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Supreme Court Rules Unions Cannot Require Financial Support From Non-Member Public-Sector Employees

Article By
Mark D. Nelson
Andrew M. McKinley
Polsinelli PC
Polsinelli At Work

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Today, the United States Supreme Court ruled unions cannot compel public employees they represent to pay "agency fees," which cover the cost of collective bargaining and processing grievances. In *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, the Court overruled its 1977 decision that permitted unions to extract agency fees from non-consenting, non-member employees they represented.

In *Janus,* Illinois law allowed unions to require represented employees to choose either to become dues-paying union members or be non-members and pay an "agency fee" to cover collective bargaining and other related costs.

The plaintiff in *Janus* refused to join the union because he opposed some of its policy positions. However, under the collective-bargaining agreement, he was still required to pay an agency fee of approximately $535 per year. He filed a lawsuit challenging the Illinois law, claiming that it violated the First Amendment. The trial court and the United States Seventh Circuit Court of Appeals rejected his argument based on the Supreme Court's prior decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which found such public-sector agency-fee arrangements were

permissible. The Supreme Court granted certiorari to consider whether to overrule *Abood* on First Amendment grounds.

In its 5-4 decision, the Court observed that compelled subsidization of private speech "seriously impinges" on an individual's First Amendment rights. The Court noted that recent cases had applied "exacting" scrutiny when judging the constitutionality of agency fees. Under that standard, a compelled subsidy must serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms. The Court found the two justifications adopted by the Court in *Abood* – labor peace and the risk of free riders – failed to meet such scrutiny.

The Court presumed that labor peace – the avoidance of conflict and disruption that would occur if employees in a unit were represented by multiple unions – was a compelling state interest, but determined that the fear of pandemonium was imagined. In the Court's view, labor peace could be readily achieved through less restrictive means than the assessment of agency fees. The Court concluded that avoiding free riders was not a compelling interest and could not overcome a First Amendment objection. Accordingly, the Court found that neither of these grounds articulated in *Abood* justified an infringement on agency fee payers' free speech rights.

The implications of the Court's decision are significant. Unions that represent public employees will see reduced revenue from employees who stop paying agency fees, and possibly from dues-paying employees who resign their memberships when they are able to do so. To replace the lost revenue, unions may seek to reduce operating costs through layoffs or other means, or reduce their political spending regarding issues in local, state, or national elections. Unions could also embark on aggressive organizing campaigns to add dues-paying members to replace lost revenue.

At least for the near term, unions that represent public-sector employees are likely to face financial and operational headwinds as a result of the *Janus* decision.