Janus – Frequently Asked Questions for Local Leaders

In a 5 to 4 decision in *Janus v. AFSCME*, the conservative Justices on the Supreme Court reversed decades-old precedent permitting public sector unions to charge bargaining unit employees who are nonmembers for their fair share of the cost of representation. The decision, which is effective June 27, 2018, strikes down fair share fee laws in over twenty states, including Illinois.

The IEA Janus Rapid Response Team has compiled these frequently asked questions and answers to provide general guidance for local leaders. If you need more information or have additional questions, please reach out to your UniServ Director.

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Advocacy

Is the union going away?

No. No! NO!! There are members that have a real fear about the ramifications of the Janus decision and this question, although not always verbalized, is still lingering in some people’s minds. This is an opportunity to turn fear into action, because it is our members who ultimately have the power to maintain and increase the strength of our union. There are resources available on the Stronger United page, and any member should be directed there. This fear also indicates a passion for the union. This is a chance for them to use their voice, to talk to their colleagues about the benefits of membership that they experience, and to stress the importance and power of the collective voice of educators.

Bargaining, Meetings, and Ratification

Does my local need to remove the fair share provision from its collective bargaining agreement?

No. Under the Supreme Court’s decision, no employer can deduct fees and no local association can collect fees. The provision is unenforceable as a matter of law. Districts may ask locals to execute an MOU to remove fair share fee language from the collective bargaining agreement. If this occurs, reach out to your UniServ Director for guidance on how to proceed.

Can the union exclude potential members from membership meetings, union workshops and conferences, committee meetings, and bargaining sessions?

The union controls its own meetings and can exclude any person who is not a dues paying member of the union from any internal union meeting or gathering that concerns internal union matters. It does not have to provide a seat at the bargaining table for a potential member.

Can the union exclude potential members from voting on the ratification of a collective bargaining agreement?

Yes. The union can exclude potential members from a ratification vote.

Can the union include potential members in the ratification vote?

The union can decide for itself whether it wants potential members to have a say in the contract. There are reasons for and against granting potential members this role. Excluding potential members may create an incentive to join the union in order to be
heard. Including potential members may provide a positive experience and insight into union governance, and it would also provide an opportunity for union activists to talk with the potential members directly about their choice. The goal should always be to encourage potential members to become full active members of the union. The local should check its bylaws for consistency with its decision.

Communication and Collaboration

Is IEA working with other NEA state affiliates to see what they are doing as a result of the Janus case? Other public sector unions?

Yes. We are collaborating with state affiliates to share best practices and brainstorm new ideas to thrive in this post-Janus world. IEA also continues to work closely with other public sector unions, such as the IFT and AFSCME just to name two, to share strategies and best practices.

Drop Campaigns

What if an anti-union group tries to contact members through their school email, urging them to drop membership?

If an anti-union group obtains or compiles school employees’ email addresses, a local association can request that the school employer take steps to block emails from such organizations. It is lawful for public employers to block all emails that come from outside organizations having no official business with the school.

It is very possible that employers might refuse based upon concerns of viewpoint discrimination. If an employer refuses, the local can suggest to its members that they individually block those emails, assuming it is not prohibited by the employer’s email/acceptable use policies. Further, the local could ask the employer to send instructions to all employees on how to block emails that they, as individuals, do not wish to receive.

Exclusive Representation

Can locals still request information from the district, such as employee’s home addresses, personal emails, and personal phone numbers?

The Janus decision has no impact on the request for this information. As the exclusive bargaining representative, the union still has the authority to request this information...
for all members of the bargaining unit (which includes members and potential members).

**I have building reps and officers who express sentiments such as the following: “I don’t feel we should giving any type of help to nonmembers at all. Why should we do anything for them if they are paying nothing to support the contract?” What should I tell them?**

Under Illinois law, the union, as the exclusive bargaining representative, is required to represent members and nonmembers alike when it comes to bargaining and administering the contract. Refusal to represent all members of the bargaining unit, regardless of membership status, is in direct violation of the law and opens the door to potential litigation against the local. Additionally, all nonmembers should be treated as potential members. Nonmembers need to see the union representatives as helpful, supportive, and raising the voice of all educators. The union should be “the club you want to join” so that these potential members will become fully engaged, active members. Creating a negative, hostile, or unwelcoming environment will only serve to undermine our efforts to increase our membership.

