



Post-Janus Guidance for Public Employee Unions

(Aug. 10, 2018)—In the wake of the U.S. Supreme Court’s *Janus v. AFSCME* decision in late June, there has been some confusion about the rights and responsibilities of public employees and employers. That’s understandable given that the *Janus* decision overturned decades of well-established law and practice.

But this confusion is being exacerbated by the same anti-union forces that were behind *Janus*. These groups, including the right-wing billionaire-funded Freedom Foundation, are trying to maximize the harm *Janus* could do to unions by arguing for restrictions that go far beyond the *Janus* ruling, and in some cases, would violate state law, workers’ First Amendment rights, and their freedom of association.

What follows is some guidance to help public employee unions in Washington state comply with the law amid these legal attacks and shifting sands.

Pre-existing membership cards and dues-deduction contracts are still valid.

“The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored,” reads a July 17 advisory issued by State Attorney General Bob Ferguson entitled “Affirming Labor Rights and Obligations in Public Workplaces.”¹

In anticipation of a negative *Janus* ruling, many unions have been conducting internal organizing drives and urging existing members to stick with their



union by signing membership cards or dues-deduction agreements. These are contracts between the union and its members in which they commit to paying dues, typically for the next 12 months. Members would then have an annual opportunity to change their minds and withdraw (per *Janus*).

The Freedom Foundation has argued that all pre-*Janus* membership/dues commitment cards should be null and void. The Washington State Labor Council, AFL-CIO (WSLC) asserts that the failure to honor such membership cards violates state law, undermines public employees’ freedom of association, interferes with the contractual relationship between the union and its members, and possibly violates existing collective bargaining agreements.²

In his July 17 advisory, AG Ferguson makes clear that these membership cards are still valid. As is their wont, the

Freedom Foundation has filed a lawsuit in U.S. District Court seeking to nullify these pre-*Janus* contracts between unions and their members. But in the meantime, all public employers must honor these membership cards.

In fact, it is the WSLC’s position that any public employer that fails to deduct and remit dues as authorized by these membership cards is violating the law and can be held liable for damages.²

Agency fee payers may choose to become members rather than *Janus* freeloaders.

“Under *Janus*, public employers may not deduct agency fees from a nonmember’s wages without the

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employee's affirmative consent. Employees who are nonmembers and paying agency fees as of June 27, 2018, may choose to become a dues paying union member," writes AG Ferguson.

This recognizes that some agency fee payers withdrew from their unions for political reasons, but wouldn't feel comfortable enjoying the benefits of a union contract and representation without paying *anything at all* to support that effort, as *Janus* allows. Therefore, it should not be assumed that all nonmembers at the time of the *Janus* ruling will stay nonmembers.

However, affirmative consent is required for pre-*Janus* agency fee payers to become members and authorize dues deduction. So unions can—and should—reach out to them and explain the importance of keeping their union strong and urge them to sign membership cards.

Unions retain access to new employees

"Public employers are required to provide exclusive bargaining represen-

tatives reasonable access to new employees in the bargaining unit" in order to share information about the union, reads the AG's post-*Janus* advisory.

That's because, under SB 6229 approved in 2018, public employers must provide unions "reasonable access" to new employees. Reasonable access means within 90 days of the employee's start date, for no less than 30 minutes, while the employee is on the clock. Nothing in the law prohibits an employer from agreeing to longer or more frequent employee access.

This law took effect on June 7, 2018. That means unions don't need to negotiate an MOU covering this issue in order to benefit from it. However, the law invites such a negotiation. So the union will want to bargain about precisely when the access to the new employee will be provided, how the employer is going to explain what the access opportunity is about (note: employees will only be told that they may take advantage of this opportunity, they cannot be required to meet with the union), where the meetings will take place, whether the employer will require the orientation to take place with more than one new employee at a time, etc.

Public employees retain privacy rights

"Public employees have the right to keep their personal information, including home addresses, protected from disclosure to third parties consistent with the Public Records Act," reads the AG's advisory.

With the *Janus* ruling, the Freedom Foundation has vowed to be even more aggressive about seeking sensitive personal information about public employees, like birthdates and addresses, so they can target them with anti-union propaganda and urge them to quit their unions. The AG makes clear that public employers should respect their employees' privacy rights upon receiving such disclosure requests.

Unions should request that public employers notify both the union and its members when they have received public records requests from third parties seeking members' names and contact/personal information. Unions should also seek to limit the amount/type of personal information collected by public employers, so disclosure of that information is not possible.



*For more details about the WSLC's positions on membership card validity and other post-*Janus* issues, WSLC-affiliated unions should email jkendo@wslc.org and/or request a copy of that information, as prepared by Schwerin Campbell Barnard Iglitzen & Lavitt LLP. But the WSLC recommends all public employee unions get legal advice directly from that firm or their own attorney/counsel.*