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Supreme Court: Quasi Public Employees Exempt from Union Dues.

The ruling creates a new class of “partial public employees” who can choose not to pay membership dues to unions representing them, laying the groundwork for overruling other precedents.

Some employees of state and local government don’t have to pay union membership dues any longer, the Supreme Court decided in a 5-4 ruling June 30.

Led by Justice Samuel A. Alito Jr., the conservative majority determined in *Harris v. Quinn* that a class of workers — home care aides paid by the state but employed by private individuals — were only “partial public employees” and therefore, compulsory union dues violate their free speech rights.

The decision is a blow to public employee unions, but not as much as some feared. The court opted not to rule on whether membership dues violated the free speech rights of full-fledged public employees.

During the oral arguments, Alito’s comments suggested that he wanted to revisit a 1977 decision, *Abood v Detroit Board of Education*, which said that public employees could be compelled to pay a “fair share” of the cost of collective bargaining.

“What stood out to me was just how narrow [the ruling] was,” said Paul Secunda, a professor of labor, employment and benefits law at Marquette University Law School. “They criticized *Abood*, but they didn’t overrule it or even say it was part of the decision.”

The limited nature of the majority opinion doesn’t mean that *Abood* is safe from further challenges. Rick Hasen, a law professor at the University of California, Irvine, and a longtime observer of the Supreme Court, noted that Chief Justice John Roberts often lays the groundwork for overruling precedents in a series of otherwise moderate decisions.

“Just because the Court takes two or three cases to reach its highly ideological decision,” Hasen wrote, “doesn’t make it any less ideological or any more comporting with principles of judicial minimalism or respect for precedent.”

Ironically, the lead plaintiff named in the case, Pamela Harris, does not benefit from the court’s decision. Harris is a personal assistant who provides home care to disabled participants in a state program administered by a division of the Illinois Department of Human Services. She is a non-union member and doesn’t pay union dues, but she sued the state to pre-empt any future requirement that she pay union dues. Technically, the state sets her pay with money from the Medicaid program, but the individuals for whom she cares are her employers in most other ways, such as having the right to fire her.

The court said Harris and other petitioners who are part of the state’s disabilities program, which is not unionized, do not have standing to challenge a 2003 state law allowing unions to collect

membership dues from home care workers. Instead, the ruling applies to three petitioners who are members of the state's rehabilitation program, which is similar to the disabilities program in its mission, but different in the sense that members voted to be unionized.

Only 26 states, including Illinois, require state employees to pay membership dues to labor unions in order to offset unions' cost of collectively bargaining with the government and creating contracts that dictate employees' pay and benefits. It is unclear how many partial public employees would be impacted by the ruling, or what proportion of overall union membership dues they represent. National Right to Work Legal Defense Foundation, which joined Harris in challenging the Illinois law, claims that at least 18 states have similar programs that pay home care aids as if they were public employees.

Public employees have become an increasingly important part of organized labor, as union membership in the private sector has declined steadily over the past 30 years. The U.S. Labor Department tallied about 7.2 million public employee union members in 2013. That accounts for about 35 percent of the sector's workforce — about where it's been for the past three decades. By contrast, only 6.7 percent of private sector workers belonged to unions last year. Thirty years ago, that share was 16.8 percent of all private industry employees.

The case prompted divergent responses by state elected officials, depending on their party identification. Illinois Gov. Pat Quinn, a Democrat, called the decision "disappointing" because home care workers deserved the right to collectively bargain for wages, benefits and working conditions. Technically, the ruling doesn't limit the right to collectively bargain, but by allowing employees paid with public tax dollars to opt out of "fair share" membership dues, the ruling could undermine unions' ability to negotiate with the government.

Wisconsin Gov. Scott Walker, a Republican, released a written statement applauding the ruling. Walker battled unions over legislation that limited public employees' ability to collectively bargain, which prompted a recall election in 2012 and appears to have led to a dramatic drop in union membership in that state.

Governing

BY J.B. WOGAN | JUNE 30, 2014