

Union's "Fair Share" Found Unfair

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In March 2003, former Illinois Governor Rod Blagojevich issued an executive order calling for state recognition of a union as the exclusive representative of home health care personal assistants employed in the "rehabilitation program." The executive order was subsequently codified by the Illinois legislature, which declared personal assistants to be "public employees" of the state of Illinois "solely for the purposes of coverage under the Illinois Public Labor Relations Act." Subsequently, the personal assistants selected SEIU as their exclusive representative for purposes of collective bargaining.

The collective bargaining agreement required non-union personal assistants to pay a "fair share" of the union dues in return for the representation they received from the collective bargaining unit. These "fair share" payments were deducted directly from the Medicaid payments to the personal assistants. In 2009, Governor Pat Quinn signed another executive order that expanded the pool of home-care workers to include disability home health aides. Under the legislation enacted after Governor Blagojevich's executive order, these disability care workers, whether union or non-union, were subject to the same "fair share" payments as other caregivers governed by the program.

One of these disability care workers, Pamela Harris, filed a class action suit that argued that the compulsory payments constituted a free speech violation, under the First and Fourteenth Amendments.

In *Harris v. Quinn*, the U.S. Supreme Court decided that non-union home health care disability care workers in Illinois were not required to pay so-called "fair share" fees to SEIU for the union's role in handling collective bargaining on behalf of both union and non-union members alike.

The *Harris* decision discussed the difference between being labeled a state employee by either executive order or statute compared to the practical situation in place with these workers in Illinois. The Supreme Court noted that the disabled individuals had the hiring and firing decisions, not the state. These home health care workers do not receive the same benefits as full time state of Illinois employees. It is not clear if the decision would have been the same if the home health care workers were clearly employees of the state.

The decision raises many questions for non-government employers who have home health care disability workers on their payrolls. *Harris* does not provide much guidance to the private sector that employs home health care workers represented by a collective bargaining union such as SEIU. Does such an employer have the obligation or authority to advise those non-union members, who are subject to fair share payments to a collective bargaining representative, of the *Harris* decision?

At least, eighteen other states have similar “schemes” in place, which are subject to the ruling in *Harris*. Anti-union groups were disappointed that the Supreme Court did not go further in striking “fair share” payments in other settings. There are, however, other cases pending both in district courts and before the Supreme Court, which will hopefully clarify those affected by the rationale employed by the court in *Harris*.

There are two large groups that may be affected by the *Harris* decision: non-union workers who make “fair share” contributions to collective bargaining representatives; and all workers who disagree with the way in which “fair share” payments are used for political contributions. Politically, both the unions and those who receive political contributions from the unions lose in the wake of the *Harris* decision.

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