

BREAKING....SUPREME COURT ISSUES DECISION IN JANUS V. AFSCME CO. 31 – AGENCY SHOP DEEMED UNCONSTITUTIONAL AND AGENCY FEES MAY NOT BE CONTINUALLY DEDUCTED WITHOUT AFFIRMATIVE EMPLOYEE CONSENT

Education Law Notes

06.27.2018

By Zachary Schurin

The wait is over. For better or worse, this morning the United States Supreme Court issued what may well prove to be the most important public-sector labor law decision of the last 50 years. By a 5-4 majority the Supreme Court's conservatives in an opinion authored by Justice Alito have held in *Janus v. AFSCME Co. 31*, 585 U.S. ____ (2018), that so-called agency shop arrangements – provisions under state law or in collective bargaining agreements that mandate that all members of a bargaining-unit pay a service fee to the union representing the bargaining-unit whether the employee wants to be represented by the union or not – violate the First Amendment free speech rights of objecting employees by requiring them to subsidize private speech on matters of substantial public concern. A copy of the majority and dissenting opinions in the case can be found [here](#). Please note: as the *Janus* decision addresses constitutional and related issues that are only applicable to public sector employers, it does **not** directly impact **private** sector employers.

We have written about the potential importance of the *Janus* decision **previously**, and will have more to say in coming weeks. For now though here are a key points and unresolved questions to be aware of:

- **Existing Agency Fee Payers** – This is big. The Court holds the following with respect to agency fee deductions:

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. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed . . . Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence . . . Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

pullcom.com  @pullmancomley

BRIDGEPORT
203.330.2000

HARTFORD
860.424.4300

SPRINGFIELD
413.314.6160

WAKEFIELD
401-360-1533

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

BREAKING....SUPREME COURT ISSUES DECISION IN JANUS V. AFSCME CO. 31 – AGENCY SHOP DEEMED UNCONSTITUTIONAL AND AGENCY FEES MAY NOT BE CONTINUALLY DEDUCTED WITHOUT AFFIRMATIVE EMPLOYEE CONSENT

What does this mean? The Court in no uncertain terms stated that employees who are not members of the union must affirmatively consent to have agency fees deducted. Practically speaking, this likely means that agency fee payers should NOT have agency fees continuously deducted from their pay checks unless and until such employees give some sort of “clear and compelling” evidence of that intent – i.e. a signed agency fee deduction authorization card or something like it. Essentially, the Court’s ruling requires employee “opt-in” for continued agency fee deductions, not employee “opt-out.”

- **Union Obligations to Fee Payers** – State law defines bargaining-units and imposes duty of fair representation requirements on unions. The Court’s decision in *Janus* is a federal law decision – namely a decision under the First Amendment of the federal Constitution which, pursuant to the Constitution’s Supremacy Clause, supersedes state law. Accordingly, unless and until the state labor laws are amended, Connecticut public-sector employee unions will still be required to represent non-members in collective bargaining matters – i.e. contract negotiations *and* grievance adjustment -- even if such employees refuse to pay *anything* to the unions that are legally obligated to support them. Expect union efforts to address this in the General Assembly very soon – although there may not be an easy legislative “fix.”

As mentioned above, we will certainly have more to say on the *Janus* case in the coming weeks. Stay tuned....

Posted in Federal Legislation, U.S. Supreme Court

Tags: Janus