

LEGAL ALERT

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SCOTUS Rules Public Employees That Opt Out of Union No Longer Required to Pay Portion of Union Dues

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On June 27, 2018, the Supreme Court of the United States overruled a 41-year-old precedent and held that public employees who opt out of union membership are no longer required to pay “agency fees” to the union. In *Janus v. American Federation of State, County and Municipal Employees*, 585 U.S. ____ (2018), a 5-4 majority of the Court ruled that forcing public employees that opt out of the union to pay agency fees “violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.”

Prior to the *Janus* decision, the Court had previously held in *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), that nearly all public employees could be required to pay a percentage of union dues, irrespective of whether or not the employee was a member of the union. *Abood* permitted charging nonmembers for the portion of union dues attributable to activities that are “germane to [the union’s] duties as collective bargaining representative[.]” However, the *Janus* Court found that what is germane and non-germane “suffers from a vagueness problem” that does not provide “a clear or easily applicable standard.” The Court further determined the unions’ assertions that the agency fee promoted “labor peace” and avoided “free riders” were no longer sufficient reasons to justify the “heavy burden of agency fees on nonmembers’ First Amendment interests.”

Finding significant conflicts with the First Amendment, together with their criticism of the vagueness and impracticability of the *Abood* reasoning, a majority of the Justices ruled that “States and public-sector unions may no longer extract agency fees from nonconsenting employees.”

The Supreme Court also appeared to impose a new requirement that all public employees must “clearly and affirmatively give consent” to the union before any agency fee or other payment to the union is deducted from the employee’s wages. In other words, the Court noted that employees must opt in for union membership (provided there is a fee associated with the membership), rather than opt-out, as had historically been the case.

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Certain provisions of New Jersey's Workplace Democracy Enhancement Act, which Governor Murphy recently signed into law, appear to conflict with the Court's holding in *Janus*. For example, the law's establishment of certain mandatory union membership requirements, a limit on employee opt-outs from union membership to a mere ten-day annual window, and a restriction on employers' statements for or against union membership may all now be unconstitutional under today's decision.

As the interpretation of *Janus* is just beginning, the actual scope and effects of the decision remain unknown. Other courts and the Legislature will likely provide additional guidance on the impact the decision may have on public employee union membership and conflicting provisions that are already contained within State laws or collective negotiations agreements currently in effect with various employee associations. However, what is clear from the *Janus* decision is that any union collecting fees from nonmembers must cease doing so immediately.

If you have any questions regarding the effect of this decision, please do not hesitate to contact the school law and labor attorneys at SPSK.

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