THE U.S. SUPREME COURT DECISION IN THE MATTER OF

JANUS V. AFSCME, ET. AL. 138 S.CT 2448 (2018)

And its Impact on the Union Member Employees of Vermont Municipalities. Where Do we go from Here?
Question 1: Do you have unionized employees in your Town?
Question 2: If you do how many are unionized?
Question 3: Do you have more then one union?
Question 4: Have you done anything in the wake of Janus?
RIGHT TO WORK STATES
BONUS NUMBER ONE: WHO WAS JANUS?
In ancient Roman religion and myth, **Janus** is the god of beginnings, gates, transitions, time, duality, doorways, passages, and endings. He is usually depicted as having two faces, since he looks to the future and to the past. It is conventionally thought that the month of January is named for Janus (Ianuarius), but according to ancient Roman farmers' almanacs Juno was the tutelary deity of the month.

Janus presided over the beginning and ending of conflict, and hence war and peace. The gates of a building in Rome named after him (not a temple, as it is often called, but an open enclosure with gates at each end) were opened in time of war, and closed to mark the arrival of peace (which did not happen very often).

Source: https://en.wikipedia.org/wiki/Janus
**JANUS THE DECISION:**

- Mark Janus was a State of Illinois employee who objected to the payment of agency fees to his union.
- What were “agency fees”? Agency fees were collected by the designated union, to cover expenses incurred by the collective bargaining process, for all employees affected by that process, EVEN IF THEY WERE NOT UNION MEMBERS.
- **HELD:** Agency fees taken from employees unless the employee “clearly and affirmatively consent[s] before any money is taken” violates the First Amendment of the U.S. Constitution.
DO YOU COLLECT AGENCY FEES AS PART OF PAYROLL PROCESS?

- Have you changed your practices in the wake of Janus?
- Why or why not?
- Discuss........

Background: Non-union members did not need to be asked, nor were they required to consent to deduction of agency fees.

Each year nonmembers get a “Hudson notice” informing them of the amount of the agency fee and the basis. This could be challenged.
Freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all.”

Application of “exacting scrutiny”– law must “serve a compelling state interest that cannot be achieved though means significantly less restrictive of associational freedoms.” “Strict scrutiny” requires for law to be “narrowly tailored” to serve a “compelling state interest.”
**COMPELLING STATE INTEREST?**

- **Labor Peace** – “Avoidance of the conflict and disruption that [ ] would occur if the employees in a unit were represented by more than one union.“ Pandemonium that would incur if agency fees were not allowed. But Justice Alito said that this had not played out with federal employee unions that are prohibited by law from collecting agency fees.

- “Labor peace” if it exists can be achieved through “means significantly less restrictive of associational freedoms than the assessment of agency fees.”

- **Free Riders** – “Agency fees are needed to prevent nonmembers from enjoying the benefits of union representation without shouldering the costs.”

- Alito – “Avoiding free riders is not a compelling interest.” Unions will still line-up to represent employees, because they want power; get special privileges; and employer must listen to them and give them a seat at the table.
COLLECTIVE BARGAINING IS NOW CONSIDERED POLITICAL SPEECH

- Under prior precedent, the Court had allowed agency fees, splitting them off from fees used on traditional political activities such as lobbying, endorsements, campaigning and electioneering.
- Unions express views during the collective bargaining process, on education, child welfare, health care, minority rights…. Climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions.
- Therefore, collective bargaining is political speech.
- “Public employees generally may not be required to support a political party.”
BONUS NUMBER TWO: WHAT FAMOUS ROMAN EMPEROR/GENERAL IS THE “T” IN “JAMES T. KIRK’S” MIDDLE NAME DERIVED FROM?
**JANUS HOLDINGS**

- “States and public-sector unions may no longer extract agency fees from nonconsenting employees.”
- “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.”
VERMONT ATTORNEY GENERAL’S ADVISORY:
Public Sector Labor Rights and Obligations Following Janus

Public sector employees - including firefighters, police officers, teachers, public health employees, and other state workers - play a vital role in our communities across Vermont. They work hard every day to ensure public safety, protect public health, educate our children, and provide other essential services to Vermonters.

