

Janus Walked Into a Bar...

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Overview

- Agency Fees & Bar Dues: A Chronological History
- Janus v. AFSCME
- NC Bd of Dental Examiners v. FTC
- New & Pending Bar Ass'n Cases
- Discussion/Questions

Phase One: RLA Cases

- Ry. Employees Dept. v. Hanson (1954)
- IAM v. Street (1961)
- Ry. Clerks v. Allen (1968)
 - Genesis of chargeable/non-chargeable distinction
 - Fee calculations based on last year's spending; implies unions should allow objectors to opt out in advance rather than pay & then apply for a refund

Lathrop v. Donahue (1964)

Split decision; majority of justices agree bar associations may charge for "elevating the educational and ethical standards of the Bar to the end of improving the quality of the legal service ... without any reference to the political process"

Aboud v. Det. Bd of Ed (1977)

- Foundational public sector dues case
- Follows RLA approach
 - Importance of DPR, Exclusive Rep.
 - Compensate unions for service to each worker; prevent instability & free riding
- Later: Procedural protections added to ensure agency fees not used unopposedly

Union Fee Procedures:

- *Ellis v. Bd. of Ry Emps (1964)*
- *Chicago Teachers v. Hudson (1964)*
 - "True rebate" approach is improper; employees must be able to opt out of non-mandatory fees in advance
 - Unions must supply info about how they calculate agency fee
 - Dissenters entitled to "reasonably prompt decision by an impartial decisionmaker"

Keller v. State Bar of CA (1990)

- Bar associations are similar to unions & are not government entities
- Chargeable activities include regulating legal profession or improving the quality of legal services
- Hudson procedures would be adequate. Court leaves open possibility that other procedures would also be adequate

Knox v. SEIU Local 1000 (2012)

- "Exacting scrutiny" applies to compelled subsidization of speech
- Union must obtain affirmative consent before charging non-members for any portion of a mid-year dues increase

Janus v. AFSCME (2018)

- Aboud overruled; unions can't charge represented workers for anything
- Knox extended; non-members must consent to pay dues/fees by "clear and compelling" evidence

NC Board of Dental Examiners v. FTC (2015)

"When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for [state] supervision is manifest."

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Abood v. Det. Bd of Ed (1977)

- Foundational public sector dues case
- Follows RLA approach
 - Importance of DFR, Exclusive Rep.
 - Compensate unions for service to each worker; prevent instability & free riding
- Later: Procedural protections added to ensure agency fees not used improperly

Union Fee Procedures:

Ellis v. Bhd. of Ry Emps (1984)

Chicago Teachers v. Hudson (1986)

- "Pure rebate" approach is improper; employees must be able to opt out of non-mandatory fees in advance
- Unions must supply info about how they calculate agency fee
- Dissenters entitled to "reasonably prompt decision by an impartial decisionmaker"

Keller v. State Bar of CA (1990)

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