

## U.S. SUPREME COURT AGREES TO HEAR MAJOR FAIR SHARE CASE

At the beginning of October, the Supreme Court agreed to hear and decide a major case that challenges the constitution validity of fair share clauses in public sector collective bargaining agreements. This case is known as *Janus v. AFSCME* and arose in Illinois initiated by Governor Rauner in the first two or three months of his term of office. The trial court dismissed his case on procedural grounds but allowed a replacement case filed by employees of the state to make the same arguments. The case was dismissed at the district and appellate court levels, but the Supreme Court has now agreed to determine whether the First Amendment to the United States Constitution allows public sector unions to charge employees who choose not to join the union for the costs the union incurs in negotiating collective bargaining agreements, processing grievances and engaging in other activities that directly benefit the members of the collective bargaining unit.

This is a significant effort by the Right to Work Committee to overturn the 1977 precedent of the Supreme Court in *Abood v. Detroit Board of Education* in which the Court held that public employees could be required to pay a fair share fee if they do not join the union. *Abood* was a unanimous opinion of the Supreme Court and has effectively governed labor relations between public employers, employees and unions since 1977. Although no single employee in the public sector may be forced to join the union or to pay for the union's political contributions and political activities, it is clear that under *Abood* employees can be required to pay the costs incurred by the union for representing the employees. In effect, the *Abood* precedent held that employees could not get a free ride and expect the delivery of services from a union without paying a fair share fee. The fair share fee is normally calculated on the basis of collective bargaining and representation expenses incurred by the union. Political expenses may not be included in the calculation of the fair share fees.

For unions confronted with the possibility of the fair share fee being declared unconstitutional, it is critical to engage in intensive organizing efforts to assure that employees join unions and understand the substantial benefits unions bring to them in the form of collective bargaining negotiations, grievance processing and the pursuit of arbitration cases. Some unions have been very successful in creating member only benefits, such as legal services programs to protect employees. The police unions, for instance, have been very successful in maintaining large membership numbers by providing legal services programs for officers who are accused of on-duty misconduct.

It is reasonable to expect that the Court will decide this case before June 30, 2018. The expectation among those who follow Supreme Court litigation is that the case will be argued in either January or February 2018.

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