Fair Share Fees…
Going, Going, Gone.

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League of Minnesota Cities

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Information contained herein is intended to be educational in nature and does not constitute legal advice.
Janus v. AFSCME: Overview

- On June 27, 2018, the United States Supreme Court issued a decision ruling it is unconstitutional for public employees, who are not full union members, to be required to pay fair share fees.

- Public employees can no longer be required to pay fees to unions to cover the costs of the work unions do on behalf of all members, such as negotiating wage and benefit increases.
Janus v. AFSCME: Overview

Facts in Janus:

- The Plaintiff Mark Janus, is a child-support specialist in the Illinois Department of Healthcare and Family Services.
- Janus and the two other plaintiffs who are not full members of the union, were required pursuant to Illinois law, to pay mandatory union fees (i.e. fair share fees) despite their non-membership in the union.
- The plaintiffs asserted they disagreed with union activity and argued the requirement they pay fair share fees violated their First Amendment rights.
  - Janus wrote in the Chicago Tribune: “The union voice is not my voice. The union’s fight is not my fight. But a piece of my paycheck every week still goes to the union … And I shouldn’t be forced to pay money to a union if I don’t think it does a good job representing my interests.”
Janus v. AFSCME: Overview

Issue in Janus:

What are Fair Share Fees? Prior to Janus, Minnesota and 22 other states had statutes that permitted unions to require public employees to pay “fair share” or “agency fees” to a union regardless of whether the employees are members of the union or want to support it.

Constitutional Challenge to Fair Share Fees  Mandatory union fair share fees have faced criticism and have been challenged in court all across the country, including multiple challenges in front of the United States Supreme Court.
Janus v. AFSCME: Overview

History before Janus:

- **Abood v. Detroit Board of Education**, 431 U.S. 209 (1977). The first time the constitutionality of fair share fees was considered by the Supreme Court was in *Abood*.
  - The Court ruled the requirement imposed on the teachers that they pay a fair share union fee did not violate the constitution.
  - The First Amendment does not prevent fair share arrangements where public employees who do not join the union are still required to pay their “fair share” of union dues for “collective bargaining, contract administration, and grievance-adjustment.”
Janus v. AFSCME: Overview

**Decision of Janus Court:**

Justice Alito wrote for the majority of the Supreme Court in the 5-4 decision where the Court overruled the 41 years of precedent from *Abood*, finding that it “was not well reasoned.”

The Court ruled fair share fees could no longer be levied against employees unless the employees “affirmatively consent” to payment of those fees.

> “Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.”

To be effective, the consent must be “freely given and shown by ‘clear and compelling’ evidence.”
Janus v. AFSCME: Impact on State Statute

Before Janus, Minnesota and 22 other states had laws permitting fair share fee deductions.

PELRA previously authorized fair share fee deductions and established requirements for collecting fees. Minn. Stat. § 179A.06, subd. 3.

This statutory provision is now void.

Collective bargaining agreement provisions addressing fair share fees are also void.
Janus does not impact which employees are included in a bargaining unit represented by a union and covered by the labor contract.

Employees that meet the definition of the bargaining unit referenced in the recognition article and certified by the Bureau of Mediation Services remain in unit and are subject to the labor contract, except for provisions addressing fair share fee arrangements.

Unions still have an obligation to bargain for and represent all persons in the bargaining unit, members and nonmembers alike.
Overarching Questions
Following Janus v. AFSCME

- What could the decision mean for public unions?
- Will losing the fair-share dollars substantially weaken unions in Minnesota?
- Are there long-term consequences public employers could face in negotiations and grievance processing?
Janus v. AFSCME: Impact on Public Sector Unions

- Minnesota currently has a fairly large union workforce. According to the Bureau of Labor Statistics, in 2017 the 411,000 union members in Minnesota accounted for approximately 15.2% of the workforce compared to the national average of only 10.7%.

