

POLICY BRIEF

Washington state should stop collecting dues for unions and help protect worker rights instead

By Elizabeth Hovde,
Director of WPC's Centers for Health Care and Worker Rights

January 2024

Key Findings

1. In a major victory for workers and First Amendment rights, the court decided on June 27, 2018, in *Janus v. AFSCME*, that non-union government workers cannot be required to pay union fees or dues as a condition of working in public service.
2. Since the *Janus* ruling, public-sector-union membership has declined, despite an increase in public employment.
3. Some public workers in Washington state are not aware that they do not have to give a portion of their earnings to a union with which they disagree. The state does not offer good information about *Janus* rights, even on a Washington State Department of Labor and Industries web page that is supposedly devoted to workers' rights.
4. Public-employee unions in Washington state make it difficult for employees to opt out. A public employee can, therefore, be forced to pay union dues despite the *Janus* ruling.
5. Washington state not only makes it difficult to find neutral information about this important workplace right, it distorts the question of whether union dues are required or optional by playing the role of dues collector for unions. The state-union partnership that exists keeps workers in the dark about their rights in ways that are not acceptable or respectful.
6. Washington state lawmakers should remove the state from this union dues collection role. Public employees should pay union dues just as they do other personal bills, and the state should limit itself to protecting a public employee's right to join or not to join a union.



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Introduction: The case of Janus v. AFSCME

Until 2018, government employees in Washington state could be forced to fund a labor union against their will as a condition of their employment. The U.S. Supreme Court changed that with *Janus v. AFSCME*.¹

In a major victory for workers and First Amendment rights, the court decided on June 27, 2018, that non-union government workers cannot be required to pay union fees or dues as a condition of working in public service. As a result, workers are no longer forced to fund unions with which they disagree or want to disassociate. An Illinois social worker and the plaintiff in the case, Mark Janus, said of the ruling that bears his name, “The right to say ‘no’ to a union is just as important as the right to say ‘yes.’ Finally, our rights have been restored.”²

The opinion of the court³ reads: “The First Amendment is violated when money is taken from nonconsenting employees for a public-sector union; employees must choose to support the union before anything is taken from them. Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.”

The impact on Washington state

King 5 News reported at the time, “The ruling is especially significant for Washington, which is not a right-to-work state.”⁴ That is because public employees had been required to pay an agency fee that was said to be for workplace representation, even if the individual had chosen to opt out of the union.

1 Supreme Court of the United States syllabus, *Janus v. AFSCME*: https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf

2 “*Janus v. AFSCME*,” Liberty Justice Center: <https://libertyjusticecenter.org/cases/janus-v-afscme/>

3 Supreme Court of the United States syllabus, *Janus v. AFSCME*: https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf

4 “Supreme Court union ruling especially significant for Washington,” KING 5 News, June 27, 2018: <https://www.king5.com/article/news/politics/supreme-court-union-ruling-especially-significant-for-washington/281-568372702>

Washington state’s Office of Financial Management⁵ confirms this and says: “The Janus decision means that public employees who choose not to be a member of the union can no longer be required to pay a representation fee.”

Washington workers opt out

Many workers now enjoy workplace freedom. They can choose whether or not to join a union and pay dues, or keep the money in their paycheck. Union dues can add up to more than \$1,000 annually.⁶ Using Bureau of Labor Statistics (BLS) survey data, the Mackinac Center for Public Policy says public-sector-union membership has declined, despite an increase in public employment.

Mackinac researchers write,⁷ “From 2017 (the year before the Janus decision) to 2022 (the latest survey), the number of government union members in the states affected by the court ruling fell by more than 60,000,⁸ despite an increase in public employment. The percentage of public sector workers who are union members is now 33.1%.⁹ That’s down from 34.4% in 2017 and is the lowest since the 1970s.”

The BLS survey is a weak source for numbers, Mackinac and the federal government acknowledge, and there are other ways to measure union membership,¹⁰ but even the BLS results show a drop in public unionism. Public records requests to government entities¹¹ show even greater declines.

Washingtonians are among those who have exercised these free speech rights and have opted out of payments and union membership. The Freedom Foundation,¹² a nonprofit organization that defends worker freedoms, told me in November that they had helped more than 2,550 individuals leave unions in 2023 to date. The organization operates OptOutToday.com¹³ to help workers make their own

5 “Q&A related to the Janus decision,” Washington state Office of Financial Management, July 12, 2018: <https://ofm.wa.gov/state-human-resources/labor-relations/qa-related-janus-decision>

6 “Public employees need to know their Janus rights,” The Seattle Times, July 7, 2021: <https://www.seattletimes.com/sponsored/public-employees-need-to-know-their-janus-rights/>

