Supreme Court Delivers Major Blow to Public Sector Unions

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On June 27, 2018, in a 5-4 decision in *Janus v. AFSCME*, the United States Supreme Court overruled longstanding precedent and held that public employees who are not members of a union elected to be their collective bargaining agent could not be required to pay so-called "agency fees" to that union. The decision is expected to have significant impact on organized labor, which relies on such fees to fund their activities.

Janus stemmed from a challenge to the requirement that certain Illinois government employees pay agency fees to unions representing their bargaining unit. Under Illinois law, state employees are permitted to unionize. If the majority of employees in a particular bargaining unit vote for the union, that union becomes the exclusive representative of all employees in the unit. However, employees are not required to join the union, and those who choose not to join the union do not have to pay full union dues. However, those workers are required to pay agency fees, which are purported to represent a portion of union dues that fund the union's activities as the employees' collective bargaining representative, such as collective bargaining, contract administration and the pursuit of matters affecting wages, hours and conditions of employment, but not the union's political or ideological projects, such as supporting a candidate for political office. Several state employees who disagreed with the union and elected not to join the union challenged the imposition of those agency fees, which amounted to nearly 80% of full union dues paid by union members.

Overruling a 41-year-old legal precedent, the Court sided with the employees, holding that Illinois' taking of agency fees from "nonconsenting public-sector employees" violated the First Amendment of the United States Constitution. According to the Court, requiring government workers to pay agency fees amounts to compelling these employees to subsidize the union's private speech and therefore infringes upon their First Amendment rights. To be constitutional, the Court held, the imposition of agency fees must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." The Illinois agency fees, the Court ruled, could not satisfy this standard.

Many have predicted that the *Janus* decision will have wide-reaching implications for unions across the country. Unions in the private sector have seen a sharp decline in recent decades, so much of the funding for union activities in recent years has come from the public sector, where unionization rates are higher. Now, because unions cannot collect agency fees from non-members in the private sector, unions are expected to lose a major source of funding. Moreover, because public employees can now receive union representation without having to contribute any money to such representation, it has been predicted that fewer public employees will elect to join unions and pay dues. Thus, many have speculated that the *Janus* decision stands to cost unions tens of millions of dollars. Unions and friendly state and city governments, however, have anticipated this decision for some time, and they may try to take steps designed to soften the blow of the decision.

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