# FREQUENTLY ASKED QUESTIONS
## *JANUS v AFSCME*

***The U.S. Supreme Court heard oral arguments in Janus v. AFSCME earlier this year, and is expected to rule soon on this important case that will impact all public employee unions, and, in turn, public employees and employers.***

***In anticipation of questions related to the court's ruling and recent written requests of labor unions, the following FAQ is intended to give CSBA members a better understanding of the potential impacts of the Court's decision.***

**Q. What is "*Janus*"?**
A. "*Janus*" refers to *Janus v. AFSCME*, a case currently pending before the United States Supreme Court. The case involves a challenge to the Illinois Public Labor Relations Act, which, like laws in California and 22 other states, requires public employees represented by unions to pay an "agency fee" to the union if they do not wish to pay full dues. The plaintiff contends that the agency fee requirement amounts to "compelled speech" in violation of the First Amendment. If the Justices rule for the plaintiff and reverse the precedent of *Abood v. Detroit Board of Education*, the decision will likely have an adverse financial impact on school employee unions and in some LEAs may have implications for their labor-management relations and will affect the processes for back-office operations such as payroll deductions.

**Q. What are agency fees?**
A. A 1977 Supreme Court case, *Abood v. Detroit Board of Education*, gave public employees represented by a union the right to opt-out of paying full dues, but upheld the legality of requiring them to pay an "agency fee," sometimes referred to as a "fair share" fee. That fee is an amount calculated to cover the costs of union representation relating to collective bargaining. It does not include the costs of political activities. California's Educational Employment Relations Act ("EERA") requires payment of agency fees as a condition of employment. Labor argues that everyone who benefits from collective bargaining activities should share fairly in the cost. Employees can currently opt out of only those fees that would go toward a union's political activities. Janus is arguing that bargaining activity is inherently political and, therefore, he should be able to opt out of paying any fees at all to the union.

**Q. How will these rules change if the Supreme Court strikes down agency fee requirements?**
A. If the Court rules that agency fee requirements violate the First Amendment, the provisions of the EERA that provide for them will no longer be valid, and public employees who choose not to join their union will be able to opt out of paying any union dues, including agency fees. The precise effect on MOU agency fee provisions will depend on the language of the decision.

**Q. When is the ruling expected?**
A. The Court will issue a ruling by the end of June.

**Q. If the Court has not even ruled yet, why are we talking about the case now?**
A. Based on the Justices' votes in prior cases and their comments and questions during oral argument, the Court is widely expected to rule that agency fee requirements do violate the First Amendment. If that happens, public agencies will have to react quickly. In addition, public sector unions are already making preparations in anticipation of the Court's decision, and many Districts are fielding inquiries from unions and individual employees.

**Q. What obligations will public employers have to their represented employees following *Janus*?**
A. Depending on how the Court words the decision, public employers may have to suspend agency fee deductions immediately. Public agencies should be prepared to communicate in a neutral and factual way with agency fee payers about the decision and what changes will result. In communicating with employees, public employers should keep in mind the recently-enacted SB 285, which provides that public employers "shall not deter or discourage public employees from becoming or remaining members of an employee organization."

**Q. What obligations will public employers have to labor organizations following *Janus*?**
A. If the ruling is as expected, we anticipate that employer obligations to labor organizations will remain the same, aside from having to continue to honor agency fee provisions. Employers will be required to address employee requests relating to payroll deductions and opting out of the union. However, the procedure to be used remains a question depending on the court's order. Employers must continue to respond to requests for information from the unions that are related to their representation of their members.

**Q. What are some things we can do now to prepare for the ruling?**
A. Because employers may have to act quickly following the Court's decision, there are a few steps that employers should consider taking now:

1. Review current MOUs, focusing on provisions relating to agency fees, maintenance of membership, savings and reopener clauses. Seek legal advice to determine the effect of agency fee provisions being invalidated.
2. Generate lists of current agency fee payers with their current contact information.
3. Work with payroll to ensure that agency fee deductions can be discontinued quickly.

**Q. We received a request from an agency fee payer to cease payment of fees immediately. What are our options and obligations?**
A. The Court has not issued a decision yet. Until it does, the agency fee requirement is still the law. If the Court does invalidate agency fee requirements, the request would have to be honored at that time.

**Q. What preparations or responses can we expect from labor organizations?**

A. Public sector unions have already engaged in extensive planning and discussion in an effort to preserve as much of their dues-paying base as possible. Employers can expect requests for information, requests to meet and confer over the effects of *Janus*, requests for release time, and proposals seeking to add or strengthen maintenance of membership provisions.

In the longer term, employers may see an increase in grievances, PERB charges, and job actions, including strikes, as the unions work to demonstrate their value to employees. There may also be shifts in leadership, new faces at the bargaining table, more disputed officer elections, decertification petitions, and an overall change in tone to more confrontational labor relations. Other employers may not see significant changes in union membership or negotiation tactics, and may continue to work collaboratively with their local unions.

**Q. How can we expect the California legislature to respond?**

A. The legislature is already considering several bills in an attempt to mitigate the likely effects of the *Janus* decision:

- AB 2980 would make the date, time, and place of new employee orientations available only to the employees and their exclusive bargaining representatives. This legislation is intended to limit outside interference with employee orientations by those who might be interested in dissuading employees from joining the union.
- AB 2577 would allow taxpayers to deduct union dues from gross income.
- AB 2154 would require employers to provide release time to union representatives for the purpose of investigating and processing grievances, enforcing the terms of the MOU, and preparing for those activities.
- AB 2049 would give unions control over determining whether requests for revocation of dues deduction authorizations from employees is valid, and would require the unions to indemnify districts against any claims made by an employee based on such determination.

**Q. What long-term effects can we expect?**

A. Of course, it is impossible to predict what will happen, but public sector unions are preparing for the worst. In Wisconsin, after the state legislature enacted "right to work" statutes governing public employees and limited their right to bargain, union membership fell dramatically, with some estimates as high as 50%. In California, the legislature is likely (and has already begun) to act to support public sector unions, but the drop in revenues will still present a long-term challenge for public sector unions, with ripple effects for employers as well.

**Q. What are the risks to the District?**

A. In some areas, we may be headed for a period of labor unrest, or at least more strained relationships with labor unions as they struggle to maintain their membership. Employers should also be aware of the risk of getting caught in the crossfire of disputes between unions and individual employees, or between unions vying for representation rights. Employers should avoid expressing opinions or offering advice to employees regarding the implications of *Janus*, and should strive for neutral, factual communications in response to questions and requests.

**Q. Are there other, similar legal issues on the horizon?**

A. In Illinois, the Operating Engineers Local 150 has filed suit against the governor seeking to invalidate the duty of fair representation requirement in the state's Public Labor Relations Act on the theory that "forcing unions to advocate on behalf of non-members who object to the very reasons they exist is a severe violation of unions' First Amendment rights to association." It is unclear whether other unions in other jurisdictions will follow suite.

Another case currently pending in California is *Yohn v. California Teachers' Association*. In that case, the plaintiffs are challenging the opt-out procedure for represented employees to cease paying union dues as unduly burdensome.

Whatever the outcome of those cases, there is likely to be a period of legal uncertainty over the rights of individual employees, the rights and responsibilities of labor organizations, and even the future of exclusive representation.

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