Attorney General T.J. Donovan issues this Advisory in response to the recent United States Supreme Court decision in Janus v. AFSCME Council 31, 888 U.S. ... (2018). Janus overturns decades of well-established law and practice relating to public employers’ deduction of fair share agency fees from public sector employees who decline union membership. Under Janus, a public employer may not deduct agency fees from a nonmember’s wages without the employee’s affirmative consent.

All other collective bargaining rights and obligations of public sector employees and employers remain the same under state law. Public employees retain their statutory rights under Vermont law to organize, join unions, and engage in collective action for mutual aid and protection. The Vermont Attorney General’s Office issues this Advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights
- Under Vermont law, the rights of public sector employees are unaffected by the Janus decision.
  These employees maintain the right to:
  - Organize.
  - Form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment.¹
  - Engage in lawful, concerted activities for the purpose of bargaining or other mutual aid or protection.² 3 V.S.A. §§ 903(a), 1012, 16 V.S.A. § 1982; 21 V.S.A. § 1721.
- Public employers also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982; 21 V.S.A. §§ 1726, 1728.

¹ Certain classes of public sector employees may not be entitled to all of these enumerated rights including state workforce classified managers, confidential employees, and deputy sheriffs.
² A state employee may not strike or call a strike unless at the time of his or her official duties 3 V.S.A. § 903(b).

Dues and Agency Fees
- An employee whose position is within the bargaining unit of a union, and who chooses to be a member of the union, pays membership dues. An employee whose position is within the bargaining unit of the union, but who chooses not to be a member of the union, previously paid an agency fee to the union.
- The Janus decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The Janus opinion only impacts the collection of agency service fees by public employers from individuals who decline union membership.
- Under Janus, a public employer may not deduct any agency fees from a nonmember’s wages without the employee’s affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018, may choose to become a dues-paying union member.
- Public employers may not threaten or coerce employees regarding union membership. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982(c); 21 V.S.A. §§ 1726, 1728.
- Membership dues may still be collected through a payroll deduction.
JANUS FALLOUT?

Conservative group sues Gov. Murphy over law protecting public worker unions

The new law was approved by the Democratic-controlled Legislature in April and signed by the Democratic governor in May in anticipation of the U.S. Supreme Court ruling in Janus v. AFSCME.

That state law strengthened the rights of public-sector unions in New Jersey, giving them greater access to their members and penalizing public employers that encourage people to resign their union membership.

At also lays out a 10-day period after the anniversary of an employees' hire date that they can quit their unions.

The Mackinac Center argues in its lawsuit that the law undermines the U.S. Supreme Court's ruling in Janus and places unconstitutional limitations on public workers' rights to resign their membership.

The Mackinac Center for Public Policy has filed a lawsuit on behalf of three Lakewood building inspectors against Gov. Phil Murphy over a law he signed in May. (Tim Hawk | For NJ.com) (File photo)
MORE FALLOUT – WALL STREET JOURNAL
OR NO FALLOUT?

by Tribune News Service  |  October 9, 2018
By Rick Karlin

Three months after the U.S. Supreme Court's Janus ruling, teachers appear to be sticking with their union, even though they are no longer required to pay dues or a fee in lieu of their dues.

"At 100 percent give or take a percent," Laura Franz, president of the Albany Public School Teachers Association (APSTA), said of her members' decisions to overwhelmingly remain in the union.

The city school district recently asked the union to provide union cards from its members in order to ascertain that the district's list is up to date. Under state law, a public employer such as a school district withholds dues from union members and sends that money to the union.

With just one or two exceptions, almost all of the union's 974 members agreed to continue paying dues, Franz said.

APSTA's parent organization, New York State United Teachers (NYSUT), has seen similar results.

In the wake of the Janus decision, NYSUT instituted a new rule that provided a one-month window, in August, during which union members could leave the union and halt their dues payments.

But just 200 members from a total of 450,000 statewide have left the union in recent months, said NYSUT spokesman Carl Korn.

Korn stressed that the union for some time has been working to convince members that it's worthwhile to retain their memberships. That was in anticipation of the Supreme Court ruling which came in June.

In Janus v. AFSCME, the court overturned a four-decade tradition in which public employees who weren't members of their unions had to pay the equivalent of dues through a separate fee. Union supporters said the decision was an attack on public sector unions, while opponents said people shouldn't be forced to pay for union activities that they may not support.

But there doesn't seem to have been a wholesale exodus from public sector unions at this point.

