

# STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

Office of Labor Relations

June 29, 2018

General Notice No. 2018-06

**TO: Labor Relations Designees**

**SUBJECT: Agency Fees to Cease per Janus v. AFSCME**

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Section 5-280 of the Connecticut General Statutes provides that the payment of dues and fees to the exclusive statutory representative is required. The law provides, in relevant part, that:

If an exclusive representative has been designated for the employees in an appropriate collective bargaining unit, each employee in such unit who is not a member of the exclusive representative shall be required, as a condition of continued employment, to pay to such organization for the period that it is the exclusive representative, an amount equal to the regular dues, fees and assessments that a member is charged.

The payroll deduction of dues and fees is a mandatory subject of bargaining. The status of the law in Connecticut changed on Wednesday when the United States Supreme Court declared this statutory provision, and applicable collective bargaining provisions arising thereunder unconstitutional in *Janus v. American Federation of State County and Municipal Employees*.

The petitioner, Mark Janus, is an employee with the Illinois Department of Healthcare and Family Services. He claimed that compelling him to pay agency fees to a Union that he neither supported nor was a member of violated his First Amendment right to freedom of speech. The mandatory fee, he argued, required him to subsidize political speech because when dealing with public employers, the negotiated issues are essentially political in nature. The Supreme Court held that:

Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, **unless the employee affirmatively consents to pay**. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938); see also *Knox*, 567 U. S., at 312-313. Rather, to be effective, **the waiver must be freely given and shown by "clear and compelling" evidence**. (Emphasis added.)

In response to the *Janus* decision, the State shall immediately discontinue the collection of agency service fees from non-union members. Union members shall, however, continue to have the union dues deducted from their biweekly payroll checks. The *Janus* decision is prospective in its application. State employees who have union membership cards on file, and such is reflected in the payroll records with the State Comptroller, will see no difference

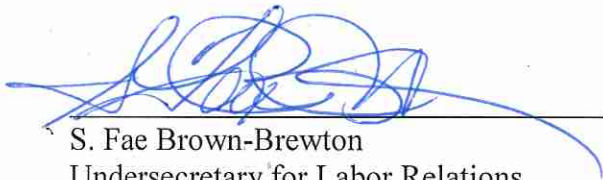
in their payroll deduction. Those employees who are fee payers, however, will note that the deduction has ceased.

It should be noted that the July 6, 2018 paycheck will, however, reflect the deduction of agency fees because it is for the June 8, 2018 to June 21, 2018 pay period. Unions may place those funds in escrow and return them to employees, but since that time period pre-dates *Janus*, the State had both a statutory and contractual obligation to continue to collect and remit those fees to the unions, as that was the status of the law.

Should employees express a desire to discontinue having the service fees deducted from their pay, you may advise them that the Comptroller's Office has already addressed that for agency fee payers. If, however, an employee expresses a desire to cancel his or her union membership, such employee should be directed to the applicable provision of the labor agreement and advised to communicate their desire, in writing, to their union.

Human Resources representatives may accept a copy of the notice to the union of the desired cancellation, and forward the same to the agency payroll office and the Comptroller's Office. The Comptroller's Office shall established a "UC" code for payroll departments to utilize for union members wishing to cancel their membership. Due to the fact that union membership is between the employee and the Union, the Union should confirm the existence of any agreement between it and the employee that would preclude an immediate cessation of the collection of dues, prior to cancelling the deduction. Notwithstanding, the State is committed to respecting the rights and privacy of State employees in this new environment.

If you should have any questions, please do not hesitate to contact the Office of Labor Relations at 418-6447. Employees with questions should contact their Agency Personnel Office.



S. Fae Brown-Brewton  
Undersecretary for Labor Relations