

NSBA's FAQs on *Janus v. AFSCME*, (decided, June 27, 2018)

1. What was the *Janus* case about?
 - a. This case involved a lawsuit brought by an Illinois public employee, Mark Janus, challenging a union's right to collect dues and fees (so-called fair share provisions), against the employees will.
 - b. Janus claimed that compelling him to pay the union dues and fees when he did not join and strongly objected to the positions the union took in collective bargaining and related activities violated his First Amendment right.

2. What was the Court's ruling in *Janus*?
 - a. In a 5-4 decision, the U.S. Supreme Court, overruling *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), held: "The State's extraction of agency fees from nonconsenting public-sector employees violates the First Amendment."
 - b. In short, the Court ruled that employees cannot be compelled to pay union dues or fees, because doing so violates the free speech rights of the employee by compelling him/her to subsidize the union's "private speech on matters of substantial public concern."

3. Is there a distinction between union fees and union dues?
 - a. Yes, dues are generally the monies paid by members to a union for representation in collective bargaining matters while fees are monies paid by members for other purposes, including political purposes. Dues and fees are part of so-called "fair share" provisions in collective bargaining agreements.
 - b. For purposes of the Court's ruling in *Janus*, there is no distinction between dues and fees. Employees cannot be compelled to authorize deductions (whether dues or fees) from their pay to a union.

4. Who will the Court's ruling affect?
 - a. The ruling most directly applies to all public-sector unions and public employers & employees.
 - b. At the very least, it will affect the 23 states that allow unions for public employees to negotiate fair-share fees.

5. How will it impact states & jurisdictions that do not have fair-share provisions in their statutes?
 - a. Likely, there will be little to no impact on these jurisdictions, particularly if those jurisdictions prohibit fair-share provisions.
 - b. However, in jurisdictions that allow unions to collect fair-share monies without the employee's authorization, those deductions cannot be collected from employees who do not join the union and object to the deductions.
6. Will unions still be required to represent and provide other benefits to district employees who have chosen not to join those unions?
 - a. Yes, unions will be required to represent and provide other benefits to district employees who have chosen not to join them. The *Janus* opinion clearly states that a union's duty of fair representation is a necessary part of the authority that it seeks when it chooses to be the exclusive [bargaining] representative. Therefore, it has the duty to represent non-members, as well as members, even though non-members will no longer be required to pay agency fees.
7. Will this decision require us to renegotiate our union contracts?
 - a. The decision may require you to renegotiate your union contracts. Agency fees can be allowed by state law or by the collective bargaining agreements (CBAs) that your school district has with its unions.
 - b. If the agency fee is required by a CBA, a school district will need to re-negotiate the agreement so that it is consistent with the holding in *Janus*.
 - c. If the agency fee is a provision of state law, you should work with your COSA member school attorney to determine what steps your district needs to take to ensure compliance with the Court's ruling in *Janus*.
8. Will this decision affect other aspects of our district's negotiations with its unions?
 - a. It depends on a district's current practices, but it is unlikely. The decision narrowly focuses on the question of dues and fees.
9. Will this decision affect the way in which we collect union dues from employees?
 - a. It depends on your current practices. If you are in a jurisdiction that allows deductions from employees for their union fees, you should ensure that an employee has authorized those deductions. Obtaining an employee's signature or using a verified electronic signature application is recommended. As a matter of fact, Justice Alito's majority opinion lists the ability to obtain automatic payroll deduction of union dues

and fees from employee wages as an additional privilege of being exclusive representative.

- b. Although the U.S. Supreme Court did not address the issue of automatic payroll deductions of union dues in *Janus*, some states have enacted legislation barring government entities, such as school districts, from using automatic payroll deductions for union dues. For example, in *Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013), the Seventh Circuit held that Wisconsin's law barring automatic deduction of union dues from paychecks of public employees represented by general public employee unions, but permitting such deductions from paychecks of public safety employee union members did not violate the First Amendment. The Sixth Circuit in *Bailey v. Callaghan et al*, 715 F.3d 956 (6th Cir. 2013), likewise, ruled that Michigan's law prohibiting public schools from collecting union dues from its employees, did not violate the rights of teachers or their unions under the First Amendment and the Equal Protection Clause. It is best to confer with your COSA member school attorney to review your state's laws.

10. What are some best practices that our district can employ to comply with the *Janus* ruling?

- a. Engage your COSA member school attorney to review your collective bargaining agreement(s) (CBAs).
- b. Ensure that your CBAs comply with state law as impacted by *Janus*.
- c. Determine whether state law requires "sign-off" by employee prior to union fees or dues deductions.
- d. Establish a system that requires prior authorization by an employee prior to union dues or fees being deducted.
- e. Engage your local union bargaining agent as a partner in implementing new processes.
- f. Review your CBAs agreements to determine whether they contain clauses that require agency fees. If they do, work with your COSA member school attorney and your union to renegotiate the contract so that there is a process in place to ensure only authorized deductions are being made.
- g. If the fees are a function of your state's law, work with your COSA member school attorney for assistance in determining how you can best implement the Court's ruling in *Janus*.
- h. If you are deducting agency fees from non-union members, make certain that the process for collecting union fees dues is updated so that you do not continue to take fees from employees objecting to the deductions.