

## Supreme Court Decision Hands Defeat to Public Sector Unions

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### ***Public Employees Have The Right To Refrain From Union Membership and Compelled Union Dues***

In a 5-4 ruling split evenly along party lines, the United States Supreme Court bolstered the right of public sector employees to abstain from union membership and compulsory dues payment. The ruling in *Janus v. AFSCME* provides that public sector unions cannot require employees to pay dues and fees associated with the negotiation of labor agreements and administration of grievances under such agreements, although those employees will be covered by the bargaining agreement. Public sector employers have been a final stronghold of the American labor movement. While only 6.5% of private sector employees are unionized, unionization of public sector employees is currently 34.4%. To put public sector's union activities into context, of the \$64.6 million spent by these unions during the 2016 election cycle, 90% of those funds went to Democratic candidates.

### ***What Does The Janus Decision Mean?***

The *Janus* case arose when a child-support specialist for the state government of Springfield, Illinois objected to a \$45 monthly payroll deduction to his union, AFSCME Council 31. AFSCME Council 31 negotiated the contract providing for wages and benefits which were received by Mr. Janus. Pro-union activists argued that the issue had been settled by a 1977 United States Supreme Court opinion, *Abood v. Detroit Board of Education*, where the nation's highest Court reasoned that a public agency could find it beneficial to accept a union-security clause to ensure labor peace and avoid strikes. *Abood*, likewise, held that objectors within the union could not be required to pay for union activities beyond those encompassed in collective bargaining, such as political campaigns which favored pro-union positions. *Abood* did allow, however, for compulsory payment of union fees associated with the negotiation of collective bargaining agreements, contract administration, and grievance adjustment purposes that would inure to the benefit of all employees.

The *Janus* ruling overturned the *Abood* decision, which had been a 9-0 ruling in 1977, by emphasizing that "compelling individuals to mouth support for views they find objectionable" violates a "cardinal constitutional command" of the First Amendment. Reiterating language from a 1943 opinion forbidding mandatory recitation of the flag salute in public school, the Court wrote that the government "may not force citizens to confess by word or act" any opinion. The bedrock principle of *Janus* is that "[c]ompelling a person to subsidize the speech of other private speakers raises" substantial First Amendment concerns.

In reaching its ultimate conclusion that unions could not force nonconsenting members of the workforce to subsidize union activities, the Court tackled the justifications set forth in *Abood*. First, the Court viewed "labor peace" as an exaggerated argument, noting that the *Abood* holding did not cite to any particular pandemonium that would result if union fees were not allowed, writing that the concern had proven through history to be "unfounded."

Second, *Abood* relied upon the concern of "free riders" as a basis for warranting compulsory union fees. Unions have long argued that avoidance of "free riders," those who receive the benefit of the union's negotiations and protections, but do not pay union dues, is a compelling justification for compulsory union membership and/or dues



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payments. The Court summarized the factual situation, with respect to *Janus* and many others, as “not a free rider on a bus headed for a destination that he wishes to reach but more like a person shanghaied for an unwanted voyage.” With that in mind, the Court ruled that the “free rider” principle did not effectively state a compelling interest to satisfy the significant infringement on individual freedom of speech and association under the First Amendment.

### ***Why Unions Care So Much?***

Comparing it to a marriage, why would a union want to be stuck with individuals who have no interest in furthering the union’s cause? The answer to that query is one word – money. Unions fear that without compulsory membership and/or dues payments their coffers will decrease, which minimizes their role and significance moving forward. While this is almost assuredly true, the Court in *Janus* made clear that this rationalization is not a compelling interest when considering the First Amendment’s right to free association.

### ***What Is Next For Public Sector Unions?***

Anticipating that this ruling may be likely, unions have been taking action to ensure their relevance post-*Janus*. Among other things, unions have been reaching out to hundreds of thousands of their members to encourage them to continue paying union dues. For instance, the Service Employees International Union sent text messages to thousands of its members as part of a program to encourage sustained membership. Similarly, the American Federation of Teachers has contacted teachers in 10 states, persuading about 237,000 teachers to sign recommitment cards that are legally binding in some states. Efforts to further retain membership by public sector employees will assuredly continue.

### ***The Verdict***

Public sector unions took a significant hit with the *Janus* decision. Losing funding will, over time, inhibit their ability to operate both on a local and national level, through bargaining and political initiatives. Only time will tell the total number of public sector employees who, like Mr. Janus, request to no longer have union dues withdrawn from their paychecks.

In the meantime, public employers should remain cognizant of notifications they receive from their employees expressing their desire to no longer have union dues withheld. Depending on the circumstances, the employer may be obligated to immediately cease payments to the union on those employees’ behalf.

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