- Public sector unions account for at least a third of Minnesota’s total union representation. Education Minnesota, the teachers’ union, reportedly has 70,000 members, while AFSCME has 56,000 and the Minnesota Association of Professional Employees has 14,500.
Practical Considerations for Public Employers

Payroll Practices

- The immediate impact of Janus for public employers is the requirement that they immediately discontinue all fair share fee payroll deductions effective the date of the decision – June 27, 2018.
Practical Considerations for Public Employers

Payroll Procedures - Time Related Questions

- Refunds for fair share fees previously deducted for June 27-30, 2018?
- Effective date applicable to date payroll checks are issued or date associated with wages earned?
- Differing Interpretations: Consideration of communicating with Unions to determine the Union’s position on implementation issues.
  - Will Union provide refund to employees for fair share fees deducted June 27-30, 2018?
  - If Employer refunds employees with fair share fees deducted for June 27-30, 2018, will Union reimburse Employer?
Practical Considerations for Public Employers

Payroll Procedures - Time Related Questions

☐ AFSCME Council 5 statement in FAQ on AFSCME website:

☐ “Unions should not accept any more agency fees from employers, and if payments are in process and can’t be stopped, any amounts attributable to agency fee payers (as distinct from membership dues) should be returned to the employer or, if that is not possible, escrowed and returned to the fee payers.”

☐ “Agency fees received on or after June 27, 2018, should be returned, even if fees are attributable to payrolls covering work periods before June 27.”
Practical Considerations for Public Employers

Questions from former Fair Share Fee Employees:

- Whether to consent to fair share fee deductions?
  - "Affirmative Consent" – Must be clear and convincing, but must make deduction if consent provided.
- Whether to join union as a full member?
- What are relative advantages and disadvantages of each?
- Best Practice: Union membership is an issue between the union and the employee.
Practical Considerations for Public Employers

Questions from Full Union Member Employees:

- Whether to reduce dues and become Fair Share fee payor
- Best Practice: Union membership is an issue between the union and the employee.
Questions from Full Union Member Employees:

❑ Whether to stop paying union dues?

❑ AFSCME Council 5 statement in FAQ on AFSCME website:
  
  “For members who signed an authorization card that commits them to financially support the union for a particular period of time, the card and the obligation to support the union remain are valid. For example, cards that include “maintenance of dues” language – whereby the member agrees to pay dues “irrespective of membership in the union” for a set period of time – such authorization cards are enforceable. If you are not using this language, you should start using it now.” ... “If a member contacts the union requesting to stop their membership or their dues deduction at a time that is outside the window established in their authorization card, the affiliate may advise the member that her request is untimely.”
Practical Considerations for Public Employers

- **Effects on future contract negotiations**
  - Potential Union proposals for:
    - Participation in new employee orientation,
    - Regular/electronic information about personnel changes within the bargaining unit,
    - Employer agreement to enforce maintenance of dues checkoff agreements, and
    - Recognition of electronic signatures for dues authorizations.

- **Effects on grievance filing and processing**
Hokeman v. Education Minnesota

Class action lawsuit filed in federal district court in Minnesota on June 18, 2018 by Plaintiffs’ Linda Hoekman and Deborah York on behalf of current or former public school teachers arguing the union has violated Plaintiffs’ constitutional rights

Relief requested includes an order that the Union “refund all ‘fair-share fees’ that they unconstitutionally extracted from Ms. Hoekman and her fellow agency-fee class members.”
Response to Janus v. AFSCME: More Litigation

- **Uradnik v. Inter Faculty Organization**
  - On Friday, July 6, 2018, Kathleen Uradnik, a political science professor at St. Cloud State University filed a federal lawsuit in Minnesota.
  - Suit is based on the *Janus v. AFSCME* decision, and alleges that forcing her to pay union dues violates her First Amendment rights.
  - Suit also alleges the union has negotiated special preferences for union members in matters related to obtaining tenure and promotions and requests a judgment barring discrimination against nonunion faculty.
Some have speculated that public sector unions may attempt to have legislation introduced in Minnesota to make it more difficult for public employees to discontinue paying full union dues.

Union cards may be altered relative to opt-out periods and procedures.

Some unions tried to pre-empt the impact of Janus by asking members to sign a new union cards that affirmed or reaffirmed members membership with the Union.
Thank you!

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