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MEETING THE NEEDS OF OUR SCHOOL DISTRICT CLIENTS SO THEY CAN FOCUS ON THEIR MISSION OF EDUCATING CHILDREN.

# K12 focus

JUNE 27, 2018

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## 'Fair Share' Union Dues Declared Unconstitutional

On June 27, 2018, the U.S. Supreme Court issued its decision in *Janus vs. AFSCME*, a case arising out of Illinois. The split decision (5-4) held that 'fair share' dues collected by public sector unions is unconstitutional. This decision will have a significant impact on Illinois school districts and other public bodies; Illinois is one of 23 states that has traditionally allowed the collection of 'fair share' dues.

### **Janus Background**

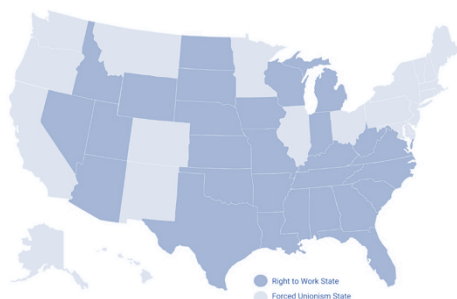
Mark Janus holds a union position with the Illinois Department of Healthcare and Family Services, but opted not to join the union. Nonetheless, 'fair share' dues to the AFSCME local were automatically deducted from his paychecks. These dues, which are typically charged at or near (90%) regular dues, act to offset the costs of union activities that all employees benefit from. Because 'fair share' members continue to pay union dues, they are entitled to fair representation by the union and every applicable benefit under the labor contract, including health care, pensions, step increases, etc.

### **Aboud Precedent**

In 1977, the U.S. Supreme Court issued a unanimous decision in similar litigation against the Detroit Public Schools that allowed public unions to legally charge non-members 'fair share' dues. *Aboud v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977). Importantly, the Aboud Court sanctioned the collection of 'fair share' dues, but only on the condition that the dues not be used for any political purpose.

Forty years later, the Court's reasoning grew more nuanced. This time around, the Court referred to *Aboud* as an "anomaly" and a decision made in error that was not "well reasoned."

Reversing *Aboud*, the *Janus* Court held that public sector unions are prohibited from extracting 'fair share' fees without the consent of the employee because to do so violates the employee's First Amendment guarantee of freedom of speech.



Source: National Right to Work Legal Defense Foundation  
<http://www.nrtw.org/right-to-work-states/>

### Terminology

Media coverage may refer to ‘fair share’, ‘agency’, or ‘service’ fees – these terms all have the same meaning.

There will also likely be extensive discussion and debate about the effects of the *Janus* decision on the public sector ‘Right to Work’ philosophy. Twenty-eight states are currently considered ‘Right to Work’ states, which prohibit compelling membership or payments to a union as a condition of employment. Illinois is considered a ‘Forced Unionism’ or ‘non-Right to Work’ state.

“States and public-sector unions may no longer extract agency fees from nonconsenting employees.”

JUSTICE SAMUEL ALITO



QUESTIONS?

JANUS  
V.  
AFSCME

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## Next Steps...

- 1) Assign a point person to field questions from staff, community members and media outlets. It is advisable to ask board members to refer all questions to the Superintendent or designee to help ensure a coordinated response.
- 2) Work collaboratively with union leadership to provide consistent messaging and a smooth transition relating to payroll adjustments. Meet with union leadership regarding possible bargaining implications.
- 3) Review collective bargaining agreements for ‘fair share’ language, payroll deduction arrangements, etc. District administrators must be readily familiar with the process by which ‘fair share’ dues are deducted.
- 4) Payroll deductions and remittance of ‘fair share’ fees to the IEA or IFT will change immediately; the Court’s decision is effective as of the date it was issued. The timing of the decision is fortuitous since ‘fair share’ and union dues are commonly deducted only during the school year. Ascertain how ‘fair share’ dues deductions are made for employees who are paid year-round.
- 5) Keep in mind that *Janus* does not impact union member employees who are voluntarily paying their union dues. Provisions are made for bargaining unit members who have a religious objection to union dues and who donate to a charitable organization in lieu of the fee. Review the election forms completed by employees or payroll records to determine which category each bargaining unit member falls in.
- 6) Review any management rights, zipper, reopener, and/or severability clauses contained in the school district’s current collective bargaining agreements to determine whether any of these provisions apply. Work directly with legal counsel to take actions necessary to amend or eliminate collective bargaining provisions that are contrary to *Janus*.

[Read the Full Supreme Court Decision Here](#)



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