

LABOR AND EMPLOYMENT LAW ALERT

Fair Share Fees

“Fair share fees” in the public sector workplace are under legal attack once again. The U.S. Supreme Court agreed on September 28, 2017 to rehear the issue of whether public sector employees in a collective bargaining unit who do not join the union can be required to pay a “fair share” fee to the union for the costs it incurs to represent the non-union members in collective bargaining, grievance administration, and other non-ideological union activities. (Janus v. AFSCME Council 31).

These mandatory fees have been allowed for almost four decades and are known as “agency fees” with respect to public sector workers in New York State.

A ruling from the high court striking down the fair share fees may seriously disrupt the underlying model, and cash flow, for unions representing public workers thereby weakening union influence in the public sector.

The court heard a case on the same issue last year (Friedrichs v. California Teachers Association), but split 4-4 following the death of Justice Antonin Scalia thereby leaving fair share fees intact. If he had survived, the result might well have been different. New Supreme Court Justice Neil Gorsuch's confirmation to the high court is expected to provide the swing vote and could lead to a banning of the fees on First Amendment free speech grounds.

The public sector unions and worker advocate group characterize the challenge to fair share fees as an attack on working people's ability to act collectively. Many employer representatives and conservative lawmakers see the fees as an unconstitutional infringement on the free speech rights of workers who do not want to associate with a union and the political positions they espouse. The Janus case should decide the issue and prove to be one of the highlights of the Court's jurisprudence this coming session.

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