STOP THE FREE RIDERS

The Supreme Court is about to consider a case that may make labor history – and not in a way that's fair to union members

IN A FEW weeks, the Supreme Court will be hearing oral arguments in one of the most important cases involving organized labor in decades. The outcome of this decision will have an immense impact on the labor movement for years to come and could very well spell sudden death for many public sector unions. What's at stake is the ability of a labor organization to collect fees from individuals who have decided that they do not wish to become full-fledged members of a union.

As I had remarked over a year ago in a previous article, collection of union dues and fees is the very lifeblood that sustains labor organizations. (See my article in the September 2014 issue, entitled "The Secret Ingredient," archived at **www.Local802afm.org/Allegro**.) Without the ability to collect fees and dues, unions don't have the financial resources to represent and protect members.

Under current law, even individuals who do not wish to actually join the union can be required to pay a fee (called an "agency fee") to the union. The idea is that the union is doing something for you – negotiating your contract and representing you – and therefore you owe something to the union. There are currently 26 states that have passed laws allowing these kinds of agency fees But if the Supreme Court changes the law for public sector workers, those workers may decide not to join the union and become "free riders" – individuals who utilize union resources without paying anything for them. To me this is comparable to individuals enjoying the benefits of living in the United States without paying taxes.

The case at hand is *Friedrichs v. California Teachers Association*. The question the Supreme Court will answer in this case is whether mandatory agency fee arrangements are invalidated by the freedom of association guaranteed by the First Amendment and whether it violates the First Amendment to require public sector employers to opt out of paying fees rather than allowing employees to opt in. In seeking these rulings, the appellants are requesting the Supreme Court to overrule its 1977 precedent *Abood v Detroit Bd. of Education, 431 U.S. 209 (1977)*. In Abood, the Supreme Court held that it was proper for public sector unions to charge non-members an agency fee as long as those fees were chargeable to union-related expenditures, such as contract administration, collective bargaining and grievance adjustment functions. The court ascertained that the First Amendment did not bar such arrangements so long as employees were allowed to opt out of paying for services unrelated to bargaining and traditional representation functions. Thus, a union may not compel a non-member to contribute to the campaign of a political candidate whose political agenda and beliefs they do not share. However, in that decision, the Supreme Court did not address whether the agency fee arrangement itself violated the First Amendment by compelling public sector employees to associate with a union they did not wish to join.

In 2014, in *Harris v. Quinn, 573 U.S. ___ (2014)*, the Supreme Court, by a 5 to 4 majority, held that home care attendants who were employed by a quasi-public employer (a private agency receiving governmental funds) could not be compelled to pay agency fees. There, the Supreme Court held that the state laws mandating that employees pay agency fees did not apply to this segment of employees because they were not employed in the public sector. That decision in and of itself was not unexpected and is in a sense limited to the facts in that case. However, in that case, Justice Alito wrote a "dicta" (a non-precedential opinion) that questioned the constitutionality of the agency fee laws. This opinion was an invitation to litigants and special interest groups to request the court to reconsider Abood. That invitation was accepted by the Center for Individual Rights, a right-wing, pro bono law group funded in part by the notoriously conservative Koch brothers. To fast-track the case, the plaintiffs requested that the lower federal courts rule *against* them so that there would be a viable case to present to the Supreme Court!

The First Amendment guarantees the right of individuals to join or leave groups of their own choosing. However, it must be remembered that the First Amendment's provisions are not sacrosanct. In this case, if there is an important societal interest served by the imposition of the agency fee, state laws dictating their payment can and should be found constitutional. Clearly, preventing "free riders" is a very important interest that could justify these statutes. Whether the majority on the court will agree on this approach is anyone's guess, but the fact that Justice Alito wrote the majority opinion in Harris is foreboding. More troubling is the very real possibility that the court will now require an opt-in of fees rather than an opt-out.

This brings us to Local 802. Everything in this article so far has applied only to public sector unions, where the employer is a governmental agency. Private sector unions (like Local 802) are governed by a different set of labor laws. But we also rely on a form of agency fees (based on a case called the Beck decision) in some instances. We don't want this to turn into an opt-in fee, which opens the gate to musicians who could enjoy all of the benefits of Local 802 contracts without paying for them. Free riders must be stopped.

The impact of this case before the Supreme Court cannot be ignored. Large public sector unions such as AFSCME may lose vast amounts of income because they will no longer be permitted to require the payment of agency fees. Public sector unions are gearing up for a negative result. We should too.

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