Why Janus Matters
Bracing for a U.S. Supreme Court ruling attacking public-sector workers.

BY GERALD FRIEDMAN

Unlike many other countries, when the United States enacted its central private-sector labor law, the National Labor Relations Act, in 1935, it did not include public employees within the same framework for collective bargaining. While there were public-sector unions dating back to the 19th century, collective bargaining became widespread only decades later. In 1959 Wisconsin established an influential legal framework for municipal collective bargaining, and in 1962 President John Kennedy issued Executive Order 10988 recognizing the right of federal workers to bargain collectively. From there, collective bargaining spread and public-sector union membership grew rapidly, remaining strong even while membership stagnated and then declined in the private sector.

Public-sector unions have been effective in raising wages and improving conditions for teachers and other public employees. Since the decline in private-sector union membership, public-sector jobs have been distinguished by relatively better conditions and wages. Because women and minority workers are disproportionately employed in these jobs, public-sector unions are particularly important for them. These unions have been particularly important for the Democratic Party, which relies on their financing and votes (just as it relies on the same from women and minorities in general). The partisan divide has led Republicans to attack public employees and their unions. After rising sharply from 2% in 1960 to 67% in 1990, the share of public employees covered by laws requiring collective bargaining has fallen, dropping to 63% in 2010. Since then, Republicans in some states, including former union strongholds Wisconsin and Michigan, have reduced the scope of collective bargaining and removed union-security rules requiring that workers covered by collective bargaining either belong to the relevant union or pay an agency fee.

The United States Supreme Court is now considering a case brought by Mark Janus, a child-support specialist at the Illinois Department of Healthcare and Family Services. While Janus is not a union member, in Janus v. AFSCME Council 31, he is disputing the obligation to pay an agency fee for the collective bargaining services provided by the union, that everything done by the union is a form of political speech and, therefore, that the requirement that he contribute is a form of compelled speech and a violation of his rights under the First Amendment. Janus would reverse an earlier decision by the Court, the 1977 case Abood v. Detroit Board of Education. It marks a return of the 2016 case, Friedrichs v. California Teachers Association, which was not decided by a 4–4 ruling after the death of Justice Antonin Scalia. With the appointment of Neil Gorsuch to the Supreme Court, it is expected that the ruling in Janus will go against the unions.

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Figure 1: Share of Public- and Private-Sector Workers in Unions, 1968–2000, 1973–2007

After rising sharply in the 1960s and early 1970s, the public-sector unionization rate has remained steady even as the private-sector rate has declined. In the early 1970s, the share of workers belonging to unions was higher in the private than in the public sector, and less than 20% of all union members were in the public sector. Public-sector unionization rates continued to rise through the 1970s, however, and passed the declining unionization rate in the private sector in 1974. The public sector advantage has only grown since then. Today, half of all union members are in the public sector, and the unionization rate there, 34%, is over five times that of private sector workers, at 6%.
Private-sector unions have a greater effect on wages and benefits for their members, but because of lower unionization rates in the private sector, they have less effect on total compensation than do public-sector unions. While public-sector workers are more likely to belong to unions than their private-sector counterparts, private-sector unions generally have larger effects on member wages and benefits. Controlling for experience and education, for example, public-sector unions raise wages by almost 15%, compared to the over 20% increase achieved by private-sector unions. Private-sector unions have much large effects on benefits like health insurance and pensions.

Because there are now so few private-sector union members, their effect on wages and benefits for workers as a whole is much less. The greater coverage of public-sector unions means that they do more to raise wages and pensions for all workers then do private-sector unions.

Women, African Americans, and Latinos are much more likely to work in the public sector (apart from the police and corrections) than are white men, and are therefore much more likely to belong to public-sector unions. This is largely due to the large share of caring, teaching, and clerical jobs in the public sector—all jobs disproportionately held by women and by racial and ethnic minorities. Nearly 16% of all women are employed in the public sector, as are almost 12% of African-American workers and 8% of Hispanics, compared with barely 7% of white men. This concentration of women and minority workers means that the Janus case is particularly important to these workers.