No Dues For You!

Client Advisories

06.29.2018

On Wednesday the United States Supreme Court overturned a 41-year-old precedent which allowed unions to require unionized public sector employees who decline to become dues paying members of the union to instead pay "agency fees" in lieu of dues. . In Janus v. American Federation of State, County and Municipal Employees, 585 U.S. _____ (2018), the Supreme Court heard a challenge to Illinois' Public Labor Relations Act which required public employees to pay "agency fees" if they declined to join a union that was acting as an exclusive representative to the employer on behalf of all employees. Both Pennsylvania and New Jersey have similar laws mandating the payment of agency fees by non-members. The New Jersey Employer-Employee Relations Act, N.J.S.A. §§ 34:13A-1, et seq., which covers public employees, has provisions which require agency fee deductions from bargaining unit employees who decline union membership. The Pennsylvania Public Employee Fair Share Fee Law, 43 P.S. §§ 1102.1, et seq., which covers public employees, provides that a "fair share fee" may be required by bargaining unit employees if the provisions of the a collective bargaining agreement provide for it.

In Janus, the Supreme Court found that the Illinois requirement violated employees' First Amendment rights not to support the Union, stating that it is:

> "not disputed that the State may require that a union serve as exclusive bargaining agent for its employees-itself a significant impingement on associational freedoms that would not be tolerated in other contexts. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views."

The Court also addressed the impact the lost revenue will have on unions, stating:

> "We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant transition costs in the short term, and may require unions to make adjustments in order to attract and retain members. But we must weigh these disadvantages against the considerable windfall that unions have received under Abood [v. Detroit Bd. of Ed.,431 U. S. 209 (1977)] for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector

unions in violation of the First Amendment. Those unconstitutional exactions cannot be allowed to continue indefinitely."

It also stated that "it is simply not true that unions will refuse to serve as the exclusive representative of all employees in the unit if they are not given agency fees. As noted, unions represent millions of public employees in jurisdictions that do not permit agency fees." To the extent that unions are concerned about providing representation to non-members in disciplinary actions, the Court stated that "[i]ndividual nonmembers could be required to pay for that service or could be denied union representation altogether."

The Court refrained from addressing the implication of Janus on private employers, although it stated that "[n]o First Amendment issue could have properly arisen" in cases surrounding private parties unless Congress's enactment of a provision allowing the arrangements is sufficient government action. Therefore, for now, the immediate effect of the Janus decision is with respect to public employees.

If you would like guidance on how the Supreme Court's opinion may affect your organization, you should contact a member of Archer & Greiner's Labor and Employment Group in Haddonfield, N.J. at (856) 795-2121; Philadelphia, Pa. at (215) 963-3300; Princeton, N.J. at (609) 580-3700; Hackensack, N.J. at (201) 342-6000; or Wilmington, Del. at (302) 777-4350.

Attachments

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