



# GRAND LODGE FRATERNAL ORDER OF POLICE®

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## Janus Decision

### Janus v AFSCME - 6/27/18

The long-awaited Supreme Court decision is here and it is what we expected. The Supreme Court ruled that Fair Share Fees are unconstitutional under the First Amendment of the Constitution. However, there is some interesting language in the heart of the decision concerning the Duty of Fair Representation, but more about that later. Here are some general observations about the decision:

- This decision **affects only** the issue of Fair Share and the collection of dues under the Fair Share doctrine.
- If you have a fair share clause in your Collective Bargaining Agreement (CBA), this decision invalidates that clause.
- Since most CBAs have a severability clause ensuring the continuation of the CBA in the event some part is ruled invalid or unenforceable, the invalidation of a fair share clause should have no effect on your CBA.
- If you do not have a severability clause in your CBA, you may have to go back to the bargaining table to discuss this issue.
- Your employers are required to stop taking Fair Share Fees from non-members as of June 27, 2018. Any fees collected after that date and sent to the lodge are required to be returned to the non-member.
- If you have language on the form you use for payroll deduction referencing Fair Share Fees, those forms should be replaced with forms indicating the payroll deduction for union dues is voluntary.
- **The Janus decision did not stop a public employer from participating in payroll deductions for union dues from members.**

In the Janus decision there is a section discussing the Duty of Fair Representation. The Court during this discussion opened the door to the prospect of charging non-members a fee for services or denying service altogether, as long as it is reasonable. However, it qualified that statement by saying union decisions cannot be arbitrary or in bad faith. In the coming months we will be examining ways to handle the question of Duty of Fair Representation. I believe a threshold might be the representation of a non-member during the initial processing of a grievance but once the grievance requires the use of attorneys and experts then the issue of payment or non-performance comes into play.



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## Frequently Asked Questions

**Q.** What does the Janus decision do?

**A.** It affects the ability of a lodge to collect monies from non-members as a condition of employment.

**Q.** Does the Janus decision affect the ability to have dues deductions from members?

**A.** No. Where state and local laws allow, the deduction of dues from members' paychecks is left unchanged. In other words, if your local jurisdiction is now deducting dues from your paycheck, that will not change.

**Q.** Will the Janus decision cancel out the right of members to have their dues deducted from their paycheck?

**A.** No, although it may require you to fill out a new dues deduction form if your old one mentioned fair share from non-members.

**Q.** Can non-members still pay a fair share fee and have it deducted from their paycheck?

**A.** Yes, but the authorization form will have to clearly state the non-member is doing it voluntarily and is not required to do so based upon the Janus decision.

**Q.** Will our union have to renegotiate any of the clauses in our Collective Bargaining Agreement?

**A.** Yes, if you have clauses in your CBA that refer to fair share payments by non-members.

**Q.** Does my lodge have to represent non-members under the Duty of Fair Representation?

**A.** Yes, to a certain extent. We are still evaluating the language in the Janus decision to see how it might affect the Duty of Fair Representation. At the very least you will be required to represent non-members during the initial processing of a grievance. However, at such time attorneys or expert witnesses may be needed it may be possible to charge the non-member for those services. Please keep in mind each state may have different rules as far as the duty of fair representation and you should consult your own state law.

**Q.** Does the lodge have the responsibility to bargain collectively for non-members?

**A.** Yes, all bargaining unit members—even non-dues paying bargaining unit members—must be represented fairly in contract negotiations.