Janus v. AFSCME: What It May Mean For The Private Sector

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Union Security
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Union security agreements require bargaining unit employees to pay Union dues and fees as a condition of employment.
Union Security: Types of Clauses

• **Open Shop**
  - Requires Union membership on or after the 30th day of employment
  - Unions cannot compel full Union membership, only that employees pay fees for the Union’s representational activities

• **Closed Shop**
  - Requires full Union membership
  - Illegal

• **Agency Shop**
  - Employees must either become Union members or pay the Union a “fair share” fee
Union Security Clause

The Employer agrees that it will, during the full term of this Agreement (or any renewal thereof), deduct from the earnings of employees who have signed an appropriate authorization and filed same with the Employer, Union dues, assessments, initiation fees, and reinstatement fees and remit total deductions to the Secretary-Treasurer of the Local Union (or to such person as may be designated by the Union). This written order shall be terminable at any time by the employee giving at least thirty (30) days written notice of such termination to the Employer.
Union Security: Can You Negotiate?

• The Employer is not obligated to agree to a Union security clause.
• Union security is, however, a mandatory subject of bargaining, and the Employer must therefore bargain in good faith over a Union's proposal.
Dues Deduction
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A dues deduction – or checkoff – is a procedure through which an Employer withholds Union dues from the employees' pay and forwards that amount to the Union.
Dues Deduction Clause

The Employer shall deduct from all employees’ first pay of each month the Union dues or agency fee, and shall remit the deductions to the Union within ten (10) days following the date of deduction, provided the Employer receives from any employee on whose account the deductions are made, an individually executed assignment authorizing the Employer to make the deductions.
Dues Deduction: Can You Negotiate?

• The Employer is not obligated to agree to a checkoff arrangement

• Dues checkoff is, however, a mandatory subject of bargaining, and the Employer must therefore bargain in good faith over a Union's proposal
DUES DEDUCTION AUTHORIZATION

I hereby authorize and direct ____________ to deduct from my pay an amount equal to the dues and initiation fees in the amounts fixed in accordance with the Bylaws of Local Union ____________ and the Constitution of the International Brotherhood of Electrical Workers and to pay same to said Local Union in accordance with the terms of the bargaining agreement between the Employer and the Union.

This authorization is voluntarily made in order to pay my fair share of the Union's cost of representing me for the purposes of collective bargaining, and this authorization is not conditioned on my present or future membership in the Union.

This authorization shall be irrevocable for a period of one year from the date hereof or until the termination date of said agreement, whichever occurs sooner, without regard to whether I am a member of the Union during that period, and I agree that this authorization shall be automatically renewed and irrevocable for successive periods of one year unless revoked by written notice to you and the Union within the ten (10) day period prior to the anniversary of this authorization. I understand that under current law the payments covered by this authorization are not deductible as charitable contributions for federal income tax purposes.

Name (printed) ___________________________  Signature _____________________________
Date ___________________________  Dept. ___________________________

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Public Sector
Public Sector: Union Security

In the 1977 U.S. Supreme Court case: *Abood v. Detroit Board of Education*, the Supreme Court approved of agency shops in the public sector, requiring non-Union members to pay “fair share” fees to compensate the Union for its efforts in representation of employees in a bargaining unit. Under Abood, fair share fees do not violate the First Amendment, because they do not compel political speech.
What Are Fair Share Fees?

• “Fair Share” fees – sometimes known as “agency shop” fees – are paid by public sector employees who choose not to belong to a Union, but are covered by a collective bargaining agreement

• Unions say these fees are a way to eliminate “free-riders”

• “Chargeable” expenses – employees who choose not to join a Union must pay mandatory fees to finance the Union’s efforts to collective bargaining, administer the collective bargaining agreement and arbitrate grievances

• “Non-Chargeable” expenses – Employees do not have to pay for Unions’ political/ideological activities including – political contributions, external organizing, charitable contributions, and Union-member only meetings
Janus v. American Federation of State, County, and Municipal Employees, Council 31
What Lead to *Janus*?

