Supreme Court Poised to Deal a Sharp Blow to Unions for Teachers and Public Employees

Los Angeles Times

David G. Savage http://www.latimes.com/politics/la-na-pol-court-unions-20170928-story.html

September 28, 2017

The Supreme Court is poised to deal a sharp blow to the unions that represent millions of teachers and other public employees, announcing Thursday it will consider striking down the mandatory fees that support collective bargaining.

The justices will hear the case of Mark Janus, an Illinois state employee who objects to paying fees to the union, which represents 35,000 state workers.

The decision, due by next June, could prove a costly setback for public-sector unions in 22 states, including California, where such fees are authorized by law. Labor experts have predicted a significant percentage of employees would stop supporting their union if given a choice. The other 28 states have "right to work" laws that forbid requiring workers to join or support a union.

With smaller numbers, public employee unions would lose some of the political power that has made them major forces in some states, such as California, Illinois and New York.

When my children were younger, I remember looking forward to the time that they'd be old enough to sit up, order, and eat all on their own. Now that they can…I'm not so sure.

The nation's four largest public-sector unions — the National Education Association, the American Federation of Teachers, the Service Employees International Union and the American Federation of State, County and Municipal Employees — sharply criticized the case, calling it "a blatantly political and well-funded plot to use the highest court in the land to further rig the economic rules against everyday working people."

"These powerful interests want to gut one of the latest remaining checks on their control — a strong and united labor movement that fights for equity and opportunity for all, not just the privileged few," said AFT President Randi Weingarten.

The unions have had time to prepare for what's coming.

Early last year, the court's conservatives were poised to strike down these so-called "fair share" fees in a suit brought by a California schoolteacher. But Justice Antonin Scalia died unexpectedly in February, leaving the court split 4-4 and unable to decide the case of Friedrichs vs. the California Teachers Assn.

Now, the court has agreed to hear a new case presenting the same issue. And this time, Justice Neil M. Gorsuch can — and most likely will — supply the fifth vote for a conservative ruling.

On Thursday, Gorsuch is scheduled to speak to a conservative group's luncheon at the Trump International Hotel, and progressive groups intend to protest his appearance. They said Gorsuch's speaking engagement raises ethical questions because the courts — and possibly the Supreme Court — may be called on to rule on a lawsuit that contends Trump's continuing ownership of the hotel violates the Constitution's ban on taking "emoluments" while in office.

The union fees case presents the question of whether to overturn a 40-year-old ruling. In that case, Abood vs. Detroit, the Supreme Court said it was reasonable to require all employees, not just union members, to pay to support the cost of bargaining because all of them benefited. By law, the unions are required to represent all employees, including by handling their grievances.

The Abood ruling took a middle approach on the issue. It said workers, even dissidents, can be required to support the union's core activities, but not its political donations or lobbying. The result is that public employees can be required to pay an "agency fee," but not the full union dues, which can include money used for campaign donations.

However, in recent years, the court's conservatives, led by Justice Samuel A. Alito, have called the Abood ruling "questionable" and said that forcing public employees to fund a private group violates their free-speech rights under the 1st Amendment. It is a "bedrock principle," Alito wrote in 2014, that "no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support."

Disagreeing, the four liberal justices have said the court should leave it to the states to set their laws on unions and public employees.

The case now before the high court began two years ago when Republican Illinois Gov. Bruce Rauner, then newly elected, filed a suit in federal court contending that the union fees paid by state employees were unconstitutional. Illinois Atty. Gen. Lisa Madigan, a Democrat, stepped forward to defend the state law. Mark Janus, a child support specialist, and two other state employees asked to join the suit on Rauner's side.

A federal judge tossed out the governor's suit and said he had no standing to sue because he did not pay the fees. The judge also upheld the fees based on the Abood decision, and the 7th Circuit Court in Chicago did the same in a short opinion.

The National Right to Work Legal Defense Foundation appealed on Janus' behalf and urged the Supreme Court to resolve the issue. It told the court there are about 11 million union employees in the 22 affected states, and of those, about half work in the public sector.

Janus, who works for the Illinois Department of Healthcare and Family Services, said he objected to paying $44 a month to the American Federation of State, County and Municipal Employees. "I went into this line of work because I care about kids. But just because I care about kids doesn't mean I also want to support a government union. Unfortunately, I have no choice," he said in a statement.

The justices met Monday to sift through hundreds of appeal petitions from the summer, and they said they would hear the case of Janus vs. AFSCME and eight others.

One of them is another labor case that comes from Los Angeles but could affect car dealerships nationwide. At issue in Encino Motorcars vs. Navarro is whether service advisors are entitled to overtime pay. Federal law exempts "any salesman" or employee who is "primarily engaged in selling or servicing automobiles." The 9th Circuit ruled that service advisors are entitled to overtime pay because they are not salesmen or do not service cars. They advise customers on what work should be done.

Two years ago, the Supreme Court agreed to hear this dispute and told the 9th Circuit to reconsider the issue. The judges in San Francisco stuck to their decision, and the justices agreed Thursday to decide the issue.