

U.S. Supreme Court's *Janus* Decision
and
Senate Bill (SB) 866

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(Please note, the information included here, and the comments of the presenters, are not intended to serve as, or substitute for, legal advice. It is for general discussion only. Implementation of the new laws in your District should take place in close consultation with your legal counsel based on your District's unique circumstances.)

1. What are the logistical challenges payroll departments will be facing in implementing the Supreme Court's *Janus* decision?

- *Janus requires each employee's affirmative consent to pay union fees.*
- *The District will not receive the authorization form; the union will retain the document.*
- *The District may inform union representatives that the District will stop collecting fees until it receives information from the union as to which employees for whom union dues should be deducted.*
 - *The union must communicate this information to the District.*

2. Who is responsible for processing requests for withdrawal from union membership and dues?

- *Pursuant to SB 866, the District must direct requests to revoke union membership to the union.*
- *The union is responsible for processing the request, and the District must rely on the information from the union as to which employees have cancelled memberships.*
- *If the District is sued, the union indemnifies the District.*

3. What type of District communications to bargaining unit members are impermissible?

Under SB 866, the District must not:

- *Distribute a "mass communication" to its employees regarding the right to join or support the union, or refrain from joining or supporting the union, without first meeting and conferring with the union.*
 - *NOTE: If an agreement cannot be reached regarding the content of the communication, the District may send out the mass communication but also must send out the union's mass communication to the employees.*
- *Deter or discourage an employee or applicant from joining the union.*
- *Discuss with an employee a request to cancel or change deductions for the union.*

4. What type of District communications to bargaining unit members are permissible?

- *The District may answer questions for employees regarding payroll issues.*
 - *However, the District must not solicit withdrawal from union membership or promise benefits.*
- *If the discussion moves towards cancellation or changing deductions for union dues, the District must refer the employee to the union and stop the conversation.*

5. What type of communication should the District have with the unions?

The District should communicate with its unions on an ongoing basis regarding the following topics:

- *Unions must reimburse for any union fees that the District was unable to stop on or after June 27, 2018.*
- *Unions must share the names of the employees for whom fees should be deducted.*
- *Inform the unions of any employees that have been referred to them for discussions regarding union membership.*

6. How should Districts handle communications from anti-union organizations?

Many Districts have already received or will be receiving communications from anti-union organizations. Each request should be handled on a case-by-case basis. Please seek advice from individual legal counsel. If there is a request to distribute materials on behalf of an organization, the District must:

- *ensure the District is not deterring or discouraging an employee or applicant from joining the union; and*
- *treat the organization like any other outside organization.*

7. If teachers or classified employees specifically contact the District about their rights or with questions about withdrawing from the union, what can the District say?

If an employee wants to talk about withdrawing from the union (canceling or changing deductions), the District must refer the employee to the union.

8. How do maintenance of membership (“MOM”) contract provisions affect the union membership withdrawal process?

- *It is not clear that the Janus decision or subsequent cases will invalidate MOM provisions of the CBA. However, the MOM provision remains in effect until and unless the union informs the District it no longer wishes to enforce the MOM provision.*
- *If the District and union agree not to enforce the MOM provision of the CBA, the agreement should be memorialized in an MOU.*
- *The District will need to rely on information from the union as to which members have withdrawn from membership and the effective date of the cancellation of their membership.*

9. Are there elements of the *Janus* decision that will help or hurt future negotiations with unions?

Districts should review the “maintenance of membership”, “savings”, and “organizational security” provisions of the CBAs and should be prepared to negotiate new provisions that comply with the Janus ruling and SB 866.

10. Will non-union members still maintain the same rights as union members under their respective CBAs?

- *The union generally must fairly represent all bargaining unit members even if they do not join the union.*
- *Rights and remedies set forth in the CBA (e.g. discipline procedures, leaves) continue to accrue to all bargaining unit members.*
- *With regard to representation in disciplinary proceedings, the level of representation afforded to non-paying employees will depend on the specific maintenance of membership (MOM) provisions in the CBA and the extent those provisions remain in effect after the Janus ruling.*

11. How do AB 119 (enacted in 2017) and SB 866 differ with regard to “onboarding” employees?

- *AB 119 addresses the manner in which new employees receive orientation in the District and imposes a duty to grant the union access to the process.*
 - *Includes a 10-day notice requirement.*
 - *Provides the right for the union to bargain the structure, time, and manner of orientation meetings and online notifications.*
- *SB 866 provides that disclosure of the date, time, and place of the of new employee orientations shall not be disclosed to anyone other than the employees, the union, or a vendor that is contracted to provide a service for purposes of the orientation.*
 - *NOTE: This information should also be redacted from any response to a Public Records Act request.*

Nothing in this post is intended to provide legal advice. If you have any questions about this publication or any other issue, please contact Kingsley Bogard LLP.