

# PARTICIPATOR

SEPTEMBER 2018

## 'FAIR-SHARE' FEE RULING BRINGS NEW DAY FOR PUBLIC EMPLOYERS, EMPLOYEES

*With proponents of a U.S. Supreme Court decision against the collection of “fair-share” fees claiming a victory for First Amendment rights and critics calling the ruling an example of the Court siding with billionaires against workers, employers are adjusting to a major change in the world of agency shops in the public sector.*

*In an agency shop arrangement, employees can be required to accept the union as their exclusive representative or pay a fee to cover the cost of contract negotiations. In a 5-4 ruling on June 27, the Court struck down a 41-year-old precedent allowing unions of public-sector workers to collect those fees—often called fair-share or agency fees—from nonunion members in states that allow agency shops. Such fees were an important part of the financial structure of the unions that negotiate pay and benefits for public schoolteachers, police and fire personnel, and various other workers at all levels of government. With a new precedent in place, public-sector employers and unions are finding their way in a new labor-management landscape.*

### **Background**

The decision in *Janus v. American Federation of State, County, and Municipal Employees (AFSCME)* reverses precedent set in the 1977 *Abood v. Detroit Board of Education* decision, which allowed unions to collect a portion of union dues from employees who chose not to join the union but were covered under contracts the union negotiated. The collection of such fees was supposed to allow the union to cover the costs of collective bargaining without forcing workers who chose not to join the union to financially support the union’s political aims.

The *Janus* case involved Mark Janus, an employee of the Illinois Department of Healthcare and Family Services, who objected to being required to pay fees to a union he chose not to join. He argued that requiring public-sector employees to pay even a portion of union fees required them to subsidize political speech in violation of their First Amendment rights. He maintained that even issues covered in contract negotiations are fundamentally political when they involve public employees.

The Court has tackled the constitutionality of fair-share fees before. The justices heard similar arguments in the March 2016 *Friedrichs v. California Teachers Association* case. Coming shortly after the death of Justice Antonin Scalia, the Court’s decision in *Friedrichs* resulted in a 4-4 tie, which left the *Abood* precedent in place.

At the time, many predicted fair-share fees would have been struck down but for the death of Scalia. Scalia’s replacement on the Court, Justice Neil M. Gorsuch, provided the fifth vote necessary to overturn *Abood*. He was joined by Chief Justice John G. Roberts Jr. and Justices Samuel A. Alito Jr., Anthony M. Kennedy, and Clarence Thomas. Dissenting were Justices Elena Kagan, who wrote the dissenting opinion, and Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor.

### **Reaction to decision**

After the *Janus* decision was announced, union leaders called on workers to recommit to unions and step up organizing drives. A statement from leaders and members of the AFSCME, the American Federation of Teachers (AFT), the National Education Association, and the Service Employees International Union (SEIU) said public-sector workers would be “more determined than ever” to band together in their unions.

“Today’s decision sends our economy in the wrong direction. But it is also a rallying point,” the statement said. “We call on elected leaders and candidates to do everything in their power to make it easier to unite in unions and build more power for all working people.”

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The National Right to Work Foundation called the decision a victory that “restores the First Amendment rights of free speech and freedom of association to more than 5 million public school teachers, first responders, and other government workers across the country.”

Janus, the child support specialist for state government in Illinois who brought the case, called the Supreme Court’s decision “a victory for all of us” that puts an end to the practice of nonunion members being forced to pay fair-share fees to keep their jobs.

### **What’s next?**

Some employer interest groups have warned that a ban on fair-share fees will discourage union leaders from agreeing to no-strike clauses in contracts since those clauses sometimes accompany agreements to collect fair-share fees. And in the wake of the decision, unions surely will be looking to bolster membership so that they won’t be so reliant on fees from nonmembers.

Some have predicted that the Janus decision will be a crippling blow to public-sector unions, the one bright spot the labor union movement has seen in recent decades. Overall union membership has dwindled for years but has been healthier in the public sector.

Figures released in January from the U.S. Bureau of Labor Statistics (BLS) show that the unionization rate for private-sector workers remains far lower than the rate for public-sector workers—6.5 percent in the private sector versus 34.4 percent for workers in the public sector. So with the unfavorable Supreme Court decision, many predict more troubles ahead for labor.

In spite of the unfavorable ruling, leaders of public-sector unions have vowed to fight to stay relevant. “Don’t count us out,” Randi Weingarten, AFT president, said after the ruling. “While today the thirst for power trumped the aspirations and needs of communities and the people who serve them, workers are sticking with the union because unions are still the best vehicle working people have to get ahead.”

