

IMPACT OF SUPREME COURT DECISION ON PUBLIC SECTOR UNION MEMBERSHIP

Labor & Employment Alert
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In one of the most important rulings of this term, the U.S. Supreme Court ruled in *Janus J. and U.S. vs. AFSCME* that public sector employees who exercise their rights not to be members of the union at their workplace cannot be forced to pay any dues to the union, even so-called “agency fees” that are dues attributed to negotiation and administration of the union contract.

Until this decision, public sector employees could be required by a union contract to join the union and pay full union dues or be non-members and pay only agency fees which are typically 10% to 20% less than full dues. Agency fees exclude dues attributed to a union’s political action. If an employee opted not to be a union member and pay only agency fees, the union still had an obligation to represent that employee.

The Supreme Court held that forcing employees to pay any union dues, including agency fees, violates the First Amendment. The majority of the judges in this decision found that the requirement to pay any dues violated the First Amendment because it forced public employees to fund and endorse union goals for public sector collective bargaining that could certainly affect taxes, state and local government financial stability, health care, education, child welfare, and minority rights.

The *Janus* decision could substantially reduce a union’s source of revenue because non-members now cannot be required to pay any union dues, but would still have the full benefits of union representation. Therefore, many public employees may choose not to pay dues and as a result of the lost revenue, unions may not be able to afford many of the expenses they incur to represent employees such as hiring union representatives to conduct collective bargaining and administer the grievance and arbitration process in the union contract. The loss of revenue and resulting inability to service members may cause a reduction in the number of unions and a decline in union membership.

The impact on public sector unions in New York is potentially not as significant as it might be for public sector unions outside of New York. Recent amendments to New York law significantly reduce a union’s duty to represent non-members. This reduced duty does not include representation during questioning by the employer, in statutory or administrative proceedings, to enforce statutory or regulatory rights, or in any stage of the grievance, arbitration or other contractual process concerning the

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evaluation or discipline of public employees where they are permitted to be represented by their own representative. Therefore, it is possible in New York that public employees may still decide to pay union dues to secure the union's full representation.

All public sector employers who are parties to union contracts must review their contract terms relating to union membership and dues. Those terms typically require employees to be full union members or pay only agency fees. Such terms must now be renegotiated with the unions to eliminate any obligation to pay full dues or agency fees.