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Supreme Court to Weigh Public-Sector Union Dues.

Plaintiffs say they oppose union goals that may benefit them, like higher pay; labor groups argue they need mandatory fees to do their work effectively

WASHINGTON—The Supreme Court on Monday will consider eliminating a pillar of public-sector union strength in more than 20 Democratic-leaning states: the ability to require workers, including those who don't join the union, to pay for representation.

The high court ruled in 1977 that such provisions—known as union security, agency fee or fair-share clauses—were constitutional for public employees, as they have been for private-sector workers.

The current case, brought by the Christian Educators Association International and nine California teachers, asks the justices to overrule the precedent and effectively end the practice.

The challengers in the case, *Friedrichs v. California Teachers Association*, argue they shouldn't have to pay for any union services, on the theory that even basic functions such as collective bargaining are political speech because they involve requesting action from a government agency.

The ability to collect fees from dues-paying members and workers who don't join has bolstered the strength of public-sector unions, which typically represent all workers in a bargaining unit regardless of membership status. Union officials say removing that ability would make their work harder, if not insurmountable.

Nearly half of public employees in states with such provisions were represented by unions, compared with 17% in states that prohibit the fees, according to an October report from the left-leaning Economic Policy Institute. Of the latter group, between 2000 and 2014 about 20% were workers who declined to pay dues, the institute said.

The plaintiffs, all Republicans or independents, say they oppose union bargaining goals that may benefit them, such as higher pay or seniority protections.

"In my district, we have 70% of our students on free and reduced lunch. It's a very low-income area and our community cannot support higher salaries," said plaintiff Harlan Elrich, a math teacher at Sanger High School in Fresno County, Calif. Mr. Elrich, who said he has been teaching nearly 30 years and makes about \$75,000 annually, added that while "seniority is great," teacher performance should also affect job security.

Among states that forbid the fees, the landscape for unions varies considerably. Wisconsin, which all but eliminated organizing rights for most public employees in 2011, represents one extreme.

Wisconsin Republicans led by Gov. Scott Walker left police and fire unions intact. But they placed restrictions on unions representing other government workers, banning collective bargaining and prohibiting payroll deduction of voluntary dues. Since then, the American Federation of State, County and Municipal Employees lost two-thirds of its membership, while the statewide teachers union shrank 50%, said Paul Secunda, a labor law professor at Marquette University in Milwaukee.

What those unions do today is “collective begging. It’s not collective bargaining,” he said.

Not all states that prohibit the fees are so restrictive. But without provisions compelling membership, union officials must continuously attend to organizing and membership retention, reducing resources they can devote to bargaining and contract enforcement, said Ann Hodges, a labor law professor at the University of Richmond in Virginia.

A blow to unions would reverberate into the political arena, she notes: “Unions are one of few large institutional players that support Democrats historically. Not just with money but with boots on the ground.”

If the unions lose, Ms. Hodges expects their strength to decline more in some categories than others. Unions representing workers with “a shared culture, a shared profession”—such as teachers, police officers and firefighters—are better poised to survive, she said.

Union leaders are already looking to their counterparts in states that don’t allow mandatory fee collection for advice on how to navigate possible changes.

Virginia prohibits collective bargaining for public employees. In Norfolk, the school board negotiated a de facto contract with the Norfolk Federation of Teachers, an affiliate of the American Federation of Teachers, in the early 1980s. Although the memorandum of understanding isn’t enforceable in court, it has remained the basis of employee relations in the school system ever since.

“We would call it a best practice,” said the school-board chairman, Rodney Jordan. “Now, they challenge us, they advocate for their members, but we also work together,” he said, citing joint lobbying of the city council to increase education funding.

Mr. Jordan said Norfolk’s “respectful relationships” with the federation and the Education Association of Norfolk, affiliated with National Education Association, helps in other ways.

“As an urban district surrounded by suburban districts that may have more resources than we do, I think it’s also a competitive advantage for us” in attracting or retaining teachers, he said.

The Norfolk federation president, Thomas Calhoun, said that just under half the teachers, and about a third of other district employees, choose to join the union, paying about \$700 in annual dues.

Because nonmembers automatically get whatever benefits the union negotiates, “there’s nothing you can offer them to entice them to come over” unless they believe in the cause, Mr. Calhoun said. That drives the federation to work constantly to prove its worth, he said.

“We go out there every day,” he said. “I try to be involved in the community, and with the League of Women Voters and the NAACP” and other civic organizations, he said.

Despite Norfolk’s experience, Mr. Calhoun said no other Virginia district has followed its example and voluntarily instituted collective bargaining.

“It’s clear that it hasn’t caught on,” he said.

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