

June 27, 2018

## **LABOR UPDATE: United States Supreme Court Strikes Major Blow to Unions Representing Public Sector Employees**

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Today the United States Supreme Court issued its decision in the long-anticipated case of *Janus v. American Federation of State, County, and Municipal Employees, Council, 31, et al.* As was widely expected, the Court struck down the Illinois law requiring nonmembers who worked for public employers to pay a fair share fee, the individual's portion of non-political representation. The majority overruled a 1977 case and relied on the employees' freedom of speech under the First Amendment of the United States. In reaching this decision, the Supreme Court has now outlawed fair share fees for nonmembers in state and local government throughout the country. This is a sweeping decision, but it is limited only to the public sector and does not apply to nonmembers who work for private sector businesses.

There are a few important take-aways at the moment from this decision:

- All unions who represent public sector units must immediately cease collecting fair share fees from those nonmembers.
- The Court indicated that fair share fees may still be collected, but only to those nonmembers who clearly and affirmatively consent. (We will determine shortly whether we recommend that public sector members sign a new consent form in light of this decision.)
- Unions remain required to fully and fairly represent all members of the unit. The obligation to not discriminate against nonpaying nonmembers has not been altered.
- The bright spot in the opinion came by way of a footnote in which the Court indicated that unions may be able to charge individual nonmembers for their grievance representation. It remains to be seen whether unions will need legislation or court interpretation for this.
- The fallout from this case will reveal itself over time. There will very likely be legislation and litigation regarding various aspects of the *Janus* decision. For example, it is unclear how the

Pennsylvania PERA revocation window requirement for a maintenance of membership clause fits into this decision.

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