**If a potential member has an employment dispute with the employer, how much assistance must local leaders or building representatives offer?**

If the dispute concerns traditional areas of bargaining or specific provisions of the bargaining agreement, the local union should play the same role it would play in helping a member. If a grievance is warranted, the union should handle a potential member’s grievance the same way it would handle a member’s grievance. A potential member who requests and receives local assistance is far more likely to decide later to join the union.

If the dispute is outside traditional bargaining issues and is not grievable, the union has no duty of fair representation. Such examples include seeking “reasonable accommodations” for a disability, child abuse investigations, and licensure investigations.

**Can individuals negotiate their own terms of employment?**

No. The doctrine of exclusive representation means a union is certified to represent the collective bargaining unit as a whole, and individuals within the unit cannot negotiate directly with the employer for different terms of employment.

**Fees and Dues**

**Does Janus affect the collection of member dues?**
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 Janus opinion only impacts the payment of a fair share fee by individuals who decline union membership.

Several law firms have taken the step of drafting and having their districts present to our locals a Memorandum of Understanding (MOU) which would allow the employer to cease deduction of dues and fees, eliminate any provision in a collective bargaining agreement which permits deduction of membership dues and have the local association "recognize that continued collection and remittance of such dues and fees is no longer lawful." As this is not the holding of *Janus*, local associations should **NOT** sign this MOU.

 Nonetheless, current Illinois law supports a district’s position that it needs written authorization to deduct dues. If the district contacts your local insisting on copies of payroll deduction forms, reach out to your UniServ Director for guidance.

**Can unions charge nonmembers a service fee for representation?**

Under the Illinois Educational Labor Relations Act (IELRA), local associations owe the duty of fair representation to all employees in their bargaining units whether or not they join the union. Illinois courts and the Illinois Educational Labor Relations Board have recognized this duty since the inception of the IELRA.

In the *Janus* decision, the Court states that unions cannot bargain contracts that provide union members with greater benefits. The Court further suggests that state law may permit unions to charge nonmembers fees for arbitrating grievances related to discipline or may decline to take such grievances at all. Illinois has no such law at this time.

*We are advising locals to avoid restructuring services in any way that treats nonmembers differently than members.* Any questions can be directed to your UniServ Director, who will consult with the IEA attorney assigned to your local as needed.

**Can nonmembers voluntarily pay a fair share fee?**

The Court’s opinion indicates that nonmembers can waive their First Amendment rights and voluntarily agree to pay fair share fees, but the union must demonstrate by clear and compelling evidence that the waivers are freely given. IEA has not encouraged voluntary contributions by nonmembers in lieu of dues and has not encouraged its locals to accept voluntary contributions in lieu of dues. Historically, IEA would rather help potential members see the value of membership and have them join the Association and pay unified dues to support the Association at all levels.
Legal

Can the Janus decision be overturned by federal or state law?

No. Only the U.S. Supreme Court can overturn its ruling as to what the U.S. Constitution means (besides a constitutional amendment).

Does the Janus decision affect private sector locals?

No. Janus only invalidates public sector fair share fee collection. Local associations that represent private sector employers should talk to their UniServ Directors regarding the continued collection of fair share fees as provided for by federal law.

May a district (through any of its administrators/agents) contact bargaining unit members directly (in person, by phone, or in writing) and ask whether they wish to still have dues deducted from their payroll checks?

Absolutely not. The labor act prohibits employers from interrogating members about their union activities, one of which pertains to the decision to have dues deducted from their paycheck. It is the association’s duty to gather and report information as to who wishes to have dues deducted. If this arises in your local, please contact your assigned UniServ Director to assist with an immediate response.

Membership

What are a member’s obligations under the membership enrollment agreement?

By signing the IEA membership enrollment/payroll deduction authorization form, the member agrees to maintain membership and have their dues deducted for that year and each year thereafter. However, the member can revoke membership at any time in writing by providing written signed notice to either the local president or IEA President.

What is the minimum that a local president (or other union representative) must do if someone requests to drop membership?

The president (or any union representative), at minimum, should explain the process of dropping membership. The member must provide written notification to the local president or the IEA President requesting to drop membership. This notification must include a signature. The president should provide necessary addresses for this correspondence. The president should take this opportunity to have a conversation with this person about membership in the organization and their reason for choosing to drop membership. If they submit their letter, this person becomes a potential member of the organization, so this interaction should be as painless as possible for both parties.
so that we have the opportunity to convert this person back to full membership in the future. A negative experience at this point could make future conversion quite difficult.

A member has contacted the district and asked to stop payroll deduction of their dues. Should I drop them as a member?

