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LEGAL ALERT

Supreme Court Strikes Down Mandatory Union "Fair Share" Deductions For Public Sector Employees

On June 30, 2014, in a 5 to 4 decision, the U.S. Supreme Court declined to extend its previous holdings regarding "fair-share" fees (fees that an employee who refuses to join a union is required to pay in lieu of union dues) to caretakers who are paid by the government to give home care to disabled individuals as part of a state program. According to the Court, in this setting, mandatory fair-share fees are unconstitutional. *Harris v. Quinn*.

Background

Theresa Riffey, Susan Watts, and Stephanie Yencer-Price are home care providers, or "personal assistants," to disabled participants in the Home Services Program, a Medicaid-waiver program operated by the State of Illinois. This program is designed to avoid the institutionalization of disabled citizens by subsidizing the cost of home care for them. Riffey, Watts and Yencer-Price each provide in-home care to a disabled individual who hired them as personal assistants; they are paid for these services by the State of Illinois pursuant to the Home Services Program.

In the 1980s, personal assistants in the Home Services Program attempted to unionize for purposes of collective bargaining with the State of Illinois. The Illinois State Labor Relations Board ruled they could not unionize because they were not employed solely by the State, but also by the disabled participants who they served. The Illinois legislature counteracted this ruling in 2003 by amending the Illinois Public Labor Relations Act to include personal assistants working under the Home Services Program within the definition of State employees.

In conjunction with this legislation, then-Governor Blagojevich issued an executive order directing the State to recognize a collective bargaining representative for Home Services Program personal assistants if they were to designate one by majority vote, and to then engage in collective bargaining with the State over the personal assistants' employment terms, such as wages, that were within the State's control.

In late 2003, a majority of the 20,000 personal assistants voted to designate the Service Employees International Union (SEIU) as their collective bargaining representative with the State, thereby triggering the mandate of Governor Blagojevich's executive order. Riffey, Watts and Yencer-Price then became part of this collective bargaining unit, but they declined to become SEIU members and so paid no union dues.

The SEIU and the State of Illinois eventually negotiated a collective bargaining agreement that established the personal assistants' pay rates. This agreement also included a union-security clause requiring all personal assistants who choose not to be SEIU members to pay "fair share" fees representing their proportionate share of the cost of collective bargaining and contract administration by the SEIU. In accordance with the law of Illinois, which is not a right-to-work state, these fair share fees are automatically deducted from the compensation paid by the State to personal assistants who choose not to join the SEIU, and the State remits these deducted fees to the SEIU.

Riffey, Watts and Yencer-Price did not join the SEIU, but, in accordance with the fair-share clause of the collective bargaining agreement between the SEIU and Illinois, they are paying SEIU fair-share fees by means of automatic deductions from their bimonthly paychecks. In 2010, Riffey, Watts and Yencer-Price, on behalf of themselves and a class of other personal assistants who also chose not to join the SEIU, initiated a class-action lawsuit against the Illinois Governor (Blagojevich's successor Pat Quinn) and the SEIU, challenging the imposition of SEIU's fair-share fees on them as a violation of their First Amendment right to freedom of speech, freedom of association, and to petition the government for a redress of grievances.

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More specifically, this class action claimed that the Governor and the SEIU are unlawfully compelling the Home Services Program's personal assistants, by means of mandatory fair-share payroll deductions that are remitted to the SEIU, to financially support the SEIU as their state-designated representative for purposes of speaking to, petitioning, and otherwise lobbying the State of Illinois and its officials with regard to certain aspects of the program, such as pay rates and health insurance coverage.

On November 12, 2010, a federal district court dismissed the personal assistants' class action, holding that the SEIU's mandatory fair share fees do not violate their First Amendment rights. The personal assistants appealed this decision to the U.S. Court of Appeals for the 7th Circuit, which addressed the issue of whether it is constitutional to require the home-care personal assistants to pay a fair-share fee to a union representative.

In affirming the district court's decision and finding no First Amendment violation, the Court of Appeals held that union fair-share fees of this nature are permitted by Supreme Court jurisprudence because the personal assistants are employees of the State of Illinois – at least in those respects relevant to collective bargaining – because the State controls some of the economic aspects of the employment relationship such as compensation and work hours (even though each disabled program participant also qualifies as his or her personal assistant's "employer" by virtue of controlling other aspects of the employment relationship, such as hiring, firing, and supervision).

The Supreme Court's Decision

In a 5-4 decision authored by Justice Alito, the Supreme Court reversed the 7th Circuit's decision, declining to extend its fair-share fee jurisprudence to these facts. According to the Court, it is constitutionally impermissible for Illinois to compel the home care personal assistants to associate with a union *via* a collectively bargained fair share fee arrangement when the personal assistants are public sector employees for only one purpose – collective bargaining (and even then, the terms and conditions of employment that can be negotiated on their behalf are limited under the Illinois statutory scheme).

The Court held the personal assistants are private sector employees for all other purposes because the persons for whom they provide care control all the significant aspects of the employment relationship such as hiring, firing and supervising. This being the case, according to the Court, the First Amendment prohibits the State of Illinois from collecting fair share fees from personal assistants who do not want to join or support the union.

What This Means For Public Employers

To date, the Supreme Court has always upheld mandatory fair-share fee arrangements in the public-employment context. This decision represents a departure from this precedent in the "joint employment" context involving situations where workers are hired and supervised by someone other than the public employer who pays them. In these types of cases, the State must establish that a fair-share arrangement serves a compelling state interest that cannot be achieved by significantly less restrictive means, something Illinois was unable to show in this case.

For more information, contact your regular Fisher & Phillips attorney.