
- (6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

- PRETRIAL ORDER AND NOTICES;
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 - (2) NOTICE OF FILING REQUIREMENTS;
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 - (5) NOTICE OF HEARING ON THE MERITS;
 - AND (6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document shall control the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

**(1) NOTICE TO RESPONDENT(S) OF
AMENDED PROHIBITED PRACTICE COMPLAINT**

The attached Amended Prohibited Practice Complaint (Amended Complaint) was filed with the Board by the above-named Complainant(s) on: **August 22, 2019.**

PURSUANT TO HAWAII REVISED STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed an Amended Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Amended Complaint within ten (10) days after service of the Amended Complaint. One copy of the answer shall be served on each party, and the original with certificate of service on all parties shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Amended Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF FILING REQUIREMENTS

a) Electronic Filing:

The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress. There is no charge to the parties for use of this electronic filing service.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrp/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

b) Filing in Person or by Mail

A party may mail or file in person an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawaii'i, 96813. The Board's office is open on the weekdays (excluding state holidays) between 7:45 a.m. to 4:30 p.m.; the office may occasionally

be closed from 12:00 p.m. to 1:00 p.m. The date of receipt by the Board shall be deemed the date of filing.

c) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party shall make certain that all social security numbers and personal information are redacted or encrypted. “Personal information” shall include social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board’s consideration of this case, the submitting party shall submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai‘i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party shall by motion request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), “The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document.”

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear in person and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai‘i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

(4) PRETRIAL STATEMENT

Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board, as listed in the Schedule set forth below. The Pretrial Statement shall include the following:

1. Statement of Issues
2. Witness List

The witness lists shall include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability. The summary for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1).

If a party intends to file a request for a subpoena for a witness, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the witness list.

3. Exhibit List

The exhibit lists shall include copies of the proposed exhibits. The parties are encouraged to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. A party's exhibits or Joint exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes with each exhibit bookmarked and bates-stamped at the top right corner. Alternatively, a party may file exhibits in person or by mail to the Board; the date of receipt by the Board shall be deemed the date of filing.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the exhibit list.

The Complainant shall identify its exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) shall identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.). Employer Respondent(s) shall identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.). In the event that there are multiple Union Respondents or Employer Respondents in a particular case, the Board shall specify the designation for each Respondent.

If there are any duplicative exhibits, the parties shall designate them as Joint Exhibits, the parties shall designate one party to file these exhibits, and the Exhibits shall be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement,

or any other supplemental agreement that has any bearing on these proceedings. These documents shall be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc.

(5) NOTICE OF THE HEARING ON THE MERITS (HOM)

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: Friday, October 11, 2019 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai'i 96813

All parties have the right to appear at the HOM in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the hearing on the merits.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Dispositive Motion Deadline</u> <i>Responses to dispositive motions shall be due five business days after the dispositive motion is filed and served.</i> HAR § 12-42-8(g)(3)(C)(iii)	10/4/19	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	9/27/19	
<u>Hearing on Dispositive Motions, Hearing on the Merits</u>	10/11/19	9:00 a.m.

All submissions shall be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, August 23, 2019.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

EXCUSED

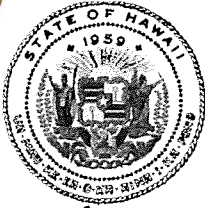
J N. MUSTO, Member

Enclosure: AMENDED PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Patrick J. Gallagher, SRL
Sarah T. Casken, Deputy Corporation Counsel

GALLAGHER v. BOARD OF WATER SUPPLY
CASE NO. 19-CE-03-931
AMENDED PRETRIAL ORDER AND NOTICES
ORDER NO. 3553



HLRB

EFiled: Aug 22 2019 12:04PM HAST
Transaction ID 64124556
Case No. 19-CE-03-931
2019 AUG 22 PM 12:04

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

HAWAII LABOR
RELATIONS BOARD

FORM HLRB-4
PROHIBITED PRACTICE COMPLAINT

Amended Complaint

INSTRUCTIONS. Submit the original¹ of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. COMPLAINANT Please select one that describes the Complainant:

- Public Employee Public Employer Public Union (public employee organization)

a. Name, address and telephone number.

