



RECENT SUPREME COURT DECISION IN JANUS v. AFSCME RAISES QUESTIONS FOR ASSOCIATIONS

By Rick Pinckard

On 6/27/18, the U.S. Supreme Court issued its decision in *Janus v. AFSCME*. The barrage of commentary which has followed may render it difficult for the many police officer associations affected by this decision to discern what is important. Therefore, I am providing the following question-and-answer series to provide guidance to these associations regarding the significance of the *Janus* decision.

QUESTION #1: Does this decision change existing law?

ANSWER: Yes. By this decision, the Supreme Court has overruled the precedential law established by *Abood v. Detroit Bd. of Education* 431 U.S. 209 (1977). In *Abood*, the Supreme Court approved the mandatory/involuntary collection of agency shop/fair share fees.

QUESTION #2: Does this decision eliminate public sector employee unions?

ANSWER: No. The decision prohibits public sector unions from compelling the involuntary or non-consensual payment of agency shop fees *from non-members*.

QUESTION #3: Does this decision eliminate agency shop provisions in public sector collective bargaining agreements?

ANSWER: To the extent that such provisions allow the employer, at the behest of the union, to collect agency fees from non-members, those provisions are no longer deemed constitutional.

QUESTION #4: If my Association does not exist as a closed agency shop, does this decision require me or the Association to do anything different from what we have been doing?

ANSWER: No.

QUESTION #5: How do I know if I work in a closed agency shop?

ANSWER: It will be in your collective bargaining agreement (labor contract) with your City, County or District. Currently, most Associations are *not* agency shops (with the exception of SDPOA, SDCPOA and DSA, which are represented by Fern Steiner).

QUESTION #6: From this date forward, will my Association now be required to get signed permission on an ongoing basis to collect Association dues?

ANSWER: **No**, not from members.

QUESTION #7: Can non-members agree to voluntarily pay an agency fee?

ANSWER: Yes. However, any non-members who waive their constitutional rights so an agency fee can be collected from them must sign a written waiver granting consent to the Association to collect the fee, and such waivers should be obtained on the same cycle that would have applied to distribution of *Hudson* letters.

QUESTION #8: For Associations which had agency shop status, is there a requirement that the Association refund any and all agency fees which have been collected for the duration of an employee's employment?

ANSWER: No. Prior to the *Janus* decision, collection of agency fees was deemed constitutional by the precedent established by the *Abood* decision. *Pro rata* refunding to fee payers for the period since the date of the *Janus* decision would be appropriate.

QUESTION #9: My Association had been thinking of negotiating for agency shop status – is that now prohibited?

ANSWER: No. However, you will not be able to compel the involuntary payment of an agency fee from those employees who choose not to join the Association.

QUESTION #10: Under the duty of fair representation, does my Association still have the duty to bargain for non-members, even if the non-members don't pay their fair share?

ANSWER: **Yes**, unless and until State law changes.

Keep in mind that our brothers and sisters in law enforcement recognize the tremendous benefits of Association membership in such areas as public safety legislative influence through PORAC, supplemental insurance, retiree medical trusts, criminal defense and administrative legal defense. These benefits are only available to Association members.

It is for this reason that most of your Associations enjoy 100% (or nearly 100%) voluntary membership. The *Janus* decision does not change this. It only applies to Associations which are agency shops, and within those groups, the decision benefits only those employees who are non-members.

Legislative changes at both the federal and state levels are anticipated to adjust to the paradigm shift introduced by this decision. For now, we will all simply need to watch and, when appropriate, weigh in on any legislative proposals.



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