• 2014: *Harris v. Quinn*. The U.S. Supreme Court questioned whether *Abood* should be overruled, but found that this was not the right case to do so. Meaning the Court might overrule *Abood* if the right case came along.

• 2016: *Friedrichs v. California Teachers Association*. The right case came along, but at the wrong time. Justice Scalia’s death led to a 4-4 split decision upholding *Abood* agency fee statutes.
Janus Background

• In 2015, Illinois governor, Bruce Rauner, filed a federal lawsuit to halt Unions’ collection of fair share fees from Illinois public employees.

• While the case was pending before the district court, plaintiff Mark Janus filed a motion to join the case. Janus, a child support specialist for the Illinois Department of Healthcare and Family Services, is forced to pay $44 a month in agency shop fees to his Union. Janus argued that requiring him to pay fair share fees violated his rights under the First Amendment because:
  • Collectively bargaining with a government Employer is the same as lobbying the government; and
  • Fair share fees are a form of compelled speech, because they force him to fund groups that back political candidates and causes he opposes.

• This case gave the U.S. Supreme Court the chance it has been looking for to overrule Abood.
Janus Decision

• 5-4 Decision.
• Extracting agency fees is unconstitutional – violation of the First Amendment.
• Supreme Court expressed concern over the compulsory nature of agency fees.
• Such fees cannot be deducted unless the employee “affirmatively consents to pay.”
• State statutes allowing mandatory agency fees for public employees are deemed unconstitutional.
What *Janus* Means to Unions

- **Decreased Revenue:**
  Public sector Unions in agency shop states will lose a valuable revenue stream. In a post-*Janus* world, Unions will now need to both maintain and grow their membership to survive.

- **Decreased Political Power:**
  Less revenue leads to less to spend on politics. Public sector Unions are a major financial backer for progressive causes and candidates, which has an especially marked impact on local and state elections.
State Responses to Janus
State Preemptive Action

New York –
- Remove Duty of Fair Representation to non-members
- Employers must provide Union with new employee’s info within 30 days of hire
- Union representative allowed to meet with employee at work, on working time

New Jersey –
- No encouraging employees to leave their Union or to revoke authorization of the deduction of fees to their Union
- Employees are only allowed to withdraw dues deduction authorization in a 10-day window following an employee’s anniversary date
- Unions can meet with new members at their workplace without charge to the employees’ work time for at least 30 minutes during orientation
State Preemptive Action

California –
• Requires that an exclusive representative be provided the right to access new employee orientations and compels collective bargaining over the “structure, time and manner” of orientation access

Washington –
• If a CBA includes a Union security provision, the Employer must enforce the agreement by deducting dues for Union members, and a fee equivalent to dues for nonmembers
• Requires Employers to provide the exclusive bargaining representative access to new bargaining unit employees within the first 90 days of employment for at least 30 minutes
Impact On Private Sector

• Money, money, money
  • Nationally, government workers make up almost ½ of the unionized workforce, despite being less than 20% of the overall workforce
  • Many unions represent both public and private sector workers
  • Dependent on fair share fees as a large portion of revenue

• SEIU – funding labor movements in agriculture and behind the “Fight for 15” movement
  • ½ of membership is in public sector
  • Cut budget by 30% in anticipation of the Janus decision
  • Anticipates at least 8% reduction in membership nationally
Impact On Private Sector

• What do unions do with their money?
  
  • Legislation:
    • Minimum Wage
    • Paid Leave
    • Overtime – daily overtime, mandatory breaks
    • State laws subjecting agricultural employees to organizing
  
  • Organizing – Could impact organizing in 2 ways:
    • Ramp up organizing efforts to make up for shortfall in revenue
    • Organizing efforts could suffer due to revenue shortages
Impact On Private Sector

• Same ruling in private sector?

• It’s possible, but *Janus* decision relied heavily on First Amendment arguments, which do not apply to private sector employers
Final Questions

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