

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Chief Deputy of Civil Affairs

SHARON PINO
Chief Deputy of Criminal Affairs

Attorney General Advisory

Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31*

New Mexico has a long and important tradition of supporting the organized labor movement and the rights of workers to organize. Our unionized public sector employees - including teachers, firefighters, police officers, child welfare workers, and other public employees - provide vital services that benefit all of our communities in New Mexico.

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31*, 585 U.S. ____, 138 S.Ct. 2448 (2018) overturns decades of well-established law and the practice of unions to receive payment for fair share agency fees from public sector employees who decline union membership. After *Janus*, there has been confusion. This Advisory is intended to provide clarity to public sector employers and employees.

The only change under *Janus* is that public employers may no longer deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the nonmember employee's affirmative consent¹. All other rights and obligations of public employees and employers remain the same under the Public Employee Bargaining Act ("PEBA"), NMSA 1978, Sections 10-7E-1 to -26 (2003, as amended through 2005).

Collective Action Rights

- The rights of public employees not affected by *Janus* under New Mexico law are:
 - The right to organize;
 - The right to choose a labor organization;
 - The right to join a labor organization;
 - The right to engage in lawful, concerted activities for the purpose of collective bargaining; and
 - The right to be represented by a labor organization of their own choosing for the purpose of bargaining collectively on questions of wages, hours and other terms and conditions of employment.

¹ Footnote 6 in *Janus* indicates that if a public employee requests to use a union's grievance or arbitration procedure on its behalf, a union can charge for the reasonable cost of using such procedure.

- Public employers shall not discriminate against a public employee because of the employee's membership in a labor organization or "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act." NMSA 1978, § 10-7E-19 (2003).

Dues and Agency Fees

- The *Janus* decision does not affect any agreements between a union and its members to pay union dues. Existing agreements by union members to pay dues should continue to be honored.
- The *Janus* opinion *only* impacts the payment of an agency service fee, often referred to as fair share fees, by individuals who decline union membership. Under *Janus*, public employers may *not* deduct agency fees from a nonmember's wages nor may the union collect agency fees from a nonmember, without the nonmember employee's affirmative consent.
- Employees who are nonmembers and paying agency fees may choose to become dues-paying union members.
- Union member employees may pay dues through a payroll deduction.

Member Access and Information

- Many public sector unions have negotiated for the rights of their members to use the employer's premises and equipment to engage in protected concerted activity. Nothing in the *Janus* opinion affects those rights.
- Employers should continue to honor any agreements or contracts that are not contrary to the *Janus* prohibition on deducting agency fees from a nonmember's wages without that employee's affirmative consent.

Workers who believe their rights have been violated may contact their employer or their union.