

The U.S. Supreme Court's decision in *Janus v. AFSCME* on “agency” or “service” fees for non-union members: What public sector employers must (immediately) know

Education Law Notes

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As was discussed in our prior blog post and alert, the U.S. Supreme Court in *Janus v. AFSCME*, 585 U.S. ____ (June 27, 2018) just issued a ground breaking decision with respect to the collection of agency fees from non-union members, holding that the involuntary withholding of such monies violates the First Amendment “free speech” rights of the non-union members. Although the full ramifications of the *Janus* decision’s impact are still being assessed, there are some consequences with which public sector employers must immediately deal. Here are some key pointers.

1. **NON-UNION MEMBERS AND AGENCY FEES?** Simply put, STOP WITHHOLDING. As we stated in our initial post, public sector employers should immediately cease withholding agency fees from all non-union members, unless a non-union member affirmatively provides authorization for such withholding.
1. **SO WHAT ABOUT UNION MEMBERS AND UNION DUES?** While a bit inartfully stated, the majority opinion on its face appears to limit its new restrictions on withholding of fees (and the need to obtain further affirmative consent for such withholding) to **non**-union members, as this was the only issue that it had to address in this case. *Janus v. AFSCME*, at p. 48. It is possible that there may be no need to obtain any further authorization for payroll withholding of union dues from union members (especially) in situations where union members have previously provided appropriate authorization for such withholding. Nevertheless, it is recommended that public sector employers immediately review a) the union security and dues provisions of their collective bargaining agreements and b) the prior payroll deduction authorizations provided by employees in order to assess whether there may be any issues with respect to the continued collection of union dues (or issues created by employees subsequently “dropping” out of the union).
1. **WHAT ABOUT FUTURE NEGOTIATIONS?** While we will continue to provide ongoing updates and consultations regarding the impact of the *Janus* decision, public sector employers should also immediately review their collective bargaining agreements for any upcoming contract negotiations, as they likely contain “agency fee” (and mandatory union membership) provisions that are illegal and invalid on their face in light of *Janus* and will have to be addressed. In addition, public sector employers may

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wish to review the related union dues/fees indemnification provisions so as to ensure that the unions provide proper protection to the employers in the collection of union dues and agency fees.

We will continue to update you as further guidance emerges and as any further practical issues arise. Please follow our *Education Law Notes* and *Working Together* blogs for further updates and discussion of these issues. In addition, should you have any questions with respect to these issues (including further options for upcoming negotiations), **or** your current contractual and statutory obligations concerning the withholding of union dues from union members, please do not hesitate to contact an attorney with our firm.

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