



COUNCIL AGENDA: 10/23/2018  
ITEM: 8.1 (18-1410)

## *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk

**SUBJECT:** SEE BELOW

**DATE:** October 23, 2018

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**SUBJECT: Legal Update - U.S. Supreme Court's Decision in Janus v. AFSCME and Recent California Legislation.**

**RECOMMENDATION:**

As referred by the Rules and Open Government Committee on September 19, 2018, adopt a resolution urging the City of San José to work with public sector unions in San José to ensure their health and success; and support the freedom of city employees to participate in unions post Janus v. AFSCME.

CEQA: (Peralez)

[Rules and Open Government referral 9/19/18 - Item D.3]



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** U.S. Supreme Court's Decision  
in *Janus* and recent California  
legislation

**DATE:** September 12, 2018

## Background

On April 18, 2018, the Rules and Open Government Committee deferred Item G.2, Councilmember Peralez's memo relating to the *Janus v. AFSCME* case pending before the United States Supreme Court, until after the Court's decision in the case, and requested staff to return to the Committee to discuss the Court's decision.

## Legal Update

On June 27, 2018, the United States Supreme Court issued its decision in *Mark Janus v. American Federation of State, County, and Municipal Employees*, and held that the collection of agency fees by public employee unions violates the First Amendment and is therefore unconstitutional.

In *Janus*, Mark Janus is an employee of the state of Illinois and his position is represented by a public sector union. Mr. Janus refused to join the union because he opposes many of its positions, including positions taken during collective bargaining. Mr. Janus paid agency fees pursuant to an Illinois statute authorizing public sector unions to assess agency fees. Agency fees, as opposed to union dues, are collected from non-member public employees and are typically limited to a percentage of the amount of union dues. Agency fees are limited to the costs of representation for collective bargaining activities conducted on the unit members' behalf.

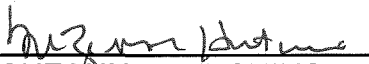
In a 5-4 decision, the majority held that forcing public employees to pay agency fees to their union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities, violates the free speech rights of nonmembers. In reaching its decision, the Court overruled 40 years of law by overturning the 1977 United States Supreme Court decision in *Abood v. Detroit Board of Education*. The *Abood* case held that agency fees could be collected and may cover

union expenditures germane to collective bargaining activities, but not the union's political and ideological projects.

On the same day, June 27, 2018, Governor Brown signed SB 866. This new law makes several changes to the union dues deduction process as follows:

- The union, not the employee, will notify the public employer of the employee's authorization for dues deduction;
- Public employers must honor employee authorizations for dues deductions provided by a union;
- All public employers must direct employee requests to cancel or change deductions to the employee's union;
- The public employer is prohibited from requesting a copy of the employee's dues authorization form from a union unless a dispute arises about the existence or terms of the authorization;
- The revocability of an authorization is determined by the terms of the authorization and the employer shall rely on information provided by the union regarding whether the request is in conformity with the authorization;
- Unions must indemnify the public employer for any claims made by employees for deductions made in reliance on that information;
- A public employer is strictly prohibited from deterring or discouraging applicants for public employment from becoming members of unions or deterring or discouraging current members from continuing or discontinuing membership; and
- If a public employer chooses to disseminate mass communications to public employees or applicants regarding union membership, it must meet and confer with union concerning the content of the mass communication. If the public employer and union do not come to agreement and the employer still chooses to disseminate the mass communication, it must be distributed with a communication of reasonable length provided by union.

While the *Janus* decision eliminates the ability for public sector unions to collect agency fees, the state's recent legislation mitigates some of the effects of the decision.

  
SUZANNE HUTCHINS  
Senior Deputy City Attorney  
City of San José