

LIVING WITH *JANUS*:

**KEY ISSUES IN MEMBERSHIP
AND DUES DEDUCTION**

**Education Minnesota
Summer-Fall 2021**



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Topics covered in this training

Legal issues with membership and dues deduction don't have to be another shark in the water for local leaders this year!



1. What *Janus* does and doesn't require
2. Membership v. maintenance of dues
3. Common scenarios
4. Key bargaining recommendations
5. Rights of members and non-members



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Disclaimer

This presentation is for informational purposes only and is not intended as a substitute for specific legal or other professional advice. If you have specific questions about your legal or contractual rights, contact your Education Minnesota field representative.

This guidance is subject to change based on evolving legal developments, so please contact the legal department before distributing after the fall of 2021.



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1. The *Janus* ruling only applies to fair share fees

- Supreme Court's decision in *Janus v. AFSCME* was significant but narrow
- Only fair share fees affected
- Other union and collective bargaining rights under PELRA remain the same



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1. The *Janus* ruling only applies to fair share fees (cont.)

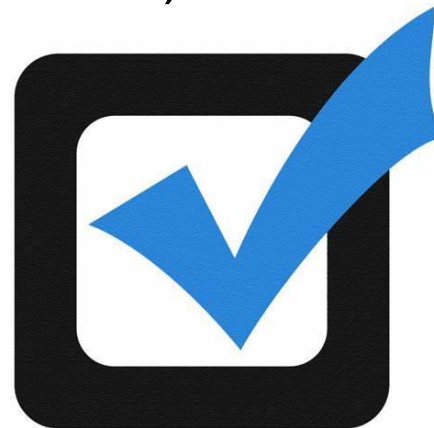
- Fair share fees still lawful for private sector in MN, other non-Right-to-Work states
- *Hoekman* case against EdMN is still pending, but over 30 federal district courts and six federal appellate courts have held that unions are not liable for fair share fees or dues collected prior to *Janus*
- Ongoing compliance with *Janus* still extremely important, since unauthorized dues collections from non-members now potentially constitute a First Amendment violation



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2. Maintenance of *dues checkoff* is still lawful and NOT the same as maintenance of *membership*

- Membership application includes agreement to be a member and an agreement to abide by September 1-30 revocation window
- **All members must have the right to resign their union membership at any time**
- This is distinct from revoking dues authorization, which can only occur during Sept 1-30 if the person signed a membership agreement in September 2017 or later (membership department can check this!)



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3. A signed membership agreement is enough to allow recurring deduction by employers

- Annual forms authorizing deduction NOT required by PELRA or *Janus* decision
- Membership agreement language authorizes ongoing deduction, so annual forms are unnecessary
- Some contract language may require annual forms, but **this language should be changed in bargaining!**
- Locals can and should provide EdMN membership agreements to employers if asked for proof of consent for dues authorization



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4. Requests to stop paying dues should be directed to unions, not the employer

- Employers should not stop deducting without union approval
- Union needs to verify whether employee has a revocation window and whether request is in that window
- Employer's unilateral termination of dues outside revocation window without union approval may violate CBA language

Pay Dues



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5. EdMN and locals should respond promptly to requests to resign and/or revoke dues authorization

- See membership procedures
- EdMN membership department maintains template letters for requests within and outside the window and emails them based on timing of request
- Excessive delays (more than a week) or continued collection of dues from potential members could create legal liability for locals and EdMN



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5. EdMN and locals should respond promptly to requests to resign and/or revoke dues authorization (cont.)

- Members have the ability to seek an exception to the revocation window via EdMN officers. Send requests to Field Staff or membership (memberdrop@edmn.org), who send to EdMN officers for review.
- Exceptions normally limited to unique circumstances (reasonable misunderstanding of dues obligation, communication/data entry errors by local or EDMN, discrepancy in CBA language and membership agreement) and not simply an unwillingness or difficulty in continuing to pay.
- If a member is extremely angry about being held to revocation window, document your response (preferably via email) and send to manager.



