

# The Final Chapter: The Supreme Court Overrules Abood in Janus v. AFSCME and Changes the Face of Public Sector Labor Relations

## Labor & Employment Law Update

By Julie Proscia on June 27, 2018

On June 27, 2018, the United States Supreme Court issued a groundbreaking decision in *Janus v. AFSCME* eliminating the public sector fair share requirement and thus changing the face of public sector labor. The *Janus* case, originating in the 7<sup>th</sup> Circuit, involved an appeal over the dismissal of a complaint that sought to invalidate agency fees and to reverse the Supreme Court's 1977 decision in *Abood v. Detroit Board of Education*.

Over 40 years ago, the *Abood Court* established that public sector non union members could be charged or allocated agency fees or a "fair share", by the representative union, for collective bargaining, contract administration, and grievance adjustment purposes. In today's ruling, the Court reversed *Abood* and declared that "public-sector unions may no longer extract agency fees from nonconsenting employees." Regarding Illinois' Public Labor Relations Act provisions allowing automatic fair share deductions, Justice Samuel Alito wrote:

This procedure violates the First Amendment and cannot continue. Neither 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.

*Janus* will undoubtedly have short and long term impacts for public sector employers and unions. Of immediate concern, and given the Court's ruling that fair share deductions cannot continue, public sector employers need to promptly determine if there are any non-union employees who have been subject to "fair share" fees and cease collecting the fees pursuant to existing contracts now that fair share fees have been found unconstitutional. This decision also substantially impacts the bargaining of open and soon-to-expire contracts and the types of provisions that will be negotiated, including proposals that will pursue to have deduction authorizations be "irrevocable" as well as provisions that will deny representation of nonmembers in grievance proceedings unless unions are properly compensated. *Janus* has opened the door for a dual grievance

administration system and essentially dual representation.

Given the broad and significant ramifications of this momentous decision, we invite and encourage all public sectors managers, administrators and department heads to participate in our webinar on July 9<sup>th</sup>, which will focus on *Janus* and its impact on public sector employers. We will discuss the following topics:

- What changes public sector employers need to make immediately for fair share employees
- The potential impact of *Janus* on exclusive representation
- The potential for a bifurcated grievance and disciplinary system
- How to handle open contract
- How *Janus* impacts closed contracts

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