

May 2018

Early Implications of Janus: Payroll and Communications with Public Employee Unions

- *California labor unions are preparing for the U.S. Supreme Court to possibly rule in favor of the plaintiffs in Janus v. AFSCME*
- *A verdict for the plaintiff would impact the finances of public employee unions by eliminating the requirement that non-member employees pay their “fair share” of union dues*
- *Unions have begun to contact LEAs about conditional arrangements for fees collection, payroll deductions and reimbursement in the event of a verdict for Janus*
- *Governing teams should be aware of the logistical challenges posed by a decision for the plaintiff and make sure their LEA is prepared to handle them*
- *CSBA is tracking Janus closely, working vigorously to ensure we provide timely and relevant information that will assist our members in addressing the impact of Janus and related issues*

As you may know, the U.S. Supreme Court is facing one of its most significant decisions related to organized labor. In February 2018, the Court heard oral arguments in *Janus v. AFSCME*. In this case, Janus (plaintiff) argues that compelling employees to pay their compulsory “fair share” of union dues is a violation of their First Amendment rights. If the Justices rule for the plaintiff and reverse the four-decade-old precedent of *Abood v. Detroit Board of Education*, the decision will have an adverse financial impact on school employee unions. It will also create logistical questions for administrators and governance teams at school districts and county offices of education.

In California and much of the country, public employees are required to pay their “fair share” of union dues regardless of whether they choose to join the union — these fees are used for the union’s collective bargaining activities. Labor unions argue that everyone who benefits from these activities should share fairly in the cost. Employees can currently opt out of only those fees that would go toward a union’s political activities. Janus, an employee of the Illinois Department of Healthcare and Family Services, is arguing that bargaining activity is inherently political and, therefore, he

should be able to opt out of paying any fees at all to the union. [For a more thorough examination of *Janus v. AFSCME*, related legislation and implications for school boards, please read the legal column in our upcoming May newsletter.](#)

Janus and its 2016 predecessor, *Friedrichs v. California Teachers Association* (which ended in a 4-4 deadlock), prompted the introduction of union-sponsored bills related to union activity, access and union dues. In July 2017, Assembly Bill 119 (employer required to grant union representatives access to new employee orientations) took effect. It was joined in January 2018 by Senate Bill 285 (prohibits public employers from discouraging union membership).

Although it's uncertain how or when the Supreme Court will decide the case, a ruling is due before the end of its session in June 2018. Some public employee unions have already contacted LEAs to make contingency arrangements for dues collection from non-member employees.

Specifically, labor unions have sent California LEAs letters proposing several means of addressing fee collection in the event *Janus* prevails. Those items, listed below, are requests for consideration and, at this time, **are not** requirements employers are obligated to fulfill. Should governance teams have any questions concerning their responsibilities, we encourage you to contact your legal counsel or CSBA for clarification. CSBA is currently reviewing the letters as well as other *Janus*-related issues and will provide you with further information in the coming weeks.

Items that unions have asked LEAs to consider (*Not requirements, just requests*)

1. Employers can provide unions with only the portion of fees due prior to the decision.
2. The employer can allow payroll to process as usual. The employer would then notify the union of the employees that are due reimbursement for fees incurred after the decision.
3. Some unions are requesting that the employer furnish them with a comprehensive contact list of employees eligible for a refund or, in some cases, to become the sole record custodian for union dues.
4. In cases where employers cannot adjust their payroll systems to end fair share fee deductions, some unions are suggesting that the employer reimburse the employee and then bill the union for repayment.
5. The unions also ask that if an LEA receives a request for reimbursement of fair share fees paid prior to the Supreme Court decision, that such requests be referred to the union for review before any action is taken.

Again, please note that the above items are simply requests. CSBA suggests that

governance teams review any communications from labor on *Janus v. AFSCME*, and discuss how they intend to handle the questions outlined above and any other considerations presented by the labor unions. We are tracking the case closely and will continue to provide additional analysis and recommendations that will help to guide and inform your decisions.