

U.S. Supreme Court Rules Agency Fees Unconstitutional in *Janus v. AFSCME*

Vol. 2018, No. 5 | June 27, 2018

As expected, the U.S. Supreme Court decided today in favor of *Janus* and against unions, ruling that mandatory agency fees paid to public-sector unions by non-union members violate their First Amendment rights and are thus unlawful. [See Court's decision here] Accordingly, such agency fees may no longer be deducted from non-members' paychecks.

Additionally, the Supreme Court ruled that in order for the union to collect any fee from a non-member moving forward, that non-member must first freely and affirmatively consent to pay the union. In other words, a non-member may only pay the union if he/she affirmatively agrees to pay the union. Absent such an opt-in, the non-member does not have to pay any fee to the union, and the union must continue to represent the non-member and cannot penalize the non-member for refusing to pay any fee.

The *Janus* decision will have a significant impact on public-sector unions in California (and other states) that have previously provided for agency fees. This decision not only impacts non-members, but also impacts union members who may decide to withdraw from union membership and not pay any fees to the union. More in depth analysis with an FAQ will follow as we analyze the *Janus* decision and the pending legislation before the Governor (SB 866) relating to the impacts of the *Janus* decision.

Impact and Next Steps

The Supreme Court's decision in *Janus* is final, effective immediately, and controls over contrary state law, including California's Educational Employment Relations Act ("EERA"). In consultation with and assistance from legal counsel, districts should immediately do the following:

- If your district has not already done so, immediately review records to ascertain which employees are union members and which employees are agency fee payers, and work with unions to confirm current information.
- Since payroll for the June 2018 pay period has most likely been finalized at this late date, districts should continue to deduct the entire amount of agency fees from non-members' paychecks, and remit the entire amounts to the unions. With the remittance, inform the unions that it is their responsibility to reimburse the non-members for the



DANNIS WOLIVER KELLEY

Attorneys at Law

portion of their agency fees that were deducted from today through the end of the June 2018 pay period. Commencing July 1, 2018, districts should cease deducting agency fees from employees who have been confirmed by the unions as non-members.

- Please note that the *Janus* decision does not have any impact on current union members' dues deductions, and their dues should continue to be deducted in accordance with current practices. For now, if current union members ask the district how to drop union membership, we recommend that the district refer those union members to their union(s) to answer such questions.

As you may be aware, there is pending legislation addressing *Janus*-related issues, including SB 866, which is currently before the Governor for signature and concerns handling of union dues authorizations, mass communications regarding employees' rights to join or refrain from joining the union, and confidentiality regarding new employee orientations. If signed by the Governor on or before July 2, 2018, SB 866 will go into effect immediately.

We will be providing additional information within the coming weeks regarding further analysis of, and compliance with, the *Janus* decision and SB 866, as well as hosting Part 2 of our *Janus* webinar. Please check our website for updates. If you have questions about *Janus*-related issues or your district's compliance efforts and obligations, please do not hesitate to contact a member of DWK's Labor, Employment and Personnel Group.

PRACTICE AREAS

- Labor, Employment and Personnel