

United States Supreme Court Ruling on Agency Fees Favors Employers

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Labor and Employment Alert
6.27.18

Nearing the end of its term, the United States Supreme Court put an exclamation point on its spate of business-friendly decisions. On June 27, 2018, the Court held that public-sector workers who are not union members cannot be required to pay "agency fees" that cover the cost of collective bargaining. In *Janus v. AFSCME*, the Court overturned 41 years of precedent that found these types of fee requirements constitutional.

In 1977, the Court set a standard in *Abood v. Detroit Board of Education* which allowed public employers to require non-union workers in union-represented bargaining units to pay agency fees, also called "fair share" fees. These permitted fees covered the cost of collective bargaining on the non-union workers' behalf, so long as employees were not required to pay for a union's political or ideological activities.

The Court agreed with Janus' assertion that required payment of agency fees violates public workers' free speech rights. Janus argued that anything a union does in relation to a government agency, bargaining included, is inherently political because elected officials are responsible for agency decisions. By being forced to pay these fees, Janus argued, employees who disagreed with the union were effectively subsidizing speech they opposed. The State of Illinois and AFSCME argued that these fees promote "labor peace" and serve to avoid free riders who benefit from union activities without contributing financially. The Court found the state's argument weak and held that "forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns [...] that includes compelling a person to subsidize the speech of other private speakers." The Court concluded with a clear ruling: "[N] either an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay."

The direct implication of this case is that public-sector workers who are not union members will no longer be required to pay agency fees, but may choose to do so if they affirmatively consent. The decision will have no impact on private businesses, who generally are not subject to the same free-speech standards as government agencies and other public employers. The decision also puts to rest many decades of courts wrestling with the *Abood* decision, which the Court explicitly overruled.

If you have questions or would like more information, please contact John Baker (bakerj@whiteandwilliams.com; 610.782.4913), Emily Paulus (pauluse@whiteandwilliams.com; 610.782.4958) or another member of the Labor and Employment Group.

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