

Category II Scholarship Essay

How do judicial decisions impact the ability of unions to organize and collectively bargain?

Since the beginning of the Trump presidency, labor unions have had to fight against conservative action to weaken them economically and politically. Anti-union arguments claim that union compulsory “agency fees” for non-members to cover costs of collective bargaining violate the First Amendment, as they require members to endorse political messages they might be against.¹ Anti-unionists instead supported right-to-work laws, which ban compulsory agency fees and give employees the right to decide whether or not they wish to join a union and pay dues, while maintaining that all workers must receive the union benefits of collective bargaining² The rise of right-to-work lobbyists throughout the past few years lead to the latest major Supreme Court decision regarding labor unions; through *Janus v. AFSCME Council 31*, a previously thrice failed effort to ban compulsory fees for non-members passed in a 5-4 Supreme Court ruling.³

In early 2018, 22 states had collective bargaining laws that allowed unions to collect mandatory dues from non-members, and 28 states functioned under right-to-work laws. The right-to-work battle has been long fought; supporters of the laws argue that unions are inherently political and in requiring dues from non-members, they are forcing workers to fund political lobbying against their will. Unions on the other hand have argued that employees are already protected from compulsory union membership and that collective bargaining dues aren’t used for political activity, but instead help to maintain successful collective bargaining which protects all workers, union and non-union.⁴ The June Supreme Court decision essentially made right-to-work the national precedent by ruling that non-union workers cannot be required to help pay for collective bargaining, while maintaining that unions are still required to extend collective bargaining benefits to all workers. Justice Samuel A. Alito Jr., who represented the majority in this decision, argued that compulsory dues “violate the free speech rights of non-members by compelling them to subsidize private speech on matters of substantial public concern,” and that there is “No evidence that the pandemonium [others] imagined would result if agency fees were not allowed.”⁵ Justice Elena Kagan, representing the minority, did not seem convinced however, warning that the decision will “wreak havoc” on the thousands of legislative and contractual agreements across the U.S. that call for compulsory dues, and will prevent workers from making

¹ Liptak, Adam. “Supreme Court Ruling Delivers a Sharp Blow to Labor Unions,” *The New York Times*, June 27, 2018.

² “Employer/Union Rights and Obligations,” *National Labor Relations Board*.

³ Richard Wolf and Gregory Korte. “Supreme Court deals major financial blow to nation’s public employee unions,” *USA Today*, June 27, 2018.

⁴ Liptak, Adam. “Supreme Court Ruling Delivers a Sharp Blow to Labor Unions,” *The New York Times*, June 27, 2018.

⁵ Ibid

independent decisions about their workplace governance.⁶ In addition, union supporters and experts showed concern that the ruling would lead to an increase in “free riding,” in which workers are able to receive benefits from unions without paying for them. The effects of freeloading could mean a predicted union-membership reduction by 8% and a decrease government employee wages by almost \$2,000.⁷

The fears surrounding the future of unions was and is well founded, if right-to-work states are any indication. According to the Economic Policy Institute, in 2015 wages in right-to-work states were 3.1% lower than in states without right-to-work legislation. These consequences make sense as well; when unions are strong and well funded, the compensation won by effective collective bargaining increases for all workers, since non-union employers must match the higher wage rates protected by unions.⁸ Experts projected that after *Janus v. AFSCME*, wage cuts would cause U.S. economic activity to drop as much as \$33.4 billion. All workers would be affected, most drastically teachers who would suffer the highest wage cuts of all unionized workers.⁹

Unions themselves face potential destabilization by legislation such as the *Janus v. AFSCME* case, which directly attacks union membership and finances while encouraging freeloading and corporate exploitation. As unions are hurt, so are both unionized and non-unionized workers. The ability of a union to effectively engage in collective bargaining with an employer is contingent upon membership support and corresponding dues. Dues help keep unions funded, which enables them to ensure worker rights like health benefits, fair wages, and paid leave. With less money coming in from dues, unions would lose their ability to fight for the worker. As both wages and collective bargaining strength decrease, workers will continually lose avenues to economic improvement and may suffer from decreases in other union-protected benefits.

At the time of the Supreme Court Decision, Penn State University director of the school of labor and employment relations Paul Clark stated that corporations have indicated that they would try to convince union workers to drop out and become freeloaders if the legislation was passed. According to Clark, it is likely that many union workers will fall for this social trap and chase the short-term interest of union benefits without having to pay at the long-term cost of depleted union capabilities and the subsequent loss of benefits many take for granted like paid overtime and leave, healthcare benefits, and fair wages.¹⁰ Justice Samuel A. Alito Jr. stated that there was no evidence of pandemonium that would arise without compulsory fees, but

⁶ Ibid.

