

United States Supreme Court Rules Public Sector Unions Cannot Collect Agency Fees from Non-Members

June 28, 2018

In a 5-4 decision, the United States Supreme Court has held in *Janus v. AFSCME* that public sector unions cannot require non-union bargaining unit members to pay union dues. The Court held that the requirement violates the First Amendment rights of non-union members by requiring them to support private speech on matters of substantial public concern.

Prior to the decision on June 27, 2018, employees covered by a collective bargaining agreement that opted not to join the union could be compelled to pay an "agency fee" portion of the union dues pursuant to the Supreme Court's 1977 decision in *Abood v Detroit Board of Education*. The agency fee portion was intended to reduce dues by the amount union spent on "non-germane" union activities, including expenditures for political and ideological projects, and only support core union collective bargaining functions. In the *Janus* case, the agency fee portion equated to 78.06% of the total dues, and Mr. Janus was required to pay about \$535 in agency fees to the union annually.

The Court overruled *Abood*, holding that the decision was "poorly reasoned," and had led to "practical problems and abuse." The Court found that the two primary justifications to require the agency fees under *Abood* were unsupported. The Court asserted that the argument that agency fees promote an interest in "labor peace" has been proven unfounded by the fact that millions of public sector employees in the twenty-eight states that prohibit agency fees continue to be represented by unions. Secondly, the Court found that the problem of "free riders" (non-union, non-dues-paying members that benefit from union representation) does not provide a compelling interest to overcome First Amendment objections. The Court also found that these problems can be avoided by less restrictive means than requiring agency fees, such as charging non-union members the cost of taking their individual case to arbitration.

Currently, about 34% of government employees are unionized compared to about 6.5% of private sector employees. In right-to-work states, such as Michigan, this decision will not impact most public union employees since the right-to-work statutes already prohibit mandatory payment of agency fees. However, the decision will impact Michigan police and firefighters, who were exempted from the Michigan right-to-work law. In the twenty-two states that do not have right-to-work laws, like Illinois, this decision will affect all of the state's public-sector union employees, who will no longer be required to pay agency fees if they opt not to join the union. Those union members who voluntarily chose to pay union dues may continue to do so.

Please contact your Miller Canfield attorney if you have any questions concerning the implementation of the decision.