7 “Janus has a large impact on union membership, five years later,” Mackinac Center for Public Policy, Nov. 20, 2023: <https://www.mackinac.org/blog/2023/janus-had-a-large-impact-on-union-membership-five-years-later>

8 “National population survey data,” Mackinac Center for Public Policy, June 15, 2023: <https://www.mackinac.org/31019>

9 “Union members — 2022,” Bureau of Labor Statistics news release, Jan. 19, 2023: <https://www.bls.gov/news.release/pdf/union2.pdf>

10 “Measuring union membership,” Mackinac Center for Public Policy, June 15, 2023: <https://www.mackinac.org/31018>

11 “National results from public records requests,” Mackinac Center for Public Policy, June 15, 2023: <https://www.mackinac.org/31022>

12 Elizabeth Hovde interview with Freedom Foundation after this Oct. 2, 2023, press release on opt-outs: <https://www.freedomfoundation.com/media-statement/freedom-foundation-sets-daily-weekly-and-quarterly-union-membership-opt-out-records-during-third-quarter/>

13 OptOutToday.com: <https://www.optouttoday.com/>

decisions about union membership and dues paying. The site is helpful, because it informs public-sector workers how to opt out if they so choose. It is especially useful because information about the new worker right is not readily available to Washington's public employees from their own employer, the state.

Some public workers still are not aware that they do not have to give a portion of their earnings to a union with which they disagree. Being forced to pay a union adds insult to injury when workers are already burdened by ostracization and scolding they receive from an institution that is supposed to represent them in the workplace.

State information is missing in action

Information about Janus rights are absent from a Washington State Department of Labor and Industries web page¹⁴ that is supposedly devoted to workers' rights. The web page highlights hours, overtime, paid sick leave, minimum wage, meal periods, rest breaks and how workers can file workplace complaints. On the web page, bold letters proclaim, "Workers are protected by laws and rules covering workers' wages, working conditions, overtime pay, and prevailing wage on public works construction projects," while leaving out any mention of what Janus rights mean for public employees' wages and working conditions.

An official poster¹⁵ titled, "Your Rights as a Worker," reminds employers that it is the law to post the notice about worker rights in the workplace where employees can read it. Like the state website, this poster also fails to mention employees' Janus rights.

A state worker with the Employment Standards office told the Washington Policy Center that information about Janus likely was not featured because it is federal law, not state law. She said her job was to "lead workers to things they'll need," but she was not familiar with the term Janus rights, nor could she point to any specific state or federal information.

The U.S. Department of Labor¹⁶ has hundreds of A-Z listings.¹⁷ At the time of this writing, entries on "Janus rights," "worker right not to join a union" or other likely terms and phrases that would provide information about the right to leave a union were absent.

There was information about "union elections," "union finances," "union records" and the rights of union members. A Department of Labor form¹⁸ called, "Your Rights at Work," does not include information that union dues should be

14 Washington State Department of Labor & Industries workers' rights web page: <https://lni.wa.gov/workers-rights/>

15 "Your rights as a worker," Publication F700-074-000 [10-2021], Washington State Department of Labor & Industries: <https://www.lni.wa.gov/forms-publications/F700-074-000.pdf>

16 U.S. Department of Labor: <https://www.dol.gov/>

17 U.S. Department of Labor site index: <https://www.dol.gov/general/siteindex>

18 "Your Rights at Work," U.S. Department of Labor: <https://www.worker.gov/wp-content/uploads/2023/03/KYR-EnglishUS.pdf>

voluntary, not compulsory. The main headline and link on the homepage for the U.S. Department of Labor, dol.gov, says, “Interested in unions & collective bargaining? The Worker Organizing Resource and Knowledge (WORK) Center has resources that can help.” The government provides inducement to join a union, but it hides information on how to leave a union.

The state of Washington’s Office of Financial Management does have a web page¹⁹ titled, “Q&A related to the Janus decision,” last updated July 12, 2018. It directs public employers this way: “What should the employer communicate to employees? The employer is expected to remain neutral on the topic of union membership or nonmembership. Employees who are part of a bargaining unit with questions about membership should contact their union or PERC.” (PERC is the Washington State Public Employment Relations Commission.)

It further explains, “What should be communicated to job applicants? The employer should check job announcements and employment web pages to be sure that communication is accurate and remove any language stating that there is a requirement to join the union or pay a representation fee. It is still appropriate to notify candidates that positions are included in a bargaining unit.”

Finally, it instructs public employees: “If I have questions about my union dues or agency fee payment, whom should I contact? Contact your union.” Telling public employees to contact their union for questions about dues in this way could lead to workers being intimidated or misled.

Washington state collects for the union

Washington state not only makes it difficult to find neutral information about this important workplace right, it distorts the question of whether union dues are required or optional by playing the role of dues collector for unions. The state automatically deducts pay from workers’ paychecks and remits the money to the union, unless a union says not to do so for a particular individual. The Janus ruling does not prevent states from doing unions this dues-collecting favor. It only says that affirmative consent is required before taking money from workers.

State law and legal guidance²⁰ outline the state’s dues-collection role, and state agencies trust unions to give them information about which state employees have agreed to be union members and which have not, not the actual employee. Washington state RCW 41.80.100²¹ says, “The employer shall rely on information

19 “Q&A related to the Janus Decision,” Washington state’s Office of Financial Management: <https://ofm.wa.gov/state-human-resources/labor-relations/qa-related-janus-decision>

20 “State of Washington — Public Employees Labor Union — Payroll Deductions for Union Dues,” AGO 1956 No. 271, Office of the Attorney General of Washington state, opinion, May 23, 1956: <https://www.atg.wa.gov/ago-opinions/state-washington-public-employees-labor-unions-payroll-deductions-union-dues#:~:text=It%20is%20lawful%20for%20any,a%20proper%20written%20assignment%20thereof>

21 RCW, Title 41, Chapter 41,80, Washington state Legislature: <https://apps.leg.wa.gov/rcw/default.aspx?cite=41.80.100>

provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.”

It also says, “An employee’s written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee’s salary must be made by the employee to the exclusive bargaining representative,” and, “The employee’s authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.” Those terms and conditions are described this way in the law:²² “An employee’s request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.” Some of those terms and conditions are limited windows of time²³ in which to withdraw from a union that have been created by unions, hindering employees’ ability to opt out.

A public employee can, therefore, be forced to pay union dues despite the Janus ruling. Public unions in Washington state have sought to circumvent the law ending compulsory unionism in this and other ways. The result is unions denying workers access to their full First Amendment and freedom-of-association rights.

Activity helping Janus in other states

At least one state is seeking clarification²⁴ on states’ roles in Janus rights. Some are ensuring that states get direct consent to withdraw union dues from employees’ paychecks.²⁵

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- 22 RCW, Title 41, Chapter 41,80, Washington state Legislature: <https://apps.leg.wa.gov/rcw/default.aspx?cite=41.80.100>
 - 23 “How to leave your union — Everything you need to know about the Janus right-to-work court decision,” Washington Policy Center, June 1, 2018: <https://www.washingtonpolicy.org/publications/detail/all-you-need-to-know-about-janus-v-afscme-and-right-to-work>
 - 24 Supreme Court of the United States No.23-179: https://www.supremecourt.gov/search.aspx?filename=%2Fdocket%2Fdocketfiles%2Fhtml%2Fpublic%2F23-179.html&utm_medium=email&_hsmi=2&utm_content=2&utm_source=hs_email
 - 25 SB 473, Arkansas State Legislature: <https://www.arkleg.state.ar.us/Bills/Detail?id=sb473&ddBienniumSession=2023%2F2023R> and <https://www.freedomfoundation.com/press-release/arkansas-bill-would-end-government-collection-of-union-dues-from-teachers-paychecks/>; “State workers will need to opt in annually to pay union dues directly from paycheck,” Lansing State Journal, July 13, 2023: <https://www.lansingstatejournal.com/story/news/local/2020/07/13/michigan-civil-service-commission-union-dues-right-to-work-janus/5427948002/>; “Florida teachers unions scramble to collect dues or risk decertification,” NPR, November 20, 2023: <https://www.wmfe.org/education/2023-11-20/florida-teachers-unions-scramble-collect-dues-risk-decertification>

In September, an amicus brief²⁶ filed with the U.S Supreme Court by the Mackinac Center argues²⁷ that states must obtain direct consent from public employees before they can withhold union dues from employees' paychecks to follow through with the unambiguous intent of the Janus ruling. It notes that the Janus decision granting public employees' their First Amendment rights also requires them to be informed of their rights and provide "clear and compelling evidence" that they consent to having dues removed from their paychecks. The brief was in support of the Alaska attorney general's request²⁸ to have the court consider appealing a 2023 decision by the Alaska State Supreme Court that invalidated a state program specifically created to facilitate the enforcement of Janus rights. Alaska wants its employees to know their rights when it comes to union membership and payments.

Policy recommendation

Washington state's government-union partnership for collection works against public workers and their right to be free of unionism, as the Janus v. AFSCME decision intends. Unions use government-administered dues collection to implement anti-Janus workarounds. Those have included limits on when employees can withdraw²⁹ from paying dues.

Protect workers

In October, the Freedom Foundation filed a petition with the U.S. Supreme Court involving five alleged instances of union representatives forging employee signatures³⁰ in order to keep deducting dues payments from people who did not authorize union-bound deductions. The incidents are said to have happened in Washington state, Oregon and California. It is the state's job to protect taxpayer-funded workers.