⁷ Frank Manzo and Robert Bruno. “After Janus, the impending effects on public sector workers from a decision against fair share,” Illinois Economic Policy Institute. 2018

⁸ Elise Gould and Will Kimball. “Right-to-Work” States Still Have Lower Wages,” *Economic Policy Institute*, April 22, 2015.

⁹ Frank Manzo and Robert Bruno. “After Janus, the impending effects on public sector workers from a decision against fair share,” Illinois Economic Policy Institute. 2018

¹⁰ Paul Davidson and Nathon Bomey. “Supreme Court rules against unions: How labor decisions will affect union pay, benefits.” *USA Today*, June 27, 2018.

Americans have not forgotten the conditions that that workers were forced to endure before the rise of the labor movement. If unions begin to lose their political and economic power, local and national governments may take the opportunity to defund areas that have long been a source of contention between unions and conservative anti-union politicians. Without the protection of a well funded unions, workers stand to lose healthcare benefits and pensions, among other union-protected rights.

Many union representatives have remained confident in the ability of unions to adapt and even utilize the latest legislation to their advantage. In preparation for the Supreme Court ruling, many public sector unions began internally organizing by reaching out to current members for canvassing and lobbying, as well as recruiting new members to keep their membership from declining drastically.¹¹ In addition, repeated governmental attacks on workers rights during the Trump presidency have made workers more willing to protest and lobby, meaning that union-members are readily willing to organize against government policies. According to Lee Saunders, president of the American Federation of State, County, and Municipal Employees, the increase in teacher walkouts to protest underfunding in public education early in 2018 is indicative of a growing momentum within unions that will result in greater group cohesion and stronger union organization.¹² Her argument seems to have merit; in August 2018, only a few months after the blow to unions, gallup reported that union support was remaining steadily high at a 63% approval rating among Americans.¹³

Almost eight months after the Supreme Court ruling, and union officials seem to have been correct in their confidence in union ability to organize and work around funding decreases. According to the Bureau of Labor Statistics, the union membership rate in 2018 was 10.5%. Although a record low, the rate is only a .2% decrease from 2017.¹⁴ Many unions conversely experienced increased membership, such as the American Federation of Teachers which has gained over 88,500 members since Janus v. AFSCME. Teachers have continued strikes, and it seems that the decision has fairly universally renewed union activism. Washington post Columnist Dana Milbank attributes recent union success as a result of union abilities to organize, engage, and prepare even before the Supreme Court Hearing.¹⁵ If Milbank is correct, this latest “blow” to unions may have proven that judicial decisions only have a minimal effect on union abilities to organize.

Successful collective bargaining takes significant funding. Judicial decisions that strip funding from unions, such as state and most recently national right-to-work laws, will have some unavoidable effect on the way that unions function and allocate funds. However, Janus v.

¹¹ Scheiber, Noam. “Labor unions will be smaller after Supreme Court decision, but maybe not weaker,” *New York Times*, June 27, 2018.

¹² Paul Davidson and Nathan Bomey. “Supreme Court rules against unions: How labor decisions will affect union pay, benefits.” *USA Today*, June 27, 2018.

¹³ <https://www.cbsnews.com/news/majority-of-americans-support-labor-unions-as-fewer-belong-to-one/>

¹⁴ “Union Members Summary” *Bureau of Labor Statistics*. January 18, 2019

¹⁵ Milbank, Dana. “So much for the labor movement’s funeral” *The Washington Post*. January 25, 2019.

AFSCME has proven that when threatened, unions continue to have the ability to organize and protect all workers, members and non-members, whether or not they pay dues. When calculating the potential effects of universal right-to-work, many focused on human individualism and tendency to pursue short term gain at the cost of long-term loss. What was not taken into account by anyone but the unions themselves was the radical social shift that has occurred since the beginning of the Trump presidency. Institutions have learned to rely on social cohesion and member passion to uphold the values they fight for. There is a greater value to union membership than just the material benefits that unions ensure and protect. There is a group intimacy and protection that cannot be replicated elsewhere in the workplace. Thus, even when given the ability to secure material benefits at no physical cost, union members instead chose to pay the tax of union dues to maintain and protect the social services unions provide.

While it may be unrecognized by the government that continually tries to defund it, unions truly do perform a necessary public service. It becomes increasingly clear that American corporations do not care for their employees. These corporations, the ones that brought about right-to-work and pushed its national adoption into the Supreme Court, fight continuously to destabilize and defund unions with hopes to inhibit collective bargaining and organization. But unions have proven that the labor movement is stronger than the capitalist impulse, and when given the choice unionized Americans will stand by their values and the groups which protect them. Judicial decisions may continue to fight against union strength, but it seems that union abilities to organize and collectively bargain may be too deeply rooted in the loyalty of its members to be significantly disadvantaged.