akerman

Blog Post

Supreme Court Slams Public Sector Union Rights

July 9, 2018

The Supreme Court has declared that mandatory union dues for public employees are unlawful, overturning 40 years of precedent. In *Janus v. American Federation of State, County, and Municipal Employees,* the Court ruled that requiring public sector employees who are not union members to pay "fair share" or "agency fees" to unions that represent them in collective bargaining violates the First Amendment.

In so doing, it overturned its 1977 decision in *Abood v. Detroit Board of Education,* which held that such fees were constitutional, and which withstood four prior challenges in as many decades.

The case was brought by Mark Janus, an Illinois state child support specialist whose unit is represented by the American Federation of State, County, and Municipal Employees. Mr. Janus, however, did not join the union because he does not agree with many of its positions. Specifically, he believes that many of the union's policies were bankrupting the state. Under Illinois law, non-union members whose unit is in a union may be required to pay "agency fees" — partial dues to cover the union's cost of negotiations and other functions. In 1977, the Supreme Court drew a distinction between such mandatory agency fees and other voluntary union dues, which could be used for lobbying or other political activities. The Supreme Court, then

Related People

Brittany Buccellato

Related Work

Labor and Employment
Traditional Labor Law

Related Offices

Chicago

HR Defense Blog

Akerman Perspectives on the Latest Developments in Labor and Employment Law

Visit this Akerman blog

led by Warren Burger, found that the government's interest in helping unions prevent employees from taking advantage of the benefits offered by unions without having to pay their fair share of the costs outweighed the employees' free speech rights.

Mr. Janus challenged this law, claiming that paying these fees violates the First Amendment by forcing him to fund policies he opposes.

In finding that mandatory agency fees violate the First Amendment, the Supreme Court rejected the rationale in *Abood* that: (i) the fees promote labor peace by avoiding the disruption that would result if employees in the same unit were represented by more than one union and (ii) the fees avoid the risk of free riders. The Court found that the fears regarding labor peace were unfounded and the benefits to a union of being the exclusive representative outweigh any extra burden of representing non-members.

This ruling only applies to public sector employees and, as a result, it does not have a direct impact on unions in the private sector. The effect in the public sector, however, may be significant. Twenty-two states have fair share laws permitting agency fees like those required of Mr. Janus. The *Janus* decision effectively means that public employees must consent prior to paying union fees – to opt in, rather than having to opt out. The other 28 states are "right to work" states, where state laws prohibit unions from charging nonmembers these sorts of fees.

The *Janus* decision will have an obvious financial impact on unions in the public sector in those states as employees cease paying agency fees and unions lose a secure source of financial support. Moreover, it may lead to public employees opting out of union membership altogether, and unions in the public sector needing to work harder to retain current members and gain new ones.

States may also step in to protect unions in the public sector in the wake of this decision. For example, in anticipation of the decision in *Janus*, New York passed legislation providing that a union's duty of fair representation to a public employee whose unit is in a union but who is not a union member is limited to the negotiation and enforcement of the collective bargaining agreement. The union is not required, for example, to represent a non-union member in the grievance and arbitration process. Other states may decide to follow New York's example.

Akerman Labor and Employment attorneys will continue to monitor the impact of the *Janus* decision.