Patrick J. Gallagher
PO Box 15060
Honolulu, Hi 96830
808 -216-2574

b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Patrick J. Gallagher
PO Box 15060
Honolulu, Hi 96830
808 -216-2574
korcky54@gmail.com

¹ Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

3. RESPONDENT Please select one that describes the Respondent:

- Public Employee Public Employer Public Union (public employee organization)

a. Name, address and telephone number.

Honolulu Board of Water Supply/City & County of Honolulu
630 S. Beretania Street
Honolulu, Hi. 96815
808-748-5000

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Ernest Lau, Manager
Honolulu Board of Water Supply
630 S. Beretania Street
Honolulu, Hi. 96815
808-748-5000

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

HGEA has a collective bargaining agreement with HBWS/City & County of Honolulu

5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

As Agreed at the pre-trial hearing on August 19, 2019. this is my AMENDED COMPLAINT TO CASE # 19-CE-03-931.

Employer HBWS and or City & County of Honolulu is in violation of, but not limited to, Section HRS 89-4 (B) by deducting sums of money from my paycheck since September 2008 without written authorization by me. Such funds are alleged to have been sent to HGEA, again without my written authorization. I request a written determination by HLRB and an order to Respondent to cease deductions immediately and to return all previous funds deducted.

Prohibited Practice Complaint (Rev. 4/2017b)
FORM HLRB-4

6. Provide a clear and concise statement of any other relevant facts.

It appears by speaking with coworkers, that this violation if deemed valid, affects many, many workers at BWS and other City & County public worker locations. If so, I am requesting a clear and concise "advisory opinion" type document from HLRB, (in addition to my funds being returned to me by my employer -HBWS) so that workers and Human Resources professionals can develop written and "union neutral" procedures so that workers can freely and confidentially explore their labor organization options.

RELEVANT EVIDENCE PREVIOUSLY ATTACHED TO THE ORIGINAL COMPLAINT:

HRS 89-4 (B) Language

Email from Michele Thomas

Conditions of Employment form (pink form signed by Complainant Sept 2008)

NEWLY ATTACHED EVIDENCE

1) AFL-CIO Know Your Workplace Rights

2) Government Jobs: 5 Things Every Employee Should Know About Their Rights — Stand With Workers

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

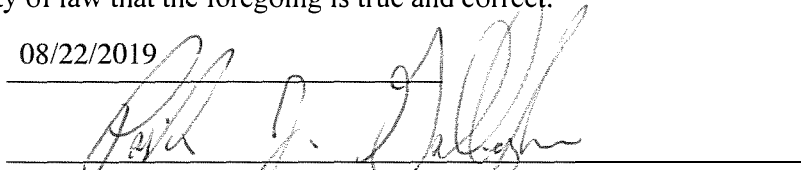
Please select one:

- the Complainant
- the Complainant's principle representative
- the person described below

I, Patrick J. Gallagher,

do declare under penalty of law that the foregoing is true and correct.

Date: 08/22/2019



The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

keeky54@gmail.com

Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

Your phone number: _____

Your relationship to the Complainant:

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at labor.hawaii.gov/hlrb/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.

About Us Blog Press AFLCIO.tv Union Plus Benefits

EXECUTIVE PAYWATCH



WHAT UNIONS DO	FORM A UNION	WHAT WE CARE ABOUT	TAKE ACTION
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Know Your Workplace Rights

Joining together with your co-workers to organize a union is a fundamental right recognized in U.S. labor law. It's even affirmed in the United Nations' Universal Declaration of Human Rights.

That said, employers usually oppose working people's efforts to organize because they would prefer to have all of the power in the employment relationship. Some employers regularly violate labor law when workers organize. Others will march right up to the edge of breaking the law to scare off organizing efforts. That's why it's important that you know your right to organize.

Under the National Labor Relations Act, you have the right to:  or not to!

- Join a union.
- Talk to your co-workers about joining a union.
- Pass out literature about joining a union (in non-work areas during non-work times).
- Sign up your co-workers on petitions in non-work areas and during non-work times.
- Join with your co-workers for the purpose of forming a union.
- Join with your co-workers for the purpose of improving working conditions in your place of employment.

Also, under the National Labor Relations Act, your employer cannot:

- Interfere with, restrain or coerce you in such a way as to prevent you from exercising the rights listed above.
- Form a union that is financed or controlled by an employer, instead of by you and your co-workers.
- Discriminate against you or your co-workers in hiring and firing simply because you have chosen to join (or not to join) a union.
- Fire you because you have exercised any of your rights under the National Labor Relations Act, including your right to file complaints and testify against your employer if you believe he or she has violated your rights.
- Refuse to bargain collectively with you and your co-workers, if you choose to form a union.

It's very important to note that the NLRA applies to most workers in the private sector, but not to everyone. Public-sector workers—like school employees, county social workers and firefighters—are covered by individual laws at the state level. Also some working people, such as independent contractors, supervisors and managers, are excluded from labor law coverage altogether.

In addition to the right to organize a union, you have other rights at work under the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Americans with Disabilities Act, and various civil rights statutes.

Read more about your rights at work.

Sus derechos en el trabajo.



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Corporate Accountability
Social and Economic Justice Advocacy
Workplace Advocacy

What We Care About
Better Pay and Benefits
Civil Rights
Corporate Greed
Criminal Justice Reform
Gender Equality
Global Worker Rights
Health Care
Immigration
Infrastructure
Labor Law
Manufacturing
Quality Education
Right to Work
Sexual Harassment
Social Security and Retirement
Tax and Budget Policy
Trade
Workplace Health and Safety

Legislative Alerts
Legislative Voting Records
Reports

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Text WORK to
235246

to receive periodic text alerts from the AFL-CIO (message and data rates may apply).



This is another example of "anti - union Propoganda " that is the cause of confusion and the genesis of my complaint against BWS.

KNOW YOUR RIGHTS
WORKERS' RIGHTS (/WORKERS-RIGHTS)
GOVERNMENT JOBS: 6 THINGS TO KNOW (/GOVERNMENT-JOBS-THINGS-WORKERS-SHOULD-KNOW)
GET HELP
GET HELP (/GET-HELP)
AGENCY FEE REFUND (/AGENCY-FEE-REFUND)
OPT OUT WINDOW ISSUES (/UNION-OPT-OUT-WINDOWS-ILLEGAL)
I DIDN'T AGREE TO JOIN (/UNION-DUES-ONLY-DEDUCTED-IF-EMPLOYEE-CONSENTS)
CASES
ADAMS V. TEAMSTERS (/ADAMS-V-TEAMSTERS)
BENNETT V. AFSCME (/BENNETT-V-AFSCME)
FEW V. UTLA (/FEW-V-UTLA)
GROSSMAN V. HGEA (/GROSSMAN-V-HGEA)
HANNAY V. KENT STATE (/HANNAYVKENT)
HENDRICKSON V. AFSCME (/HENDRICKSON-V-AFSCME)
JACKSON V. NAPOLITANO (/SB866)
JANUS V. AFSCME (/JANUSVAFSCME)
KIOUSSIS V. SEIU LOCAL 668 (/KIOUSSIS-V-SEIU-LOCAL-668)
LEITCH V. AFSCME (/LEITCH-V-AFSCME)
MANDEL V. SEIU (/MANDEL-V-SEIU)
O'CALLAGHAN V. NAPOLITANO (/OCALLAGHAN-V-NAPOLITANO)
OLIVER V. SEIU (/OLIVER-V-SEIU)
SOLOMON V. AFSCME DC 37 (/SOLOMON-V-AFSCME-DC-37)
STROEDER V. SEIU (/STROEDER-V-SEIU)
SWEET V. CAPT (/SWEET-V-CAPT)
WOLF V. UPTA (/WOLF-V-UTPE)
UPDATES
UPDATES (/LATEST-NEWS)
IN THE NEWS (/IN-THE-NEWS)
PRESS RELEASES (/PRESS)
CONTACT
ABOUT US (/LIBERTYJUSTICECENTER)
GET IN TOUCH (/CONTACT)
MEDIA KIT (/MEDIKIT)
MEDIA INQUIRIES (/CONTACT)

DONATE (/DONATE)

Know Your Rights

WORKERS' RIGHTS
(/WORKERS-RIGHTS)

GOVERNMENT JOBS: 6
THINGS TO KNOW
(/GOVERNMENT-JOBS-
THINGS-WORKERS-
SHOULD-KNOW)

Government Jobs: 6 Things Every Employee Should Know About Their Rights

If you work for a local, state or federal government entity – a public school district, city hall, a state agency or another government body – you have the right to decide whether you want to join a union at your workplace. If you decide union membership isn't for you, then you are not obligated to pay the union at your workplace any kind of dues or fees. The U.S. Supreme Court reaffirmed workers' rights regarding union membership and support on June 27, 2018, in the case *Janus v. AFSCME*.

The decision to join or financially support a union is an important and deeply personal one for anyone who takes a government job. Before deciding whether union membership is right for you, it is important to know what's at stake and what rights you have.

1. If you work in the government, your employer should inform you of your rights.

New hire orientation and on-boarding includes a lot of information. It can be overwhelming! You have decisions to make about retirement benefits, health insurance... and union membership. At the time you are hired, your employer – that is, the government body that you work for – should inform

government body that you work for – should inform you of your right to join or not join a union and to pay or not pay union dues.

If you started working for the government after June 27, 2018, and were not informed of your right to refrain from union membership, then your Janus rights may have been violated.

2. You have the right to decide whether to join a union.

Almost all government workplaces have unions, and in many cases these unions have been in place for decades. Only you can decide whether you want to join the union and pay union membership dues. No one can pressure you to join a union, and your job is not at stake if you choose not to join or pay dues to a union.

3. You cannot be forced to pay anything to a union.

The Janus decision says that only union members can be charged union dues. If you are not a union member, no union dues or fees can be deducted from your paycheck. If you paid “fair share fees” or “agency fees” before June 27, 2018, you no longer have to pay them.

4. The government must get your permission to deduct union dues from your paycheck.

Under the Supreme Court’s ruling, “employees must choose to support the union before anything is

HRS 89-4 (B) affirms that union dues must be authorized by the worker in writing....I believe this to be the violation.

I also seek clarification as to whether (under the federal law if "you must give another signed permission" or not?

taken from them." This means that no union dues or fees can be deducted from your paycheck unless you have been fully informed of your right not to pay union dues -- and have freely given your written, signed permission to have union dues deducted from your paycheck. If you signed a union membership application prior to June 27, 2018, you must give another signed permission to have your dues deducted.

5. Employer-provided benefits are not tied to your union membership status.

A common concern among government employees is that they will lose employee benefits such as health insurance and retirement if they decide not to be part of a union. This is not true. Any benefits offered to employees by your employer – the government entity that issues your paychecks – are available to you regardless of your union membership status.

6. You have a right to talk to your employer about your salary and benefits, union membership, and your Janus rights.

The Supreme Court required that you must be fully informed to give your permission to have union dues deducted from your paycheck; therefore, your employer must talk to you about your rights. The government cannot leave it up to the union to answer your questions. You have a right to speak to your employer about your employment choices,

and your employer has a first Amendment right to speak to you, as well.

Working in the government or taking a government job can be overwhelming – especially for those entering the public sector for the first time! Knowing your union membership rights is an important first step to making the decisions that are best for you.

Spread the word! Download a Janus Rights poster. (/s/Know-your-Janus-rights_Final.pdf)

If you believe your rights have been violated in any way or you feel coerced to join a government union, **contact the Liberty Justice Center** (<https://standwithworkers.org/get-help>). We may be able to help.

HOME (/HOME)

GET HELP (/GET-HELP)

CASES (/CASES)

DONATE (/DONATE)

CONTACT (/CONTACT)

» » » » »

SUBSCRIBE

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SIGN UP

StandWithWorkers.org is operated by the Liberty Justice Center (<http://libertyjusticecenter.org/>). There is a lot of misinformation surrounding the Janus decision. StandWithWorkers.org serves as an educational resource (</disclaimer>) to help government workers understand their options.

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