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LEGAL UPDATE

February 12, 2020

To: Superintendents, Member School Districts (K-12)
**From: Carl D. Corbin *CDC*
General Counsel**
**Subject: Unions & Districts Do Not Have to Reimburse Retroactive
Agency Fees
Memo No. 04-2020**

As referenced in our Legal Update Memo No. 33-2018, Senate Bill (“SB”) 846 shields public employers, employee organizations and any of their employees or agents against certain lawsuits related to agency or “fair share” fees¹ collected prior to the United States Supreme Court’s June 27, 2018 decision in *Janus v. AFSCME*.²

In light of the Supreme Court’s decision in *Janus*, multiple anti-union organizations across the United States have filed suit on behalf of fair share fee payers seeking retroactive reimbursement of fair share fees collected prior to June 27, 2018.

The lawsuits filed seeking reimbursement for agency fees paid to unions prior to the *Janus* decision alleged violations of the United States Constitution and not a violation of California law. As such, it was unclear whether SB 846 would have any effect on these lawsuits, or on any future lawsuits filed on First Amendment grounds.

Joining the Seventh Circuit of Appeals,³ the Ninth Circuit Court of Appeals, in a decision arising out of Washington State,⁴ held that:

¹ An agency shop fee arrangement occurs when employees are required to pay certain compulsory “fair share” or “service” fees to the employee organization as a condition of employment even when the employee is not a member of the union.

² *Janus v. American Federation of State, County, and Mun. Employees, Council 31* (2018) 138 S.Ct. 2448.

³ *Janus v. American Federation of State, County, and Mun. Employees, Council 31* (7th Cir. 2019) 942 F.3d 352 (“*Janus II*”) and *Mooney v. Ill. Educ. Ass’n* (7th Cir. 2019) 942 F.3d 368.

⁴ *Danielson v. Inslee* (9th Cir. 2019) 945 F.3d 1096.



“...[T]he Union is not retrospectively liable for doing exactly what we expect of private parties: adhering to the governing law of its state and deferring to the Supreme Court’s interpretations of the Constitution. A contrary result would upend the very principles upon which our legal system depends. The good faith affirmative defense applies as a matter of law, and the district court was right to dismiss Plaintiffs’ claim for monetary relief.”⁵

As the Ninth Circuit Court of Appeals decision is binding in California, unless this matter is appealed to the Supreme Court of the United States, **employees are not entitled to reimbursement of agency fees paid prior to the *Janus* decision.**

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁵ *Id.* at 1105.