

Looking Forward

Janus case deals a blow to unions



By Mark James Miller, July 27, 2018

It's been called the most significant court decision affecting collective bargaining rights in decades. When the Supreme Court ruled in favor of the plaintiff in *Janus vs. American Federation of State, County, and Municipal Employees*, it dealt a blow to public employee unions that will be felt for generations to come.

The *Janus* case, like the *Frederichs* case before it, involved a public employee who objected to paying what is known as the "fair share" or "service fee" to the union that represents the worker. His claim, that he was being forced to support through his fair-share dues deduction political candidates he does not agree with and thus violating his 1st Amendment rights, was upheld in a 5-4 decision.

Justice Samuel Alito, who wrote the majority opinion, stated the service fee compelled "individuals to mouth support for views they find objectionable," a practice that "would in most contexts be universally condemned."

This argument, that paying the fair-share fee forces a person to support a particular candidate like it or not, is untrue. Until the *Janus* decision, an employee had the option of not paying that percentage of their fair-share fee that went to political activities. The rest went to defray the expenses of representing them in the collective bargaining process and in other ways, such as in disciplinary matters.

And since the union is legally obligated to represent all employees when it bargains with the employer, and since all employees, members and non-members alike, benefit from what the union gains for them, that seemed a common sense and fair compromise.

No longer. Now public employee unions, such as the Part-Time Faculty Association, will be forced to bargain for people who contribute nothing but will reap the benefits of what the union gains for them. This sounds like a sweet deal for the non-members — after all, who wouldn't like the idea of contributing nothing and having someone else fight on your behalf for an increase in pay or benefits. In the long run, however, those who support this practice may see that they have worked against their own interest.

With the end of the service fee will, in all likelihood, come a decline in the unions' ability to collectively bargain on its members' behalf. As Justice Elena Kagan noted in her dissent, “everyone — not just those who oppose the union, but also those who back it — has an economic incentive to withhold dues.”

Union membership is likely to decline and with that will come an erosion in union power. As another observer noted, “Without the ability to collect fair-share fees, many (public employee unions) may not survive.”

The political right has long had public employee unions in its gunsights. With union membership in the private sector down to 6.5 percent, public employee unions were the nation's last bastion of union power. Now that bastion is crumbling away.

Mark Janus, the Illinois public worker who was the plaintiff in the Janus case, is leaving his job with the state of Illinois to become a senior fellow at the Illinois Policy Institute, one of the right-wing think tanks that paid his legal

expenses. While he moves on to what are surely greener pastures, he leaves behind public employees who are going to see their wages, benefits and working conditions decline as their unions lose their ability to confront the employer on anything resembling equal terms. In the years to come, he has to live with that.

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