

## ***Janus v. AFSCME Explained***

In a 5 to 4 decision in *Janus v. AFSCME*, the conservative Justices on the Supreme Court effectively read into the First Amendment of the U.S. Constitution a national right to work law for the public sector. Under the decision, no state or school district or other public employer anywhere in the country can permit a union to charge non-members a fee for the costs of their representation. Such fees – often called fair share or agency fees – had previously been permitted in many states with public sector collective bargaining and allowed unions who represented a bargaining unit to spread the costs of representing that unit in bargaining across all employees in the unit.

The *Janus* decision means that unions in the public sector can no longer charge non-members fair share or agency fees. NEA and its affiliates who previously did collect such fees have now stopped doing so in order to comply with the decision. Delegates to the NEA Representative Assembly have asked a number of questions about what the decision means. NEA held a town hall for delegates the day the decision came out to answer those questions. This short overview provides a brief review of the answers to the most frequently asked questions for the use of both delegates and affiliates.

### **FAQ's**

**1. Can the *Janus* decision be overturned by federal or state law?** No, the *Janus* decision held that the First Amendment of the U.S. Constitution prohibits charging non-members fair share fees. The U.S. Supreme Court is the supreme arbiter of what the U.S. Constitution, our highest governing law, means. Only the U.S. Supreme Court can overturn its ruling as to what the U.S. Constitution means.

**2. My school district is saying that *Janus* means the union needs to re-sign existing members, is that right?** No, that is wrong. *Janus* only addresses whether involuntary fair share fee or agency fees are permitted, and holds that they are not. The Court's opinion expressly states (at page 48) that it is only addressing payments collected from non-members (feepayers) by stating as follows: "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 a payment, unless the employee affirmatively consents to pay."

**3. Can unions decline to represent feepayers altogether or charge them fees for that representation?** When a union is acting as an exclusive collective bargaining representative, meaning it has been recognized by the employer as the sole authorized representative of the employees in a bargaining unit, the union is obligated by state labor law to treat all employees in the unit fairly without discrimination. That means, among other things, that unions cannot withhold from feepayers' collective bargaining representation that it provides to members.

*Janus* also makes clear that the First Amendment prohibits a public sector employer from agreeing to provide union members with greater benefits in a collective bargaining agreement than are provided to non-members.

But there are many services and benefits that unions provide to members besides collective bargaining. Unions may restrict those services and benefits solely to members. For example, in many states teacher dismissal matters are governed by tenure law, and nothing in *Janus* prohibits unions from either declining to represent non-members in such disputes or from charging a fee to non-members for the representation they provide.

**4. Given *Janus*, why should my union do anything at all for feepayers?** Feepayers are potential members. Like anyone else, the union should treat feepayers with respect, engage them to help them understand how educators and students will be better off if everyone does their part. Collectively, we are stronger than any one of us as individuals.

**5. What if feepayers are willing to voluntarily pay their fees?** *Janus* permits unions to continue to collect fair share or agency fees if individuals clearly and affirmatively consent to such payments.

**6. What should my union be doing in response to *Janus*?** The real work of the union after *Janus* is continuing to re-engage existing members and organize new members.

**7. Does *Janus* in anyway address when members can opt-out of the union?** No, *Janus* was about what fees may be charged to feepayers, it did not address union membership or payroll dues deductions for members.

**8. How can public employers continue to support the value of strong labor management relationships?** In the wake of *Janus*, many public employers have communicated with their employees about their continuing support for the strong labor management relationships that strong unions make possible. In addition, many state legislatures have passed laws that provide exclusive bargaining representatives with important rights to access and contact information for employees so that the representative can effectively represent all employees in the unit.

**9. Should we be concerned about what the Supreme Court might do next?** Yes, absolutely. The *Janus* decision was the result of Trump filling the seat that the U.S. Senate Republicans stole from President Obama. Trump's appointment, Justice Gorsuch, provided the critical 5<sup>th</sup> vote in the *Janus* case for overruling *Abood*. Another Trump Justice on the

Court would jeopardize core workers' rights, health care coverage for millions, prohibitions against state funding of religious schools, voting rights, affirmative action, civil rights including LGBT rights, the ability of states and municipalities to ban assault weapons and enact sensible gun control measures, rights to access to public education, protections for the environment and consumers and even the ability of the President to be held accountable under the laws of our country.

For more resources on *Janus* go to [www.neatoday.org/Janus](http://www.neatoday.org/Janus).