

LEGAL ALERT

To: All School Committee Members and Superintendents
From: Stephen J. Finnegan Esq., MASC General Counsel
Re: *Janus v. American Federation of State, County, and Municipal Employees* (Decided June 27, 2018)
Date: July 6, 2018

Illinois law, like Massachusetts law M.G.L. Ch. 150E, permits public employees to unionize. If a majority of the employees in a bargaining unit vote to be represented by a union, the union is designated as the exclusive representative of all the employees, even those who do not join. Non-members are required to pay what is generally called an “agency fee,” i.e., a percentage of the full union dues. The “agency fee” payments for approximately 40 years been authorized by the Supreme Court decision, *Abood v. Detroit Bd. Of Ed.*, 431 U.S. 209, which the court in *Janus* overruled because it found that the facts violated the employee’s First Amendment rights. M.G.L. Chapter 150E, s.2 states in relevant part as follows, “An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of services fees to an exclusive representative....”. Most public employee contracts have language requiring the payment of an “agency fee” by an employee as a condition of their employment during the life of a collective bargaining agreement so providing, which is explicitly stated in M.G.L. Chapter 150E, s.12. This Supreme Court decision, at the very least, concerns agency fees, which may no longer be extracted from nonconsenting employees. In *Janus* the agency fee was 78.06% of the full union dues. *Janus* is a state employee whose unit is represented by a public sector union. He refused to join the union because he opposes many of its positions.

I expect that legislation will be filed soon in the Massachusetts Legislature (any legislation after July 31, 2018 must have unanimous support) that will outline path(s) to implementation of *Janus*. I will keep you updated as to any such legislation, court action or administrative advisories. Enclosed please find an Advisory from the Office of Attorney General Maura Healey

M.G.L. c. 180, s.17G allows payroll deduction for public employees “agency service fees “as follows:

Deductions on payroll schedules shall be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed or which may be specified by a collective bargaining agreement with the PCA quality home care workforce council or a collective bargaining agreement with the department of early education and care covering family child care providers for the payment of agency service fees to the employee organization, which, in accordance with the provisions of chapter one hundred and fifty E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed. The amount of such agency service fee shall be as provided in section twelve of chapter one hundred and fifty E. Any such authorization may be withdrawn by the employee by giving at least sixty days’ notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed, and by filing a copy thereof with the treasurer of the employee organization.

Other payroll deduction authorizations may be found in MASC Selected General Laws c.180.

Please contact your school counsel to review your collective bargaining agreements and to advise you of how and when to proceed with the implementation of the *Janus* decision.



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Attorney General Advisory:
Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees—including firefighters, police, teachers, social workers, and sanitation workers—play a critical role in our communities and across Massachusetts. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services to our residents.

The Attorney General issues this Advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 U.S. ____ (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Massachusetts law to organize, to join unions, and to engage in collective action for mutual aid or protection under Chapter 150E of the Massachusetts General Laws. The Attorney General's Office issues this advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Massachusetts law, the rights of public sector employees are unaffected by the decision in *Janus*. These employees maintain the right to:
 - organize;
 - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
 - engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. M.G.L. c. 150E, § 2.
- Employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. M.G.L. c. 150E, § 10.

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. M.G.L. c. 150E, § 10.

Dues & Agency Fees

- 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. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.
- Under *Janus*, public employers may not deduct agency fees from a nonmember's wages without the 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.
- Employees may pay dues through a payroll deduction. Under existing state law, employees may authorize a payroll deduction by notifying his/her employer in writing. *See* M.G.L. c. 180, § 17A. This writing may be a signed union card, or an electronic writing, signature or voice recording consistent with M.G.L. c. 110G, § 2.
- Public employers may not threaten or coerce employees regarding union membership. M.G.L. c. 150E, § 10.

Member Access & Information

- Many public sector unions have negotiated for the right of their members to use the employer's email systems and its premises to engage in protected concerted activity.
- Under M.G.L. c. 150E, and under many collective bargaining agreements, public employers are required to provide, in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.
- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure to third parties (with limited statutory exceptions, including collective bargaining representatives). *See* M.G.L. c. 4, § 7 (26)(o); and M.G.L. c. 66, § 10.

Workers who believe their rights to join or form a union have been violated may contact the Massachusetts Department of Labor Relations at (617) 626-7132 or visit www.mass.gov/dlr.

Workers who believe their right to earned wages have been violated may call the AGO's Fair Labor Division Hotline, 617-727-3465.