

**MEMORANDUM**

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE INFORMATION**

FROM: Kingsley Bogard, LLP

DATE: June 28, 2018

RE: **United States Supreme Court decision regarding union fair share fees**

---

This memo is intended to provide you with initial guidance regarding the United States Supreme Court's decision in *Janus v. AFSCME Council 31 (Janus)*, which was issued on June 27, 2018.<sup>1</sup> We start by providing some general background information and then discuss the decision in *Janus*.

Under existing law, a union that represents employees in a collective bargaining unit has a legal obligation to represent equally all employees in the bargaining unit, regardless of whether those employees are members of the union.<sup>2</sup> Fair share fees<sup>3</sup> are paid by employees who choose not to join their bargaining unit's union.<sup>4</sup> The fair share fees cover the costs that the union incurs in representing those nonmembers.<sup>5</sup>

In *Janus*, the Court concluded that taking money from a nonconsenting employee for a public-sector union violates the free speech rights of the employee under the First Amendment.<sup>6</sup> The Court accordingly held that fair share fees **may not** be deducted from a nonmember's wages unless the employee affirmatively consents to pay those fees.<sup>7</sup>

In the immediate wake of *Janus*, the District is advised to take the following actions:

- Immediately cease deducting fair share fees from employee wages. If payroll authorizations and deductions have already been processed for any period on or after June 27, 2018, the District should ensure that refunds of fair share fees are issued for those periods. This may require working with the applicable union to ensure that proper refunds are made.

---

<sup>1</sup> 2018 WL 3129785.

<sup>2</sup> *Wagner v. Professional Engineers in California Government* (9th Cir. 2004) 354 F.3d 1036, 1038.

<sup>3</sup> These fees are also referred to as "agency fees."

<sup>4</sup> Gov. Code § 3546.

<sup>5</sup> *Ibid.*

<sup>6</sup> 2018 WL 3129785, \*23.

<sup>7</sup> *Id.* at \*31.



KINGSLEY BOGARD LLP

- Not engage in conversations with employees or prospective employees that could be interpreted as deterring or discouraging those employees (1) from becoming or remaining members of an employee organization, (2) from authorizing representation by an employee organization, or (3) from authorizing dues or fee deductions to an employee organization.<sup>8</sup>
- Not disseminate a “mass communication”<sup>9</sup> to employees or applicants concerning their right to join or support, or refrain from joining or supporting, an employee organization without meeting and conferring with the exclusive representative concerning the content of the mass communication.<sup>10</sup>
- With respect to employees who are members of a union or other employee organization and who request to cancel or change their authorizations for payroll deductions for membership in that organization, direct those requests to the employee organization rather than the governing board. The employee organization is responsible for processing these requests and the governing board is required to rely on information provided by the employee organization regarding whether deductions were properly canceled or changed.<sup>11</sup>

The foregoing is intended as initial guidance to ensure immediate District compliance with *Janus* and applicable state law. We will continue to monitor the ripple effects of *Janus* and related state laws and advise you accordingly. Please contact us if you need additional clarification or more fact-specific guidance.

---

<sup>8</sup> Gov. Code § 3550.

<sup>9</sup> A mass communication is a written document, or script for an oral or recorded presentation or message, that is intended for delivery to multiple public employees. Gov. Code § 3553(e).

<sup>10</sup> Gov. Code § 3553.

<sup>11</sup> This is a new requirement under amendments to Education Code sections 45060 and 45168 that took immediate effect pursuant to urgency legislation signed by the Governor on June 27, 2018.