

November 9, 2018 Advisory Letter — Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31*

Re: Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31*

New Mexico has a long and important tradition of supporting the organized labor movement and the rights of workers to organize. Our unionized public sector employees - including teachers, firefighters, police officers, child welfare workers, and other public employees - provide vital services that benefit all of our communities in New Mexico.

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31*, 585 U.S. ____, 138 S.Ct. 2448 (2018) overturns decades of well-established law and the practice of unions to receive payment for fair share agency fees from public sector employees who decline union membership. After *Janus*, there has been confusion. This Advisory is intended to provide clarity to public sector employers and employees.

The only change under *Janus* is that public employers may no longer deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the nonmember employee's affirmative consent¹. All other rights and obligations of public employees and employers remain the same under the Public Employee Bargaining Act ("PEBA"), NMSA 1978, Sections 10-7E-1 to -26 (2003, as amended through 2005).

Collective Action Rights

- The rights of public employees not affected by *Janus* under New Mexico law are:
 - The right to organize;
 - The right to choose a labor organization;
 - The right to join a labor organization;
 - The right to engage in lawful, concerted activities for the purpose of collective bargaining; and
 - The right to be represented by a labor organization of their own choosing for the purpose of bargaining collectively on questions of wages, hours and other terms and conditions of employment.
- Public employers shall not discriminate against a public employee because of the employee's membership in a labor organization or "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act." NMSA 1978, § 10-7E-19 (2003).

Dues and Agency Fees

- The *Janus* decision does not affect any agreements between a union and its members to pay union dues. Existing agreements by union members to pay dues should continue to be honored.
- The *Janus* opinion *only* impacts the payment of an agency service fee, often referred to as fair share fees, by individuals who decline union membership. Under *Janus*, public employers may *not* deduct agency fees from a nonmember's wages nor may the union collect agency fees from a nonmember, without the nonmember employee's affirmative consent.
- Employees who are nonmembers and paying agency fees may choose to become dues-paying union members.
- Union member employees may pay dues through a payroll deduction.

Member Access and Information

- Many public sector unions have negotiated for the rights of their members to use the employer's premises and equipment to engage in protected concerted activity. Nothing in the *Janus* opinion affects those rights.
- Employers should continue to honor any agreements or contracts that are not contrary to the *Janus* prohibition on deducting agency fees from a nonmember's wages without that employee's affirmative consent.

Workers who believe their rights have been violated may contact their employer or their union.

[1] Footnote 6 in *Janus* indicates that if a public employee requests to use a union's grievance or arbitration procedure on its behalf, a union can charge for the reasonable cost of using such procedure.