

June 2018

## Preparing for a decision in Janus: Updated information

A decision in *Janus v. AFSCME* is imminent and could come as early as the morning of Monday, June 18. In preparation, we are including information on the case and its implications as well as new developments in the state legislature related to Janus.

The first part of this message deals specifically with background on the case itself. The second part is an FAQ on critical Janus-related issues. The third portion explains new budget trailer bill language related to Janus that may be added to the 2018-19 budget package.

CSBA will provide updates soon after the decision is announced and further analysis throughout the day. In the meantime, please review the information below as the Supreme Court's decision may take effect immediately.

### Background and implications of 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
- 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
- Janus has prompted employment-related legislation which may impact LEAs

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 a majority of the Court rules for the plaintiff and reverses the four-decade-old precedent of *Abood v. Detroit Board of Education*, the decision will create logistical questions for administrators and governance teams at school districts and county offices of education. It will also have an adverse financial impact on school employee unions.

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 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 this month. 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.

**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.

### **Janus FAQs**

**[Click here](#)** to view Frequently Asked Questions regarding Janus.

### **Summary of Janus-related budget bills**

- **AB 1832 (Assembly Budget Committee)**
- **SB 866 (Senate Committee on Budget and Fiscal Review)**

The budget committees in the Senate and the Assembly recently amended bills in their respective houses to provide unions with greater access to activities involving new and current employees. Although there are currently two bills, both have nearly identical language and only one will move through the process and on to the governor as part of the 2018-19 budget package. Summarized below are just a few of the key provisions that would impact school employers:

- Recently enacted state law (AB 119, Chapter 21, Statutes of 2017) requires public employers, including local education agencies, to provide the exclusive representative with mandatory access to new employee orientations. These bills would prohibit the advance disclosure of the “date, time, and place of the orientation to anyone other than employees or the exclusive representative.” This change would undermine the accountability that district and county governing boards have to the students, families and other stakeholders in their local education community regarding activities that could impact nearly every school site. Prohibiting the disclosure of this information sets a troubling precedent that interferes with the LEA’s responsibility to keep the school community informed and with the public’s right to know.
- These bills would expand the scope of collective bargaining to include the content of any mass communication relating to public employees’ rights to join or support an employee organization. If no agreement is reached, the bills would grant the employee organization the right to have its own communication sent out at the same time as the employer’s mass communication. The bills define “mass communication” to mean a “written document, or script for an oral or recorded presentation or message, that is intended for delivery to multiple public employees.” This change could potentially prolong collective bargaining negotiations and would complicate an employer’s communication with its own employees.
- Under these bills, the responsibility for the administration of payroll deductions for membership in employee organizations would be transferred from the employer to the employee organization.

AB 1832 is scheduled to be heard in the Senate Budget and Fiscal Review Committee on Monday, June 18, 2018. The Assembly Budget Committee has not yet set a hearing date for SB 866. If approved, the bills will go next to the floor for consideration by each house. Whichever bill is sent to the Governor for his consideration will take effect immediately upon his signature.

More information about these budget trailer bills is available at the following links:

**AB 1832:**

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1832](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1832)

**SB 866:**

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB866](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB866)