

Negotiating In the New Student Centered Funding Formula and Post-*Janus* World

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Today's Agenda

- The *Janus* Decision
- The Fallout from *Janus*
 - New Related Legislation
- Be Prepared for Impasse Negotiations
- Negotiations from Fiscal Services Perspective



The Changing Landscape of Union Representation: *Janus v. AFSCME* (2018)



Janus v. AFSCME

- *Janus v. AFSCME*
 - Case No. 16-1466, 138 S.Ct. 2448 (2018)
- Issue before the United States Supreme Court:
 - “Does the extraction of agency fees from non-consenting public sector employees violate the First Amendment?”

Janus Decision

- What exactly did *Janus* decide?

“Forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns.”
- Thus, the requirement of paying an agency fee violates employees’ First Amendment rights.

Janus Decision

United States Supreme Court ruled:

- States and public sector Unions may no longer extract agency fees from non-consenting employees;
- The First Amendment is violated when money is taken from non-consenting employees on behalf of a public sector union; and
- Employees must choose to support the Union before anything is taken from them.

The Fallout from *Janus*



New California Laws Related to *Janus*

- **AB 119** — *Employee Orientation (2017)*
- **SB 866** — *Dues Deductions (2018)*
- **SB 285** — *Deterrence of Membership (2018)*



AB 119 and *Janus*

- Mandatory union access to new employee orientations.
- Employers provide at least 10 days' notice before orientation, unless there is an unforeseen and urgent need critical to the employer's operations.
- Time and manner of access shall be negotiated.
- New hire and employee information must be provided to union.
 - Name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and the home address of the new hire.

SB 866 and *Janus*

- Signed the same day *Janus* was issued
 - Unions now handle dues deduction authorizations.
 - Unions certify that employee has authorized deductions, and employers must rely on this representation.
 - Employer cannot ask for records of authorization forms unless dispute arises.
 - Unions will indemnify employer for any claims made by employee relating to dues deductions.

SB 285 and *Janus*

- Signed same day *Janus* decision was issued
- Added Gov't Code section 3550:
“A public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization.”

CSEA POLICY 610

- Policy 610 is an internal California School Employees Association (CSEA) policy that applies to negotiated agreements. The policy requires that tentative agreements be submitted to the labor relations representative assigned to the chapter, who, with his/her field director, reviews the agreement and issues a recommendation to the chapter president stating approval or disapproval, before the unit members may convene to ratify or reject the agreement.

Be Prepared for Impasse Negotiations:

Impasse Process

Impasse may be helpful!



Bargaining Process

Declaring Impasse



- Either the district or the union may declare that an impasse has been reached between the parties over matters within the scope of representation and may request PERB to assign a mediator to assist the parties in reconciling their differences and resolving the controversies involved.

Bargaining Process

Impasse Procedures

- The mediator, within 15 days after his or her appointment, assists the parties in effecting a settlement of their controversies and disagreements.
- At the conclusion of such time, the mediator may declare that a “fact-finding” is appropriate to the resolution of the impasse. Either party, upon such declaration, may give notice and request that their differences be submitted to a fact-finding panel.

Impasse

Fact-Finding



The fact-finding panel is composed of members selected by the parties, with a chairperson determined by PERB or mutually agreed upon by the parties. If the parties are unable to come to a settlement as a result of the panel's fact-finding, the panel will make a recommendation of settlement terms, which is advisory only.

**Remember that fact-finding is an extension of negotiations!*

YCCD Calendar of Events

- January 2018 Student Centered Funding Formula in Governor's Budget
- February 2018 District last best final offer
- March 2018 New Chief Business Officer
- June 2018 Simulations show YCCD on winning side of the Student Centered Funding Formula by a substantial amount
- July 2018 Impasse
- September 2018 Fact-Finding
- November 2018 Unfair Labor Practices strike
- December 2018 Tentative Agreement
- January 2019 Tentative Agreement approved by the Board of Trustees
- April 2019 Memorandum of Understanding to clarify Tentative Agreement

Negotiation Perspective From Fiscal



Fiscal Services Considerations

- It's a perfect storm of Janus, the SCFF and other state mandates, and a potential recession
- There's so much uncertainty about funding—What do you do when bargaining?
 - 1) Get other perspectives
 - 2) Put yourself in other people's shoes—especially members of the Board of Trustees
 - 3) Document throughout negotiations as if you will end up in Fact-finding—Fact-finding is not necessarily a bad thing.

Fiscal Services Considerations

- 4) Have legal counsel as part of your team
- 5) Make sure the union's demands are known IN WRITING before agreeing to the Fact-finding negotiation
- 6) Data must be from an unimpeachable source (e.g., Form 311 Report)
- 7) Do not underestimate the impact of the union's ability to get their narrative out to the campus and greater communities while the district is bound by confidential negotiations process
- 8) Be prepared to educate the Fact Finder

Fiscal Services Considerations

- 9) Don't get distracted—the district's Fact-finding binder should frame all district communications and negotiations
- 10) Don't deviate or bring new data into negotiation conversation inconsistent with existing trusted data
- 11) Remember Fact-finding is a TEAM effort
- 12) Take care of yourself—physically and emotionally

Fiscal Services Considerations

- 13) Keep in mind that both the district and union's teams are comprised of people trying to do their jobs to the best of their ability
- 14) Beware the white knights!
- 15) Review the agreement in its final form with attachments before it is signed
- 16) Let it go!

Thank You

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Question & Answer
Session

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