

FEDERAL APPEALS COURT AFFIRMS THAT FORMER UNION MEMBERS MAY NOT SEEK REFUND OF UNION DUES POST-JANUS

On Friday, the Seventh Circuit Court of Appeals affirmed a District Court's decision to dismiss a claim by a former union member against AFSCME Council 31, seeking a refund of union dues after the Supreme Court's 2018 decision in *Janus*. In the *Janus* decision, the Court held that public employees could not be compelled to pay agency fees to a union without violating their First Amendment rights. Agency fees are payments to the union by non-members who enjoy the benefits of a collective bargaining agreement and other union services to which they are entitled.

In the instant case, public school district custodian Susan Bennett opted to join the union and paid dues, beginning in 2009. Before the Supreme Court ruled in *Janus*, Bennett had signed an authorization card, most recently in 2017, which automatically renews for the following year unless revoked. Bennett sent a resignation letter to the international union and asked them to stop collecting dues. The union wrote her back to say that it would accept her resignation from membership as soon as it received written notice, but that she could not revoke the agreement to pay dues until a two-week window into the next year. Thus, Bennett resigned her membership, but the union continued to collect her dues. Before the window period for when the dues could be revoked, Bennett sued the union, school district, and various individuals who work for the school district and contended that the continued deduction of the dues for the remaining period violate her First Amendment rights of speech and association, citing to *Janus*.

The District Court and Seventh Circuit ruled in favor of the union and other defendants. Noting that other federal courts across the country have held the same way, the court distinguished *Janus* from Bennett's case by noting that Bennett chose to become a member of the union, and that she was not an employee compelled to pay agency fees. Instead, the court said, Bennett's union membership and by extension the terms of her dues payments are contractual in nature – they do not invoke constitutional issues of free speech or association. The court explained that “*Janus* said nothing about union members who, like Bennett, freely chose to join a union and voluntarily authorized the deduction of union dues, and who thus consented to subsidizing a union.” Bennett agreed to join the union and receive the benefits of membership, the court explained, and one cannot simultaneously choose to both join the union and not pay dues. The court explained that *Janus* addressed the constitutionality of the mandated payment of agency fees, which are paid by non-union members. It did not address those who voluntarily chose to join the union and pay dues.

The Seventh Circuit also affirmed the dismissal of Bennett's claim that the union's exclusive representation of employees violates her First Amendment associational rights. The court pointed to a prior Supreme Court decision affirming the constitutionality of exclusive representation, explaining that it does not hamper Bennett's ability to choose whether or not to associate with the union.

The Seventh Circuit's decision represents a financial relief for public sector labor unions. Those unions will not be required to refund union dues from members who have chosen to disassociate with the union following *Janus*. However, Bennett may attempt to appeal to the U.S. Supreme Court...

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