Still, the changes have led to some extra work for unions and employers. In gathering and providing the district its list of union cards, APSTA's Franz said she redacted some information such as personal emails of union members.

Emails became an issue days after the Janus decision when teachers in various districts, including some in New York state, received email blasts from the Mackinac Center for Public Policy, a conservative group that opposes teacher unions.

The emails said that teachers are no longer required to pay dues-like fees and could quit their union and save money.

Franz said in the case of many APSTA members, spam filters caught those emails and blocked them.

A few other school districts have requested union cards from their teachers, especially if they didn't have the cards on file, said Michael Borges, executive director of the state Association of School Business Officials.

Additionally, at least one county board of supervisors, in Saratoga County, earlier in the summer said it needed copies of union cards from workers represented by the Civil Service Employees Association, or CSEA.

A similar episode cropped up between the Syracuse school district and its CSEA workers.

CSEA spokeswoman Shannon Hutton said members are by and large continuing to pay dues into the 300,000-member organization.

At another state worker union, the Public Employees Federation (PEF), the number of members who have left since the decision is "minimal," said spokeswoman Jane Briggs. She added that PEF in recent months has gotten several hundred people who used to pay fees rather than dues to become full-fledged members.

Public sector union dues such as those paid by teachers vary depending on salaries. They can run from several hundred to approximately $1,000 annually.

Union opponents are keeping up their push, however.

"We're running ads," said Robert Bellaflore, spokesman for New Choice NY.

The group is a nonprofit that Bellaflore says informs public employees about their rights. Funded by some national donors who are critical of public unions, New Choice NY has been focusing on Janus-related issues since the court decision.

The organization has recently purchased radio spots that talk about how public employees can still get the benefits of collective bargaining including pensions and health care as well as dental and vision benefits, even if they no longer pay dues. The group also has put up billboards along commuter routes in the Albany area.

In Albany, teachers' union members this week are voting on a new contract proposal. They are going into their third school year without a new contract. Under state labor law, though, many of the terms for the old contract remain in place. "We're hoping to settle," said Franz.

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Tribune News Service  |  @TribuneAgency
Oregon lawyers sue over mandatory bar dues in wake of Supreme Court’s union dues decision
If the argument to expand Janus is unsuccessful, the lawyers also claim they are owed damages for dues collected that supported political or ideological work. In a 1990 decision, Keller v. State Bar of California, the high court found that mandatory members of state bar associations have a First Amendment right not to subsidize political or ideological activities.

In April, the Oregon State Bar’s bulletin ran a piece written by bar leadership called “Statement on White Nationalism and Normalization of Violence,” which condemned “violence, extremism and exclusion” as detrimental to the rule of law.

The statement was published next to a letter written by specialty bar associations’ leadership that specifically said President Donald Trump had catered to white nationalists, allowing violence in Charlottesville, Virginia, and other locations—including Portland—to occur.

A green band bordered the two statements
Supreme Court ruling will hurt Vermont unions

Kelsey is VTDigger's Statehouse reporting intern; she covers general assignments in the Statehouse and works on projects for the statehouse desk.

About Kelsey

Kelsey's beat at VTDigger is the state's education system, but she covers general assignments in the Statehouse as well. She is a 2013 graduate of the University of Vermont in May 2013 with a Bachelor of Arts degree in History and Political Science. She worked on the UVM's student newspaper while a student. She began working at VTDigger the summer before her senior year, and joined the team full time after graduation. She covers education, politics and other general assignments. She is originally from Richmond, Virginia, and has covered other beats in the state including Health Care and Transportation. She especially enjoys covering the Vermont Senate, where she often reports on stories that go beyond the political.
VSEA RESPONSE PER EXECUTIVE DIRECTOR STEVE HOWARD

- Asked the State to immediately stop collecting agency fees.
- VSEA is using this as an opportunity to actively recruit new members.
- VSEA is promoting benefits of belonging to Union, in addition to explaining liabilities (for example they will charge $200/hr for non-members to utilize services of a union representative and $350/hr for union attorneys).
- According to Howard, membership has gone up.
- Decided not to take aggressive approach exemplified in other states and other unions.
BONUS NUMBER THREE: WHAT IS THE LATIN MOTTO OF THE UNIVERSITY OF VERMONT AND WHAT IS ITS ENGLISH TRANSLATION?

- Latin: Universitas Viridis Montis
- English: University of the Green Mountains
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