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LEGAL ALERT

The U.S. Supreme Court Strikes Down Public Sector Fair-Share Fees, Requiring Employees to Consent to the Collection of Union Dues

In a 5-4 decision issued yesterday, the United States Supreme Court ruled that requiring non-union public sector employees to pay union dues violates the First Amendment. The ruling overturns the Court's 1977 decision in *Abood v. Detroit Bd. of Ed.*, which permitted public sector unions to charge "fair-share fees" to cover the cost of union activities that benefit non-members who are in a bargaining unit. The ruling requires employees to affirmatively opt-in before they can be required to pay union fees.

The petitioner, Mark Janus, a non-union employee of the Illinois Department of Healthcare and Family Services, refused to join AFSCME ("Union"), because he opposed many of its public policy positions. Janus objected to fair-share fees levied by the Union, which the Union used for "lobbying, social and recreational activities, advertising, membership meetings and conventions, litigation, and other unspecified 'services that may ultimately inure to the benefit of the members of the local bargaining unit.'" Janus argued that such use of his fees amounted to "coerced political speech." The fair share fees were deducted from Janus' pay by his employer pursuant to the provisions of the employer's collective bargaining agreement with AFSCME, which is a common arrangement and which is specifically allowed by both the Illinois Public Labor Relations Act and the Illinois Educational Labor Relations Act. The vast majority of public sector collective bargaining agreements have similar fair share provisions.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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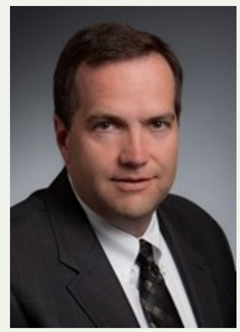

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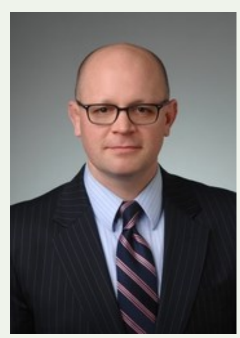

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In finding for Janus, the Court noted that, in addition to protecting the right to speak freely, the First Amendment similarly protects "the right to refrain from speaking at all." The Court reasoned that fair-share fees, which could be used to advance unions' political agendas, amounted to "compelled subsidization" of political speech. The Court found that neither interest asserted by AFSCME, the preservation of labor peace and the avoidance of "free-riders," justified the violation of the First Amendment caused by compulsory fair share fees. The Court held that "[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay."

The Court's ruling will have considerable impacts on union membership and union activity, generally. Such impacts will vary from union to union. Note that the ruling is effective June 27, 2018, requiring the immediate halt of all payroll deductions of fair-share fees. Unions are issuing requests that all fair share deductions cease immediately. They are doing this because most contracts that have fair share provisions also require the union to indemnify the employer for any liability arising from compliance with those provisions. Where union representatives request that employers halt such deductions, employers should comply. In addition, depending on the terms of your collective bargaining agreement, this decision may trigger mid-term bargaining obligations.

Employers must be careful in their communication with employees about this case. It is important to note that it is still an unfair labor practice to negotiate directly with employees, to disparage the union, or to try to discourage union membership. Any communications should be strictly factual and should not attempt to explain to employees why they should stop paying dues. The decision to be a member of a union or not belongs to each employee and any interference with that decision by an employer will likely result in an unfair labor practice charge.

We encourage our clients to contact us to discuss the local impact of this decision, and to analyze potential mid-term bargaining and communication issues.

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