

Public Union Forced “Agency Fees” On The Chopping Block Again

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The issue of forcing unionized public employees to pay union “agency fees” is teed-up for the Supreme Court once again. Mark Janus, an employee of the state government of Illinois who is represented by the American Federation of State, County and Municipal Employees appealed a decision of the U.S. Court of Appeals for the Seventh Circuit last week that upheld 40-year-old Supreme Court precedent holding that forcing public employees represented by unions to pay for collective bargaining does not violate the First Amendment. That case, *Abood v. Detroit Board of Education*, was decided in 1977. The same issue was brought before the court last year, but Justice Antonin Scalia’s death a month after the case, *Friedrichs v. California Teachers Association*, was argued resulted in a 4-4 tie, leaving the precedent in place. Now, however, with a full complement of justices on the Court, we are likely to get a definitive ruling on whether public employees will continue to be forced to pay agency fees. The *Abood* Court distinguished between fees paid to unions that go to political activities – which violate the First Amendment if employees are forced to pay them against their will – and “agency fees,” which pay for collective bargaining. Currently, employees can be forced to pay agency fees against their will without a violation of the First Amendment. What Janus now wants to do is obliterate that distinction and render all fees public employees pay to unions against their will a violation of the First Amendment. Justice Samuel Alito explained the rationale behind this argument in a 2012 case dealing with a similar issue: “Because a public sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights.” Given that the Court found the issue important enough to hear last year, it is highly likely it will agree to hear it again this year with a full Court. And, if Justice Neil Gorsuch votes with the conservative bloc on the Court, as he is widely expected to do, *Abood* will be overturned and a significant blow will be dealt to public sector unions in the 22 states and District of Columbia where no right-to-work laws are in place.

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