

More Litigation in the Wake of Janus



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Reverberations continue following the Supreme Court's June 27 decision in *Janus v. AFSCME*. (138 S.Ct. 2448.) On November 14, 2018, the California Policy Center and the Legal Justice Center jointly announced they have filed a lawsuit against United Teachers Los Angeles and the Los Angeles Unified School District on behalf of Tommy Few, a teacher in LAUSD. According to a press release issued by the California Policy Center, the lawsuit alleges UTLA is violating Few's First Amendment rights by refusing to let him leave the union until the expiration of his one-year membership term, and LAUSD is supporting the violation by continuing to withhold union dues from his paychecks.

Anticipating an adverse decision from the Supreme Court, some public-sector unions imposed minimum membership periods — typically one year — on employees who joined the unions, and imposed a narrow time window for employees to cancel their membership at the end of the period to avoid automatic renewal. In Few's case, UTLA provides a defined 30-day window in which members can opt out of the union.

On the same day the Court issued the *Janus* ruling, Governor Brown signed Senate Bill 866, requiring, among other things, that public employers rely exclusively on unions to authorize the starting or stopping of dues deductions. (See Education Code §§ 45060, 45168.) Under these provisions, school districts may not stop withholding dues at the request of an employee. The new lawsuit alleges the state laws authorizing these withholdings are unconstitutional and unenforceable.

The *Janus* decision did not address the withholding of dues from paychecks of union members. The Court held that mandatory *agency fees* — fees withheld from employees who decline to join unions — were unconstitutional because they “compel” those nonmembers to “subsidize private speech on matters of substantial public concern.” (138 S.Ct. at p. 2460.) Agency fees are a proportion of union dues (in *Janus*, which involved an Illinois public employee union, the proportion was 78.06% of full union dues), purportedly attributable to the union's representation in collective bargaining but not to political or ideological activities. The Court held these agency fees were nonetheless unconstitutional compelled speech.

The Court did not venture into union practices such as membership terms or the withholding of dues from the paychecks of employees who elected to join the union. While the California Policy Center and the Legal Justice Center rely on *Janus* in their challenge to UTLA's one-year membership term and the Education Code amendments, a court may find that the *Janus* ruling has no bearing on these issues.

We will continue to publish updates as these challenges proceed through the courts. In the meantime, if you have any questions, please contact one of the authors or your usual counsel at AALRR.

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