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Legal Update

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U.S. SUPREME COURT REJECTS ILLINOIS PUBLIC UNION LAW IN FAVOR OF FREE SPEECH RIGHTS

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The U.S. Supreme Court recently struck down a provision of the Illinois Public Labor Relations Act. In *Janus v. AFSCME*, the Court held that public-sector unions may not require non-union employees to help pay for collective bargaining by charging "agency fees" (*i.e.*, a smaller percentage of the full union dues paid by union employees). The Court ruled in favor of protecting public employees' free speech rights under the First Amendment. This decision reverses 41-year-old precedent that had previously permitted public-sector unions to charge non-members for collective bargaining activities without their consent, in part, to prevent non-members from enjoying the benefits of union representation without the costs.

Janus, an Illinois government employee, refused to join AFSCME, the union that represents Illinois public employees, because he opposed its activities. Illinois law, however, required Janus to pay, by employer deduction from his paycheck, agency fees every year. He argued that this was "coerced political speech" because "the First Amendment forbids coercing any money from the non-members." The Court agreed that public-sector agency fee arrangements violate public-sector employees' First Amendment rights. As a result of *Janus*, public-sector unions can no longer collect an agency fee or any other payment unless a non-union employee "clearly and affirmatively" consents to pay.

What's Next?

More than 20 states have laws similar to the Illinois law struck down by *Janus*. Public-sector unions across the country therefore are at risk of losing substantial revenues—and possibly their size and influence—now that public-sector workers are no longer required to pay agency fees. In anticipation of *Janus*, unions have reportedly ramped up internal organizing efforts (e.g., reaching out to current members and re-signing them, solidifying existing union support) as well as other union mobilization initiatives.

Notably, the Court stated that public-sector unions could still require non-union members to pay for the reasonable cost of using union services such as representation in disciplinary matters (*e.g.*, grievances or arbitrations) or be denied union representation altogether. Some states such as California already have laws authorizing unions to charge an employee for the reasonable cost incurred by an employee's request to a union to use a grievance procedure or arbitration procedure on his or her behalf. Moreover, *Janus* only affects public-sector unions, not unions in the private sector, and the Court specifically noted the differences between the effects of agency fees in public- and private-sector collective bargaining. Private-sector unions may still charge agency fees unless prohibited by law. 28 states, including Wisconsin and Indiana, have passed "right to work" laws prohibiting such fees. Accordingly, businesses and others potentially affected by these developments should consult with counsel to determine what impact this ruling may have on them.

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