Weingarten cited Kagan’s dissenting opinion, which claimed no justification for reversing Abood. “Not only was Abood well within the mainstream of First Amendment law, it has been affirmed six times and applied to other cases upholding bar fees for lawyers and student activity fees at public colleges,” Weingarten said.

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## **NEW AT NDIRF**

The NDIRF is pleased to announce that Rebekah Wallen has joined the company as a Claims Support Specialist. Rebekah graduated from Rasmussen College with a Paralegal Associate’s Degree and is also a Notary for the State of North Dakota. She was previously employed as a legal assistant for a Bismarck law firm.

Rebekah and her husband Eric have two children, Parker and Sadie. ■

## RISK SERVICES

### NDIRF UPGRADES MEMBER TRAINING CENTER

The North Dakota Insurance Reserve Fund (NDIRF) Member Training Center has been upgraded!

Located under the **Member Training** tab at [www.ndirf.com](http://www.ndirf.com), the new training system will have a modern look and feel, allow easier access to courses and videos from any device and remain **free of charge for all NDIRF members**. As we move to the new system, the same high-quality training your organization has been using, powered by LocalGovU, will continue to be available.

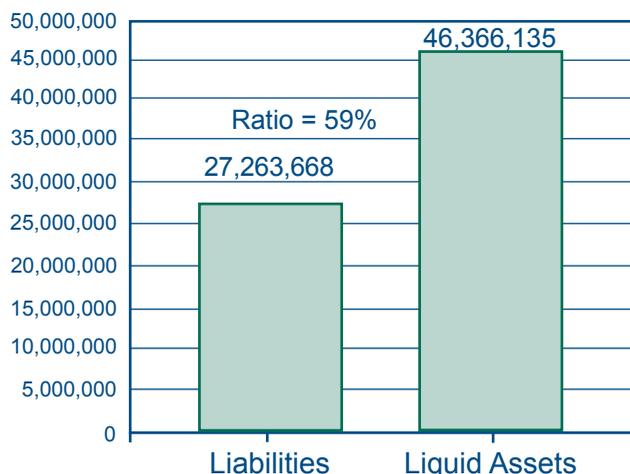
Along with the system upgrade and the ever expanding and improving library of courses, the law enforcement and corrections training currently available on the Member Training Center will now also be **free of charge for all NDIRF members**. Many of the free law enforcement courses are approved for continuing education credit by the North Dakota POST Board.

For primary administrators, the improved training system contains enhanced features for creating assignments, allowing for start and end dates for each course and automated reminders for personnel to complete their training. It also gives administrators an easy-to-use tool for managing personnel in groups based on rank, shift and other custom options. Finally, the new platform offers more options for running reports which can be used to monitor and track training compliance, reducing your organization's liability exposure and creating a safer, more productive workplace.

If you are already signed up for the NDIRF Member Training Center, your profile will be automatically transferred to the new system. If you have not yet signed up, you can easily do so by accessing the Member Training Center located under the **Member Training** tab at [www.ndirf.com](http://www.ndirf.com). If you have any questions, please contact NDIRF Risk Services Manager, Corey Olson, at [corey.olson@ndirf.com](mailto:corey.olson@ndirf.com) or 701-751-9107. ■

## FINANCIAL INSIGHTS

### Liabilities to Liquid Assets Ratio As of July 31, 2018



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities (primarily loss reserves) by liquid assets (primarily investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF, with a 59% ratio, is in a very strong position to meet its obligations, with liquid assets nearly twice as large as liabilities. ■



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INSURANCE  
RESERVE FUND  
PO BOX 2258  
BISMARCK ND 58502

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Bruce Strinden, Mandan    Terry Traynor, Bismarck    Chris West, Grafton

### MEET YOUR BOARD

Darcie Huwe, Finance Director/Auditor for the City of



Wahpeton, was appointed to the NDIRF Board of Directors in June, 2018.

Darcie grew up in Iowa City, IA, and holds a Bachelor of Science Degree in Finance from Bemidji State University.

She holds designations from the Municipal Finance Officers' Association and Government Financial Officers Association. Darcie is married to Keith and has two sons. In her spare time, she enjoys kayaking, fishing, college football and watching movies.

In describing an advantage the NDIRF provides its members, Darcie states "The NDIRF provides extraordinary service and high quality risk management." Her vision for the NDIRF is that it continues to surpass reasonable expectations with the services and products it provides. ■

### Mark Your CALENDAR

Sept 2018

20: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck

Oct

7-9: NDACO Annual Conference  
Bismarck Events Center, Bismarck

25-26: NDSBA Annual Conference  
Ramkota Hotel, Bismarck

Dec

06: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck