

Supreme Court Justices Appear Ready to Overturn Mandatory Union Fees for Public Sector Employees

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The ***United States Supreme Court*** appears headed toward outlawing “agency-shop” or “fair share” provisions in public sector collective bargaining agreements, requiring non-members to pay union fees, sometimes reluctantly, in lieu of dues. ***Frederichs v. Cal. Teachers Ass’n***, No. 14-915, argued Jan. 11, 2016.

The Supreme Court held in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), that public-sector unions are constitutionally prohibited from using the fees of objecting nonmembers for ideological or political purposes that are not germane to the union’s collective-bargaining duties. The Court, however, upheld a state law authorizing unions and government employers to enter into agency-shop agreements. Under these arrangements, a union can levy a fee on employees who are represented by the union in collective bargaining but who object to becoming union members. For public sector employees, *Abood* remains the controlling standard.

Many states, including California, currently authorize such agreements. In the public sector, agency fee arrangements raise First Amendment concerns because they force individuals to contribute money to unions as a condition of their government employment.

In *Frederichs*, ten California teachers requested the Supreme Court overrule *Abood* and find the agency fees unconstitutional. When given the opportunity to overturn *Abood* in 2014, the Court declined. Instead, in *Harris v. Quinn*, the Court held that “quasi-public” employees (those who do not actually work for a public employer, but who are paid by public funds, such as Medicaid) were not required to pay agency-shop fees, but left *Abood* (as it pertains to “full-fledged” public employees) intact. For an extensive discussion of *Harris v. Quinn*, [click here](#).

Although Justice Antonin Scalia’s earlier statements on the issue led some Court observers to believe he might support the union in *Frederichs*, his questioning at oral argument suggested otherwise. In *Harris v. Quinn*, he appeared to empathize with the union’s argument that agency fees were required to prevent “free-riders” (individuals who accept the “benefits” of collective bargaining

without paying the costs associated with it). Now, he seemed to question the necessity for those fees to sustain the union's survival. Justice Anthony Kennedy also noted, "[t]he union basically is making these teachers 'compelled riders' for issues which they strongly disagree."

Chief Justice John Roberts, Justice Scalia and Justice Kennedy seemed to support the teachers. However, as noted by Justice Elena Kagan, the teachers have a "heavy burden" to convince the Court to overturn long-standing precedent. Labor unions in the public sector depend on compulsory financial support for their bargaining strength and political influence. Approximately 5 million public sector employees are covered by union contracts and pay a compulsory fee. That means huge sums of money for unions representing public employees are at stake.

A decision is expected in the spring.

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