

Public School Entity Employer and Employee Collective Bargaining Organizations

Janus v. AFSCME, Council 31, No. 16-1466, (U.S. June 27, 2018)

DATE OF ISSUE: June 27, 2018

PURPOSE

This Basic Education Circular (BEC) provides brief guidance concerning the U.S. Supreme Court's decision in *Janus v. AFSCME, Council 31*, No. 16-1466 (U.S. June 27, 2018). This decision may impact a significant number of Pennsylvania public school entities, including school districts, intermediate units, career and technical education centers, and certain post-secondary and higher education institutions. Most importantly, compliance with the Supreme Court's *Janus* decision must not impact instruction to students.

BECs provide guidance and do not establish binding norms or requirements. Please consult the applicable statutes, regulations, or case law for additional information concerning the matters discussed in this BEC. This BEC is subject to revision or rescission based on subsequent changes in statutory, regulatory, or decisional law.

DISCUSSION

In *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), the U.S. Supreme Court held that a clause in a collective bargaining agreement that required every public school employee represented by the union to pay a fee to that union was permissible and not a violation of the employees' rights under the U.S. Constitution, so long as the fee was limited to the costs of the union's collective bargaining activities. These clauses are often referred to as "fair share" clauses, and have long been permitted by many state public employee and labor relations laws. Pennsylvania is one of 22 states with laws permitting collective bargaining agreements to include "fair share" fees for public employees. *See* 71 P.S. § 575; 43 P.S. § 1102.3.

In *Janus*, the Supreme Court overruled the long-standing holding in *Abood*, finding:

States and public-sector unions may no longer extract [fair share fees] from nonconsenting employees. . . . Neither [a fair share 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 such a payment, unless the employee affirmatively consents to pay.

Janus v. AFSCME, Council 31, No. 16-1466, slip op. at 48 (U.S. June 27, 2018).

Pennsylvania public school entity employers and their employees must continue to observe the various requirements of the labor relations laws applicable to them. Additionally, school entities subject to the collective bargaining requirements of Article XI-A of the School Code of 1949, 24 P.S. § 11-1101-A *et seq.*, must continue to observe the requirements of that law.

Public school entity employers are reminded that they may not in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Pennsylvania Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and must comply with any provision of law establishing organizations as employees' exclusive representatives. *See Janus*, No. 16-1466, slip op. at 15-16, 33.

PDE does not administer or enforce the PERA or NLRA. Public school entity employers may consult with their solicitors, and public school entity employees may consult with their collective bargaining unit representatives, for additional information concerning their legal obligations.

REFERENCES

Statutes

Public Employee Relations Act, 43 P.S. § 1101.101 *et seq.*
National Labor Relations Act, 29 U.S.C. §§ 151-169
24 P.S. § 11-1101-A, *et seq.*

Cases

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977)
Janus v. AFSCME, Council 31, No. 16-1466 (U.S. June 27, 2018)

CONTACT BUREAU/OFFICE

Office of Chief Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor | Harrisburg, PA 17126-0333
Phone: 717.787.5500 | Fax: 717.783.0347
www.education.pa.gov