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6. Dates and procedures in CBA related to dues deduction should align with EdMN procedures

- Language should authorize deduction from year to year unless ended during revocation window
- If revocation window mentioned, it should be September 1-30
- Dues deductions should not start before early October



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6 Labor Day	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Dues revocation deadline



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7. Bargain union access language if you haven't already

Information: request updated rosters each month to track number of potential members, especially for ESP units

Orientation: many locals are guaranteed opportunity to address new employees annually at orientation; this can be bargained

Access to worksite: ensure union representatives are able to access to buildings to meet with members provided it doesn't interfere with employment responsibilities. This is not an automatic right for non-employees of the worksite (e.g., EdMN staff), but can be bargained.

EdMN's Union Protections Toolkit: For sample language, bargaining alerts and more! <https://www.educationminnesota.org/members-only/bargaining/Union-Protections-Toolkit>



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8. Non-members don't have a right to union benefits or PD

- Court decisions have upheld unions' right to exclude non-members from member-only benefits (e.g. union-provided disability insurance)
- **Check C&B language** and consider modifying to **ensure only members can vote in officer elections, contract ratifications, and strike votes**
- Union-provided PD outside of work hours does not need to be provided to non-members; however, it might be a good recruiting tool in some cases
- Committees that affect the whole bargaining unit should not explicitly be limited to members (e.g., TDE, Q-Comp, re-licensure), but *Knight* decision upheld union's right to make selections if agreed by employer



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9. Non-members do not have the right to serve in union representational roles

- Union stewards, exec. committee, negotiations, etc.
- No federal constitutional right to serve on committees that deal with terms and conditions of employment; government has the ability to decide who it listens to
- Exclusive representation (ability of union to represent all bargaining unit members in negotiations) still lawful. Many lawsuits trying to attack this so employees could negotiate individually despite being in the bargaining unit.

EXCLUSIVE



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10. Unions should not engage in fee-for-service arrangements with non-members

- EdMN Rep Convention Action Item in 2018 opposing fee-for-service arrangements
- Unions have a **duty of fair representation** under PELRA to represent all employees fairly with respect to terms and conditions of employment, regardless of membership; can't discriminate against non-members
 - This is why we have to represent non-members in disciplinary investigations and grievances
 - Only exceptions are individual legal matters limited to members only (criminal and MDE investigations, teacher terminations, licensing issues, long-term disability appeals)



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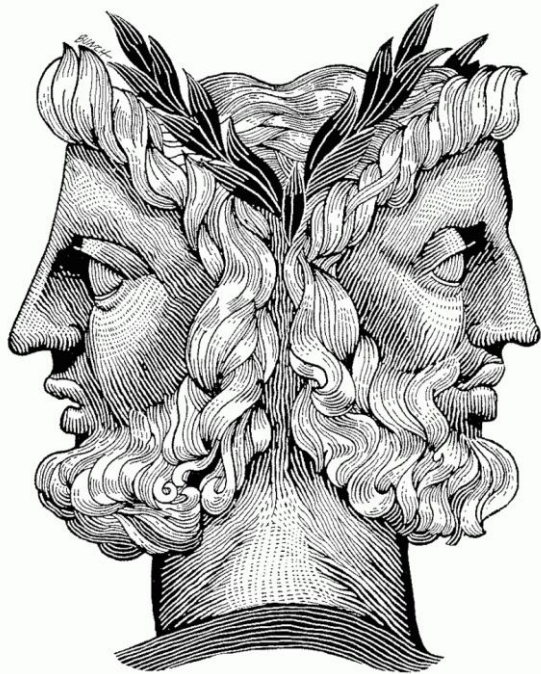
10. Unions should not engage in fee-for-service arrangements with non-members (cont.)

- Fee-for-service jeopardizes union's right to serve as exclusive representative and is legally risky
- Members also cannot opt out of state and national dues and remain a member of their local only; C&Bs at all three levels require unified membership
- Some states have seen legislation introduced to authorize fee-for-service, hopefully not MN



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QUESTIONS?



***As a union, we have shown we
can “live” with Janus.***

***If you know the legal pitfalls, you
can look forward and make better
decisions for your local and your
members!***

Education Minnesota Legal Department



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