

# Post-Janus, N.Y. legislation favors public-sector unions

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Mark Janus, an Illinois state employee, decided not to join the American Federation of State, County, and Municipal Employees, the union that represents his public sector co-workers. Under Illinois law, however, Janus was still required to pay fees to the union. Those fees are known as “fair-share” fees. The fee for nonmembers was approximately 78% of the full union dues. In Janus’ case, that came to \$23.48 per pay period.

Objecting to paying, Janus sued, and on June 27, the U.S. Supreme Court ruled in his favor. The court’s decision in *Janus v. AFSCME* struck down as unconstitutional the Illinois fair share law and similar state laws, including New York’s.

## Proactive legislation

This decision could be devastating for New York public-sector unions. New York’s government workforce has become increasingly unionized since public sector collective bargaining was authorized in 1967.

In 2016, almost two million New York government workers were union members, accounting for 25.2% of the state’s workforce. This is by far the highest percentage of unionized public sector workforce employees among the 50 states.

Given the devastating impact that the *Janus* decision might have on New York unions (and the political parties and causes that those unions support), it is not surprising that Gov. Andrew Cuomo and the New York legislature have already acted to avoid this political catastrophe.

The legislature passed legislation called Part RRR in March 2018, amending the Civil Service Law, the General Municipal Law and the State Finance Law as those laws relate to union issues.

Part RRR includes various provisions that will make it easier for public-sector unions to contact new employees, collect dues and retain members even if their government employment is interrupted.

Part RRR also eliminates an employee’s right to revoke dues deductions in writing at any time. Instead, it mandates that a dues authorization shall remain in effect until the employee “revokes membership in writing in accordance with the terms of the signed authorization.”

The legislation, however, does limit or restrict the terms that a union may include in its authorization card to restrict revocation of membership or cancellation of dues. This lack of clarity leaves employers and employees unsure of when and how an authorization to deduct union dues from an employee’s wages may be revoked.

## Contacting new employees

Perhaps the most aggressive portion of the new legislation, however, is a requirement for public employers to

permit union representatives to meet with new employees for a reasonable amount of time, and without charge to leave credits. The legislation does not define “reasonable amount of time.”

More troubling, however, is the implication that because leave credits cannot be charged, the meetings must take place on paid time. This raises several issues, including whether this use of paid time would be an unlawful gift of public funds.

Other questions also arise: What if the employee refuses to attend the meeting? Under Part RRR, must that employee be compelled to meet with the union under penalty of discipline? What about the constitutional right of association? These and many other questions will be left to the courts to decide as Part RRR takes hold.

## **Nonmembers not represented**

Most of this anti-*Janus* legislation is designed to improve unions’ chances of persuading employees to join and pay dues voluntarily. However, several provisions substantially curtail unions’ duty to fairly represent everyone in a particular bargaining unit.

Part RRR limits the unions’ obligations to nonmembers to negotiation or enforcement of the terms of a collective bargaining agreement. That means unions do not have a duty to represent nonmembers:

- During questioning by the employer
- In statutory or administrative proceedings or to enforce statutory or regulatory rights
- In any stage of a grievance, arbitration or other contractual process concerning employee evaluation or discipline where the nonmember is permitted to proceed without the employee organization and be represented by his or her own advocate.

Finally, Part RRR expressly permits unions to provide union members with legal, economic or job-related services or benefits better than those provided to nonmembers. In other words, the legislation invites unions to create opportunities to favor its members over those employees who elect not to join the union or pay dues.

Part RRR promises confusion, contentiousness and cost—in both time and dollars—for New York public employers.

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