Even if unions are accurately reporting which employees want to be members and which ones do not, and even if they would allow our state's employees to leave union membership at any time, the state should not be doing unions this favor. The

26 Amicus Brief, Supreme Court of the United States, https://www.mackinac.org/archives/2023/Alaska_Brief_USSC.pdf?utm_medium=email&hsmi=2&utm_content=2&utm_source=hs_email

27 "Brief says states must obtain direct consent from employees before withholding union dues," Holly Wetzel, Sept. 29, 2023: <https://www.mackinac.org/pressroom/2023/brief-says-states-must-obtain-direct-consent-from-employees-before-withholding-union-dues>

28 Supreme Court of the United States No.23-179: https://www.supremecourt.gov/search.aspx?filename=%2Fdocket%2Fdocketfiles%2Fhtml%2Fpublic%2F23-179.html&utm_medium=email&hsmi=2&utm_content=2&utm_source=hs_email

29 "How to leave your union — Everything you need to know about the Janus right-to-work court decision," Washington Policy Center, June 1, 2018: <https://www.washingtonpolicy.org/publications/detail/all-you-need-to-know-about-janus-v-afscme-and-right-to-work>

30 "Five union forgery cases bundled into one Scotus appeal," press release, Freedom Foundation, Oct. 5, 2023: <https://www.freedomfoundation.com/press-release/five-union-forgery-cases-bundled-into-one-scotus-appeal/>

state should not risk aiding and abetting the involuntary collection of dues or open the state up to litigation by which all taxpayers will be harmed. The state should make it easy for workers to be protected by current law, not make it easier for unions to circumvent that law.

Helping workers who want to be freed from association with or payments to a union would also protect ideological freedom. Beliefs and opinions that do not line up with a union are often trampled and disparaged by labor groups, not tolerated. Helping protect ideological minorities should be a state priority.

Unions often fund political issues or candidates at workers' expense and in ways in which they disagree. This is, after all, what the Janus ruling was all about. The Janus decision intended to restore free speech and free association rights of public employees. While the Janus decision is good on paper, unions have been able to circumvent the law. States can adopt policies that make unions respect worker rights.

In the private sector, union membership continues to decline.³¹ In 2022, the union membership rate for public-sector workers was 33.1%, more than five times higher than the rate of private-sector workers (6.0%).³² A decline in membership in the private sector is not surprising. People are supportive of individual rights.

As WPC noted in a 2014 study,³³ unions were once an important means by which historically mistreated workers organized and gained safe working conditions and fair wages. Unions have since evolved into something altogether different. Instead of advocating on behalf of workers, unions have increasingly acted as organizations that advocate for political causes that benefit union leadership and a political party more than workers themselves.

Union executives are heavily involved in securing political campaign donations, and over 90%³⁴ of union giving goes to candidates of the Democratic party. Increasingly, private-sector workers reject labor's newly politicized role and resist the notion they should be forced to support that new role. Right-to-work laws, in states where they exist (Washington state is not a right-to-work state), have helped workers keep their money from going to political causes and candidates with which they disagree.

When unions must focus on representing and serving their members, regardless of political beliefs, there is less time and fewer resources to engage in political activities that many union members oppose.

31 "Union members — 2022," press release, Bureau of Labor Statistics, Jan. 19, 2023: <https://www.bls.gov/news.release/pdf/union2.pdf>

32 Ibid.

33 "Right to work and how it works," Washington Policy Center policy brief, Oct. 21, 2014: <https://www.washingtonpolicy.org/publications/detail/right-to-work-what-it-is-and-how-it-works>

34 "Labor sector summary," Open Secrets: <https://www.opensecrets.org/industries/industries.php?ind=P> and <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0302-goldberg-democrats-government-20210301-bdsku3a2rzexddfxxrhf2zj5zu-story.html>

Keep more dollars local

The state, in getting out of the collection role for public employee unions, would help ensure that more of its employees' dollars stay local. Most union dues remove dollars from Washington state to a union's national organization. The national organization also dictates union priorities to workers in Washington state. It is in Washington's interest to stop unions from sending dues dollars away from the Evergreen state.

Conclusion

Washington state lawmakers should remove the state from this union dues collection role. The state should limit itself to protecting a public employee's right to join or not to join a union. The state-union partnership that exists now keeps workers in the dark about their rights in ways that are not acceptable or respectful.

Just as the state should not be collecting money for workers' Netflix accounts or other personal bills, it should not be the bill collector for payments that go to unions. Also, it is an irresponsible administrative cost that should be borne by unions, not taxpayers. The state should not aid or abet politicized unions that do not respect the Supreme Court's Janus guidelines or the genuine spirit of the law.

No one should be forced to pay a union with which they disagree. The state can help workers realize their Janus rights.

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