

Will Abood v. Detroit Board Of Education Survive?

Labor & Employment Law Update

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In June 2014, the Supreme Court issued a decision impacting “fair share” provisions in public sector collective bargaining agreements. By a 5-4 vote, the justices ruled in *Harris v. Quinn* that home health care workers in Illinois could not be compelled to financially support a union they did not want to join. Writing for the majority, Justice Samuel Alito noted that the “primary purpose of permitting unions to collect fees is to ‘prevent nonmembers from free-riding on the unions’ efforts, sharing the employment benefits obtained by the union’s collective bargaining without sharing the costs incurred.” The *Harris* ruling, however, was narrow insofar as the home health care workers at issue were not deemed “full-fledged public employees.”

Now comes *Friedrichs v. California Teachers Association*, one of five cases to watch in the Court’s 2015 term according to Washington’s *The Hill* newspaper. In *Friedrichs*, the issue is whether public employees may be compelled to pay union dues as a condition of their employment. The case stems from a California law that allows school districts to require public school teachers, as a condition of employment, to either join the union or opt out. The teachers are nevertheless required to still pay a portion of the union dues.

Many observers anticipate that the court’s conservative majority will overturn its 1977 opinion in *Abood v. Detroit Board of Education*. In *Abood*, the Supreme Court upheld “fair share” provisions in union contracts where a group of public school teachers in Detroit had sought to overturn the requirement that they pay fees equivalent to union dues on the grounds that they opposed public sector collective bargaining and objected to the union’s ideological activities of the union. The court, nevertheless, found that non-union members could be charged dues for “collective bargaining, contract administration, and grievance adjustment purposes” so long as their dues were not used for other ideological or political purposes. In *Harris*, Justice Samuel Alito questioned the *Abood* court and its understanding of precedent. He was also critical of the court’s failure to appreciate the conceptual difficulty of distinguishing what are chargeable versus non-chargeable union expenditures in the public sector. Finally, Justice Alito criticized the *Abood* court’s analysis as resting on “an unsupported [unwarranted] empirical assumption, namely, that the principle of exclusive representation in the public sector is dependent on a union or agency shop.”

Writing for the dissent, Justice Elena Kagan noted that the “*Abood* rule is deeply entrenched, and is the foundation for not tens or hundreds, but thousands of contracts between unions and governments across the nation. Our precedent about precedent, fairly understood and applied, makes it impossible for this court to reverse that decision.”

If the Supreme Court does overturn *Abood*, such a decision will have a profound impact, across the Country’s twenty five states that permit compulsory “fair share” for teachers, firefighters, police and other public workers as unions will not flourish if they cannot compel non-members to contribute toward their efforts. *Friedrichs* truly is a case to watch.

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