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What the Supreme Court's Janus Decision Means for Teacher Unions

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It has been months of whiplash for teachers unions. The nation's highest court decided on Wednesday that they, and other public sector unions, can no longer collect agency fees, which are currently mandatory in 22 states.

The ruling came down after the unions racked up a series of victories early this year, taking part in teacher walkouts in six states and winning raises and new education dollars from conservative lawmakers.

Now, teachers unions could lose up to a third of their members and funding as a result of the decision, labor experts say, some of the same money that fueled the walkouts.

"Members and money are power in politics," said Terry Moe, a Stanford political science professor who has written critically of the unions. "This will weaken the teachers unions nationwide as a political force."

The walkout movement began in West Virginia, where agency fees are already outlawed, and was largely driven by rank-and-file teachers, not union leaders. While union members pay dues, agency fees cover the costs of representing nonmember teachers in contract negotiations and disputes with management.

The decision in the Supreme Court case, *Janus v. American Federation of State, County and Municipal Employees*, "will affect us, because it's going to hurt the national" unions that provided crucial support, said Jay O'Neal, a West Virginia teacher and a leader of the protests.

States with agency fees and public sector collective bargaining, he said, tend to have higher teacher salaries and school funding than right-to-work states like West Virginia and the others where teachers went on strike.

[Read more on the Supreme court decision and its impact on labor unions.]

Nonmembers can already opt out of paying for political lobbying. But because unions engage in politics even at the bargaining table, on issues such as how public dollars are spent on salaries and benefits, five of the court's justices said such fees violate workers' free-speech rights, by forcing them to give money to organizations whose views they may not support.



An empty cafeteria at University High School in Morgantown, W.Va., during a teacher walkout in February. The movement began in West Virginia and was largely driven by rank-and-file teachers, not union leaders. Alex Flynn for The New York Times

Given the court's conservative tilt, the two national teachers unions have considered the ruling all but a foregone conclusion for several years. They plan to reduce budgets and cut back on activities like conferences.

Public sector unions have been under attack for years. Several states, including Iowa, Michigan and Wisconsin, have passed laws aimed at weakening them, and membership has declined, even in places where unions continue to represent teachers and other public sector workers in contract negotiations.

About 70 percent of the nation's 3.8 million public school teachers belong to a union or professional association, according to a 2015-16 survey by the National Center for Education Statistics, down from 79 percent in the 1999-2000 school year.

Lily Eskelsen García, president of the National Education Association, the nation's largest teachers union, said that the Janus decision could mean a loss of up to 200,000 members: \$28 million less in the organization's \$366 million budget.

The union is preparing a campaign to mitigate the fallout, in particular reaching out to younger teachers who do not have deep loyalties to organized labor.

"We know it will have an impact, and we know we will come back," Ms. Eskelsen García said.

The National Education Association does not plan to curb its political activities, which are largely on behalf of Democrats and liberal groups. Among the union's priorities is mobilizing teachers to vote in this year's midterm elections, Ms. Eskelsen García said.

Neal McCluskey, director of the Cato Institute's Center for Educational Freedom, said the Janus decision reversed a "fundamentally unjust" requirement that forced teachers to pay for the union's political agenda.

"This restores teachers' ability to say, 'I will not support speech or political activity that I don't agree with,'" he said.

For union allies stung by the court decision, the walkout movement offered a glimmer of hope. The protests occurred in states crippled by education funding cuts since the recession, and where unions are already weak and working without agency fees. Union affiliates in several of the states, including Arizona, North Carolina, Oklahoma and West Virginia, said they had signed up hundreds or even thousands of members since the movement began.

In Arizona, where the walkout prompted Republican lawmakers to give teachers a raise, the Arizona Education Association attracted 2,000 new members this year, compared with an average of 400 to 600 in previous years, the group's president, Joe Thomas, said.

A protester at the Oklahoma State Capitol in April. Union affiliates in several states, including Oklahoma, say they have signed up hundreds or even thousands of members since the movement began. Scott Heins/Getty Images

In many of the walkout states, the teachers who led the protests first gathered supporters on Facebook, sometimes with little help from union officials. But the state and national unions stepped in with organizing and lobbying muscle — and money — that sustained the movement as it grew. That support could wane if teachers in strong-union states like California or Illinois choose not to pay dues and fees.

Despite having worked together during the protests, some walkout leaders have little loyalty to unions. In Oklahoma, Alberto Morejon, a 25-year-old middle-school history teacher, started a Facebook group that pushed for the walkout. Many in the group were frustrated, he said, by union leaders whom they believed were not responsive to their concerns, and whom they felt were too quick to call off a nine-day labor action in Oklahoma in April.

“Teachers starting off, the salary is so low,” Mr. Morejon said. Foregoing union fees means “one less thing you have to pay for. A lot of younger teachers I know, they’re not joining because they need to save every dollar they can.”

A recent survey of 1,000 traditional and charter school teachers across the country, commissioned by the advocacy group, Educators for Excellence, gave a preview of the challenges facing unions. While most of those surveyed said that working conditions would be worse without union representation, six out of 10 nonunion members currently paying agency fees said they would likely opt out after the ruling.

Anticipating the decision, some leaders have sought countermeasures. In April, Gov. Andrew M. Cuomo of New York, where public sector unions remain powerful, signed a law freeing the unions from the legal requirement to represent workers who have not paid dues in disputes with management. Labor experts say this will likely encourage teachers to maintain their union membership. Other liberal states may follow.

Randi Weingarten, president of the American Federation for Teachers, the other national teacher’s union, remained optimistic: Of 800,000 members in 18 states affected by the Janus decision, the group said it had secured more than 500,000 “recommitments” to retain membership since January. About 90 percent of the A.F.T.’s 1.8 million members are school educators.

The Trump administration and its conservative allies that funded Janus have made it easier to make the case for union membership, Ms. Weingarten said.

“These folks that have huge power over their lives have tried to cut school budgets, tried to hurt their health care, cut retirement benefits, privatize hospitals and schools, are now having the chutzpah to say, ‘Give up your union to get a quick raise,’” she said. “People are getting it big time, and are basically trying to stick with the union.”

Patrick Semmens, a spokesman for the National Right to Work Legal Defense and Education Foundation, whose lawyer argued the Janus case, said the decision would not prevent union leaders from bargaining on behalf of its members. But it would expose whether they were in tune with their members' best interests.

"It'll mean that teachers can now hold union officials accountable," Mr. Semmens said. "It allows them to say, 'If you want my money, you have to earn it now.'"

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