

## League of California Cities

### RESOURCE PAPER: NEXT STEPS FOR CITIES AFTER *JANUS V. AFSCME* AND S.B. 866

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#### I. KEY ELEMENTS OF THE *JANUS* HOLDING (*JANUS V. AMERICAN FEDERATION OF STATE, COUNTY, AND MUN. EMPLOYEES, COUNCIL 31* (2018) 138 S.CT. 2448 (“*JANUS*”))

- Agency shop fees (a.k.a. “fair share fees” or involuntary “service fees”) are an unconstitutional violation of the First Amendment.
- Employees must clearly and affirmatively consent before any money is taken from them. Reasoning:
  - ✓ Individuals cannot “waive” their First Amendment rights by presumption. To be effective, such waiver must be “freely given and shown by ‘clear and compelling evidence.’”
  - ✓ Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met. (*Janus* at p. 2486.)
- Overrules *Abood v. Detroit Bd. of Ed.* (1977) 431 U.S. 209, as “wrongly decided.”

#### II. KEY ELEMENTS OF S.B. 866 IMPACTING CITIES (SENATE BILL 866 (CAL. LEGIS. SERV. CH. 53 (S.B. 866)))

- Must honor employee organization requests to deduct dues, initiation fees, general assessments and payments of any other membership benefits from the salaries and wages of their members. (Gov. Code, § 3554, added by Stats. 2018, c. 53 (S.B. 866), § 14, eff. June 27, 2018.)
- Must rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed. (Gov. Code, § 1157.12, amended by Stats. 2018, c. 53 (S.B. 866), § 10, eff. June 27, 2018.)
- Requires employee organizations to indemnify the public employer for any claims made by the employee for deductions made in reliance on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed. (Gov. Code, § 1157.12, amended by Stats. 2018, c. 53 (S.B. 866), § 10, eff. June 27, 2018.)

- Must not require employee organizations to provide copies of individual authorizations, if the organization has certified that it has and will maintain such authorizations, unless a dispute about the existence or terms of the authorization arises. (Gov. Code, § 1157.12, amended by Stats. 2018, c. 53 (S.B. 866), § 10, eff. June 27, 2018.)
- Must meet and confer with recognized employee organizations prior to disseminating mass communications to public employees or applicants concerning public employees' right to join or support an employee organization or to refrain from joining or supporting an employee organization. But, employer may send such communication if no agreement is reached, as long as it also sends a communication of reasonable length provided by the exclusive representative at the same time. (Gov. Code, § 3553, added by Stats. 2018, c. 53 (S.B. 866), § 14, eff. June 27, 2018.)
- Must not disclose the date, time and place of an employee orientation, to anyone other than the employees, the exclusive representative, or a vendor that is contracted to provide services for the purposes of the orientation. (Gov. Code, § 3556, amended by Stats. 2018, c. 53 (S.B. 866), § 16, eff. June 27, 2018.)
- Must (still) not deter or discourage public employees or applicants from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing fees or dues deductions. (Gov. Code, § 3550, amended by Stats. 2018, c. 53 (S.B. 866), § 11, eff. June 27, 2018.)

### III. ADDITIONAL RESOURCES

- **Full text of *Janus v. AFSCME***, available online at [https://www.supremecourt.gov/opinions/17pdf/16-1466\\_2b3j.pdf](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf)
- **LCW Special Bulletin: Mandatory Agency Shop Fees Rules Unconstitutional in *Janus v. AFSCME***, available online at <https://www.calpublicagencylaboremploymentblog.com/labor-relations/mandatory-agency-shop-fees-ruled-unconstitutional-in-janus-v-afscme/>
- **Full text of Senate Bill 866:** [https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201720180SB866](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB866)
- **LCW Special Bulletin: Top 10 Questions about Senate Bill 866**, available online at <https://www.calpublicagencylaboremploymentblog.com/labor-relations/top-10-questions-about-senate-bill-866-new-state-legislation-impacting-how-public-employers-communicate-with-employees-and-manage-employee-organization-union-membership-dues/>