

Fact Sheet on Janus v. AFSCME Council 31: The Threat to Fair Share

Background Janus v. AFSCME Council 31: Janus v. AFSCME began as a political scheme by Illinois Gov. Bruce Rauner, who shortly after taking office issued an executive order and filed a lawsuit trying to ban fair-share fees. This case did not have standing because it had not stated a claim upon which relief could be granted. Mark Janus, Brian Trygg and Marie Quigley filed motions to intervene as plaintiffs on the side of the governor. The judge dismissed the governor from the case, but allowed the intervenors to bring their claims.

Who has brought this case? The National Right To Work Legal Defense Team on behalf of Mark Janus, a child support specialist at the Illinois Department of Healthcare and Family Services. Janus is a member of the American Federation of State, County and Municipal Employees (AFSCME). The National Right to Work Legal Defense Team argues that, because issues like salaries, pensions and benefits for government employees are inherently political, agency fees – even if characterized as the costs of contract negotiations – are supporting “speech designed to influence governmental policies.” Therefore, he maintains, requiring him to pay an agency fee isn’t actually any different from forcing him to subsidize a group that lobbies the government. Indeed, he observes, an agency fee may require state employees to “subsidize advocacy that they oppose and that may harm their interests.” In his words, “The First Amendment guarantees freedom of speech and freedom of association. Mark Mix, President of the National Right To Work Foundations, states, “This is a violation of providers’ freedom of association.”

What is this National Right To Work Legal Defense Team? The **National Right to Work Legal Defense Foundation (NRTWLDF)** is the legal arm of the **National Right to Work Committee (NRTWC)**, a non-profit organization. The NRTWLDF was established in 1968. According to the NRTWC website, “Its mission is to eliminate coercive union power and compulsory unionism abuses through strategic litigation, public information, and education programs.” The NRTWC has deep financial connections with the Koch brothers. Reed Larson, who led the NRTWC groups for over three decades, became an early leader of the **John Birch Society**, which was founded by Fred Koch, father of David and Charles Koch. **Charles and David Koch of Koch Industries** have supported numerous ultra-conservative political candidates and causes. In 2012 **Koch’s Freedom Partners** group funneled \$1 million to the NRTWC. **The Charles G. Koch Charitable Foundation** gave \$15,000 a grant to the NRTWLDF which also received significant funding from the Koch-connected **Donors Trust and Donors Capital Fund**. At least three former Koch associates work as attorneys for the NRTWLDF. The brothers are associated with the **American Legislative Exchange Council (ALEC)**, which has pushed for privatization of public education and eliminating school employee unions, and modeled legislation to eliminate teacher rights in the classroom, to certify non-credentialed individuals as teachers, and promote private voucher programs.

Corporate CEOs and wealth special interests want to further tilt the economic rules in their favor by making it even harder for workers to come together, speak up and get ahead. This case, which deals with

public service workers, is just the latest tactic by the same wealthy special interests that have been attacking working people for decades. The best way for working people to get ahead is to band together to win better wages, working conditions and benefits. This case is not about worker freedom; it's about weakening the unions workers depend on to advocate for their interests.

What is the basic issue before the Supreme Court in Janus? Should *Abood v. Detroit Board of Education* be overruled and public-sector “agency shop” arrangements be invalidated under the First Amendment? Janus asked the Supreme Court to overrule the Abood decision and hold that requiring an unwilling employee to pay even this more limited fee violates the First Amendment. The defendant unions brought a motion to dismiss based on the precedent established by the Supreme Court in *Abood v. Detroit Board of Education* which gives the public sector unions the right to collect fair share fees from non-members.

What is Abood? *Abood v. Detroit Board of Education*-In 1977, the Supreme Court ruled that public employees who do not belong to a union can be required to pay a fee – often known as a “fair share” or “agency” fee – to cover the union’s costs to negotiate a contract that applies to all public employees, including those who are not union members.

Challenges to Abood v. Detroit Board of Education: *Harris v. Quinn*- In June 2014, the court found that the home health aides/ care workers in Illinois were not “full-fledged public employees”, therefore the rules for Abood did not apply. In the case of *Friedrichs v California Teachers Association*, in March 2016, Friedrichs objected to having to pay agency fees. The court heard oral arguments in the case but had not yet announced its decision before Supreme Court Justice Scalia died. The Supreme Court upheld Abood.

What are Fair Share Fees? Everyone can choose whether or not to join a union at work and nothing in this case will change that. When the majority of people vote to form a union, however, the union is required by law to represent everyone in the workplace, whether that employee is a union member or not. As all public employees enjoy the benefits, job security and other protections the union negotiates, it is only fair that all employees contribute to the cost of securing those benefits and protections. Currently employees of the bargaining unit who do not wish to pay the fees that are considered to be political and ideological must complete a process in order to opt-out of the union, become Agency Fee Payers, and are reimbursed for those costs. They only have to contribute to the costs of the representation they receive, including the cost of negotiating and maintaining contractual benefits, protections and rights. They are no longer considered members of the union - no voting power and cannot hold office in the union, but receive the benefits of the collective bargaining agreement and the grievance administration, and all union services they are paying for.

What is currently happening with the case? On September 28, 2017 the Court granted the permission to hear the case this year. Arguments will be heard February 28, 2018. A Supreme Court Decision shall be rendered by June 2018.

What's at stake if unions lose this case? Abood may be overturned. Members may have to opt-into the union or re-sign their union card. Members may choose to leave to save a few dollars, or give themselves a raise. If enough members choose that path, it is possible that your union will not be able to function effectively as an advocate for members - or possibly to function at all. The union could be decertified; in that case your collective bargaining agreement would only stay in effect for one year. After that you will not have a contract. The Contract would be deemed null and void. No more salary schedule, no requirement of the district to provide or contribute to health insurance, no rules about working conditions, no grievance procedure, and so on. All employees would become at-will employees who are completely subject to managerial discretion on everything concerning their employment. Which is similar to the way it is now in many Right-to-Work states where there is no collective bargaining. If and when that happens, the "savings" achieved by not paying dues would be seen for what it is; a very bad bargain! By that time, it would be too late to do anything about it.

Essential Questions to Ask:

1. Without a certain level of membership, how will you enforce your contract?
2. Will the District take any grievance seriously or even bother to come to the table with you?
3. Without the dues, how do you provide service for disciplinary matters?
4. Without the dues, how do you sustain a budget?
5. Without the dues, who will defend the concept of public education?
6. Without the dues, who will stand up for students and adequate school funding?
7. Without the dues, who will negotiate your contract, including salary, health insurance, work hours, APPR?
8. What will happen over time when even the most agreeable of employers begins to realize that the association can no longer back up its statements or actions?
9. Who will argue and provide exceptional professional development opportunities?
10. Who will fight for and represent the most vulnerable members and families? What will happen to the collective voice?
11. Was Janus an active member of the Union who could stand up to the National Right to Work Legal Foundation (NRTW) and related groups like the Freedom Foundation and the Center for Individual Rights (a network funded by billionaires and corporate CEOs who use their massive fortunes to tilt the playing field in their favor) who often seek out people who feel like their rights have been violated?
12. Did Janus understand the complexity of the Union's political challenges?

13. Many of our agency fee payers are looking for the extra dollar or have no real understanding of what the union values and how that might align with their own values.