No. A request for termination of payroll deduction is not the same as a membership drop. A person can be a member and directly pay dues rather than use payroll deduction. The membership enrollment form we have used until now requires that the member has to notify either the local president or IEA President in writing, with a signature, to revoke dues deduction authorization for the upcoming school year. Both our new membership enrollment form and recommitment form now require that the member notify both the employer and the local (or IEA) “in writing” of their intent to stop payroll deduction of dues. If the language in the letter only requests termination of payroll deduction, then this person is only requesting to cease this method of dues payment and has not dropped membership. The local should reach out to this individual to arrange payment of their dues.

Who is entitled to receive EEL forms (NEA Educators Employment Liability (EEL) Program) or similar information?

Members. Only members are entitled to receive the EEL forms and similar information. However, this information could be used as an advertisement of benefits of membership for potential members.

With the new electronic membership forms, is there a way to sign electronically?

Not at this time. IEA and NEA are working on this and hope to have this option available soon. Meanwhile, once the information is entered into the form, you must print the form and the member must sign and date.

What should be done with Potential Member Forms?

This information should be entered into NEA360. The local should maintain the original copy of this form to help in its future organizing and recruitment efforts.

Can a person choose to join their local union without joining IEA and/or NEA?

No, an employee cannot join only the local union. Because we are a unified state, a person must become a member of local, state, and national levels.

Is there a membership drop form? What is the process for a person wishing to drop membership?
There is no specific form that an individual must complete to drop membership. The individual must draft a letter to their local president or the IEA president stating that they wish to drop membership. This letter MUST be signed and dated. We encourage them to list the reason for their termination of membership, but we cannot legally require this information to be included.

As part of the process stated above, IEA has created a Membership Drop Checklist. This form is a great organizing tool to have a conversation with a member about the benefits that are lost from leaving the union. A member is NOT required to complete this form and is NOT required to sign the form to complete a membership drop. Also, completion of this form does NOT satisfy the necessary process for terminating membership. The process in the previous paragraph is the only approved and required process to drop membership.

If an individual was eligible for membership at the beginning of the school year, but chose not to join, will their dues be prorated should they choose to join later (for example, to have voting rights at a ratification meeting)?

No. If the person was eligible for membership at the beginning of the year, the current practice is that the full dues amount will be charged to the individual.

Payroll Deduction

Should all members sign recommitment forms for authorization of payroll deduction?

Following the Janus decision, some districts are asserting that their practice of permitting dues check-off based simply on the local association providing it a list of union members, may create liability for the district. Some districts are requiring a signed dues deduction authorization from each member. We strongly encourage you to resist such attempts to change past practice of payroll deduction authorization.

However, we are advising that it would be prudent to begin the process of collecting membership forms or, if those cannot be located by the local or the IEA Membership Department, replacement forms that authorize dues deductions. (See Payroll Deduction section of this document for information about forms that legally satisfy the requirements for dues deduction authorization).

Please contact your UniServ Director with any payroll deduction authorization requests from your district that differ from past practice.

Does Janus have any effect on how locals should submit payroll deduction requests for dues to the district?
No, it does not. Nonetheless, current Illinois law supports a district’s position that it needs written authorization to deduct dues.

According to guidance provided by the Illinois Attorney General on 7/20/18:

1. Janus only affects non-union members who previously paid fair share fees.
2. Janus does not change any other rights and obligations regarding public employment law in Illinois.
3. Janus does not impact collection of union dues from members or any preexisting arrangements regarding dues.
4. Union members’ existing choices as to membership cards, payroll deductions and other agreements must continue to be honored.
5. Nothing in Janus changes the validity of existing members’ prior authorization of dues deduction or requires existing members to reaffirm prior authorization.
6. Under Illinois law, public employees may pay dues through a voluntary payroll deduction negotiated by the exclusive bargaining representative.

So, if the district does not insist on any changes, the process should be as usual, and the guidance provided by the AG can be used in support. If the district insists on receiving signed dues deduction forms, please reach out to your UniServ Director for guidance.

What forms can be used to satisfy the legal requirements for payroll deduction authorization?

There are only four forms that IEA has created that satisfy the legal requirements for payroll deduction authorization:

- New Membership Enrollment Form
- Current Membership Recommitment Form
- Single Signature Payroll Deduction Authorization
- Multiple Signature Payroll Deduction Authorization

Please remember that the forms created for these purposes are legal forms and must NOT be changed by your local.