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POLITICS FEB 26 2018, 6:28 AM ET

# Supreme Court to rule on power of public employee unions

by PETE WILLIAMS

WASHINGTON — A case the U.S. Supreme Court takes up Monday is likely to deal a crippling blow to unions representing millions of the nation's public employees.

The justices will decide whether state government workers who choose not to join a union must still pay a share of union dues to cover the cost of negotiating labor contracts.

The court deadlocked 4-4 on the same issue two years ago in a case brought by a group of California teachers opposed to paying the dues. Since then, conservative Justice Neil Gorsuch has joined the court, and he seems all but certain to provide the fifth vote opponents need to strike the fees down.

"Public sector unions have to be deeply troubled — in fact, scared," says Tom Goldstein, publisher of SCOTUSBlog. "The court's conservatives have signaled strongly that this critical funding tool is going to be struck down."

At stake is the financial health of public sector unions in the 22 states where they bargain for both members and nonmembers alike.

The court has long held that requiring nonunion members to pay the full amount of union dues would violate their right of free expression, forcing them to subsidize a union's political activities whether or not they agree with its goals.

But since 1977, the court has also said that nonunion employees can be required to pay a portion of union dues, known as agency fees, to cover the cost of collective bargaining and prevent "free riders" — workers who get the benefits of a union contract without paying for it.

The current challenge began with a lawsuit filed against a state union by Illinois Gov. Bruce Rauner, a Republican. He was eventually dropped from the litigation, but a state child support specialist, Mark Janus, is carrying on the fight.

"Nobody asked me if I wanted to pay these dues. I never got the opportunity to say no," Janus said, claiming that the dues requirement violates the freedom of association guaranteed by the First Amendment.

His lawyers say even the positions that unions take in collective bargaining are essentially political, because the quality of public services is at stake. They estimate that 5 million public employees nationwide are required to subsidize all kinds of union political expression that has nothing to do with negotiating contracts.

Striking down agency fees, they argue, would leave laws in place that give unions exclusive power to negotiate contracts and could actually make unions more responsive to the needs of public employees.

But David Frederick, a Washington lawyer representing the Illinois union, said agency fees are justified by the expense of contract negotiations.

"To negotiate effectively for better wages, benefits and working conditions, unions employ lawyers, economists, negotiators and research staff," he said.

And Frederick said the mere fact that some collective bargaining topics affect state budgets doesn't make them inherently political issues. Illinois Attorney General Lisa Madigan, a Democrat, agrees.

It's not true, she says, that "everything a public employee union does — right down to the most picayune workplace grievance — is political speech."

The unions also argue that the Supreme Court, in a long line of cases, has ruled that when public workers speak strictly as employees, they have less free expression protection than their counterparts in the private sector.

That argument may prove to be a tough sell before the current lineup of justices, who have been willing to extend First Amendment protections even to people who falsely claim to have won military honors or who disrupt the funerals of soldiers who died in Afghanistan or Iraq.

The court will decide the case by late June.

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