

Agency Fees Can't Be Required for Illinois Rehab Personal Assistants, SCOTUS Rules

June 30, 2014

The State of Illinois cannot require Rehabilitation Program "personal assistants" (PAs) who decide not to join a union, to pay compulsory union dues, commonly known as "agency fees," the U.S. Supreme Court ruled in *Harris v. Quinn*, decided June 30, 2014. Illinois and 25 other states require unionized public sector employees to pay a portion of union dues even if the employee chooses not to join the union.

Because of the unique circumstances of the PAs' employment, the decision's impact is limited to the facts of the case and does not invalidate agency fees in all public union scenarios. While the Court majority expressed disagreement with the 1977 case *Abood v. Detroit Board of Education* – in which the Court allowed states to require public sector employees to pay agency fees to cover the "core bargaining activities" of a union that represented them even if they refused to join the union – it did not overturn that case. "Core bargaining activities" were defined as collective bargaining, contract administration, and grievance adjustment, but exclude ideological and political purposes.

In *Harris*, PAs work for Medicaid recipients who control most aspects of their employment, including their hiring and firing. Under Illinois law, the Medicaid recipients are considered the employers of the PAs, which are only considered public employees "for the purposes of collective bargaining." The Court specifically noted that the PAs are not "full-fledged public employees" under the general context of an employment relationship.

The majority distinguished the case from *Abood* based on the employment status of the PAs. The Court stated that it was refusing to "extend *Abood*" to cover the PAs because they were not fully public employees, and held that the requirement that the PAs pay union dues violated the First Amendment.

The decision may signal the Court majority's inclination against allowing compulsory agency fee union dues. We will keep you informed as other challenges to the payment of compulsory union dues make their way to the Court.

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