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LABOR & EMPLOYMENT LAW ALERT

PERB Publishes Notice of Emergency Adoption and Proposed Rule Making

On August 15, 2018, New York State's Public Employment Relations Board (PERB) took rare action and published a Notice of Emergency Adoption and Proposed Rule Making ([found here](#)).

The emergency rule, now in effect, allows for an expedited PERB review of "an issue or issues of law regarding the scope of any duty of fair representation allegedly owed by an employee organization to a non-member, or to any member seeking to terminate membership in an employee organization, or related question."

PERB adopted the emergency rule in response to the U.S. Supreme Court's June 2018 decision in *Janus v. AFSCME, Council 31*, which held that public sector employees in a bargaining unit who choose not to become or remain union members cannot be required to pay "agency" or "fair share" fees to the union for its representational activities. In anticipation of the *Janus* decision, a number of New York State laws were amended via adoption of the 2018-2019 State Budget to try to protect the public unions and their dues revenue stream by making it more difficult for public employees to withdraw from union membership.

The emergency rule will allow PERB to quickly process cases that may require interpretation and enforcement of the new state laws in light of *Janus*. For example, with regard to those union members who now wish to withdraw from union membership, many municipalities have questioned whether the proper time to stop the employee's union dues deduction is after the deduction authorization has been revoked by the employee in writing and approved by the union, as seemingly required by the state law amendments, or if waiting to do so will fly in the face of *Janus'* holding that an employee must clearly consent to any deductions for the benefit of a union. PERB will likely be confronted by such issues in the near future and will also have to grapple with the question of whether public unions may rely on old membership lists to keep dues deductions in place for non-withdrawing member employees without having to secure new deduction authorization cards from the union's claimed current members.

Any party to such a dispute before PERB or PERB's Director of Public Employment Practices and Representation can request that a case be reviewed on an expedited basis under this new emergency rule. Unless the duration of the emergency rule is extended, or the emergency rule is adopted on a permanent basis, it will expire on October 24, 2018.

PERB will accept public comments on the emergency rule via email to PERB Deputy Chair Sarah Coleman at coleman@perb.ny.gov until October 15, 2018.

If you have any follow-up questions about the new emergency rule or issues surrounding it, please contact one of Hancock Estabrook's Labor & Employment attorneys. This communication is for informational use only and should not be construed as legal advice.

This topic will be covered in more detail at our annual symposium on September 20, 2018. Please see our invitation <https://conta.cc/2BGqR0h> for more information or to register.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Labor & Employment attorneys:

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