Winter is coming.

I’m not talking here about ice and snow, which one hopes are finally behind us.

Nor do I mean the army of the dead from HBO’s *Game of Thrones*, which will not return to the small screen until 2019 (sigh).

I’m speaking, rather, of the Supreme Court’s decision in the wintry-named Janus case (*Janus v. AFSCME Council 31*) – the right wing’s latest attempt to further chill collective bargaining.

The question before the Court is whether public sector unions such as ours can charge “agency” or “fair share” fees to non-members they nonetheless represent. Under US labor law, employees covered by collective bargaining cannot be required to join or pay membership dues to the union. The union is, however, required to represent them, be they dues-paying members or not. As any economics major can tell you, such arrangements give rise to the notorious free-rider problem: when a good is “non-excludable” – when it’s legally or practically impossible to restrict the enjoyment of that good to those who pay for it – there is little if any incentive to contribute to its production. Absent such incentive, however, the good will soon cease to be produced at all, to everyone’s detriment.

To prevent free-riding, then, many states including Connecticut have adopted fair share laws, where non-members pay an agency fee equal to full membership dues (which, for UConn-AAUP members, amount to 0.9% of salary). Non-members can request a rebate of non-collective bargaining costs (as we inform them every fall), though very few in our unit ever do. In 1977, the Court (in *Abood v. Detroit Board of Education*) found fair share constitutional, and such arrangements have helped smooth labor relations ever since.

Now, however, Mark Janus and his backers seek to change all that. Asserting that collective bargaining by public employees is, because it affects state budgets, “political speech indistinguishable from lobbying the government”, the plaintiff argues that agency fees amount to
compelled political speech and thus violate the First Amendment. A ruling on the case is expected late this spring…

While this is hardly the place for a deep dive into First Amendment jurisprudence, my own (admittedly inexpert) opinion is that Janus’s argument falls short on numerous counts.

First of all, collective bargaining isn’t lobbying by another name; it’s primarily contract negotiation and administration. The fact that the employer happens to be a government or government agency is largely incidental to this process.

Nor is collective bargaining properly thought of as political speech, at least not in the recognized sense of commentary on how the government should be run and by whom. In bargaining, unions represent employees’ private employment interests: their interests in better pay, job security, working conditions, and so on. The fact that collective bargaining contracts can affect a state’s finances does not suffice to make their speech political in the relevant sense; weather, too, affects state finances, but that doesn’t make all meteorological speech political. (True, since the infamous Citizens United decision, unions have been allowed to engage in genuine political speech through affiliated PACs; but under Abood, they are already required to offer a rebate of PAC contributions back to non-members who request it.)

Nor are agency fees themselves a form of speech, political or otherwise. Speech acts involve the use of words or symbols to express an opinion or other attitude. Speech, in other words, has an expressive function: it sends a message. Agencies fees, by contrast, have the function of funding a service – one unions are required by law to provide. Much like the Affordable Care Act’s “individual mandate” (which the Court upheld in 2012), an agency is essentially a tax.

Now, no one likes paying taxes, least of all me. But neither does anyone seriously imagine that compelled tax payments infringe upon their First Amendment rights – not even when their tax dollars fund, as they often do, speech by government officials, agencies, or contractors with whom they strongly disagree. The reason coerced tax payments do not violate the First Amendment seems clear: tax payments aren’t an expression of support for the government or its polices, because they aren’t acts of expression at all.

Compelled speech becomes morally and constitutionally problematic when people are forced to endorse or affirm views with which they do not agree. If the state were to legislate that employees must swear allegiance to the union or endorse the union movement’s agenda, that would be a problem, and I would like to be first in line to challenge it in court. However, fair share laws are not about enforcing ideological conformity; they are a mechanism for subsidizing service organizations which democratic majorities in states like CT have decided should exist.

To me, then, it seems quite dubious that agency fees burden anyone’s constitutional rights. Nonetheless, Court-watchers on both sides expect the conservative majority to rule in favor of the plaintiff, Mark Janus, and overturn Abood. And if they do, it will initiate a “death spiral” from which many unions will never recover.
Fortunately, UConn-AAUP is a strong organization with a long history and considerable resources, the most important being you – our active, engaged, and highly educated members. With the right preparation, we can weather this winter storm and emerge stronger as a result. Those preparations are well under way, but there is much to do. In particular, we need members to reach out to their friends and colleagues on the faculty, talk to them about what union representation means for them, and encourage them to join and/or stick with the union.

40 Years of Advocacy
Michael Bailey, UConn-AAUP Executive Director

UConn-AAUP has been working for you for over 40 years to ensure that your voices are heard:

- At the bargaining table for improved working conditions;
- At the Provost’s office for improved learning conditions;
- At the CT General Assembly for supportive legislation on bargaining & education.

Special interests are seeking to reverse our years of progress and weaken our voice in a case called Janus v. AFSCME Council 31, which is currently before the Supreme Court. On January 19, 2018, AAUP filed an amicus brief to the Court in defense of your rights to join together and set standards that create a better university with the Board of Trustees. Oral arguments were heard on February 26 and a decision is expected by the end of June.

After reading this short summary, we recommend that your best protection to ensure your continued rights is to immediately sign a membership form that formally commits you to continue to be a dues paying member. This is conveniently done at http://www.uconnaaup.org/member-info/national-application/

At issue in Janus is the attempt to eliminate the ability of unions to collect contributions from all members, the “fair-share” arrangement. Elimination of fair-share would put our collective voice in danger as non-members would get the same benefits as members, without paying any dues.

Most recently, our AAUP has been able to secure the following:

- Pension and health care benefits for you and your family through 2027;
- An average salary increase of 2.7% over the 10 year period from 2011-2021;
- A $2,000 one-time payment in 2018 and raises of 5.5% in 2019 and in 2020.
- Continued access to a merit pool;
- Protections for academic freedom and participation in departmental governance;
- Pool of money for equity and retention adjustments;
- Longer term contracts and protections for annually appointed members.

Over these past 40 years, many faculty have come before you and worked hard to build the foundation of the union as it stands today. Your elected union leadership is working hard to maintain what was fought for in the past and is asking for your help by committing to become and remain a UConn-AAUP Member.

Right to Work is Coming & What it Could Mean for UConn-AAUP: An Organizing Prospective
Christopher Henderson, UConn-AAUP Internal Organizer
Dr. Martin Luther King Jr., in a 1961 speech on right to work, said: “In our glorious fight for civil rights, we must guard against being fooled by false slogans such as ‘right to work’. It is a law to rob us of our civil rights and job rights. Its purpose is to destroy labor unions and the freedom of collective bargaining by which unions have improved wages and working conditions of everyone…Wherever these laws have been passed, wages are lower, job opportunities are fewer and there are no civil rights. We do not intend to let them do this to us. We demand this fraud be stopped. Our weapon is our vote.” The mechanism to guard against the harmful effects of right to work is that we must not only vote, but sign – sign a membership card to be a member of the UConn-AAUP.

As we have discussed at length this year and in this newsletter, the Supreme Court case Janus v. AFSCME Council 31 will, more likely than not, usher in national right to work. Yes – the definition of right to work is allowing employees covered under a collective bargaining agreement and represented by their union not to pay their fair share for the benefits of the contract and union, even though the union is under a legal obligation to represent them. 28 states have passed right to work laws, but Janus will ensure that all 50 states are under a right to work regime.

What will it mean, both in the short term and long term, here at UConn? In the short term, once the Janus decision is decided in June, UConn-AAUP’s power to negotiate will be diminished substantially by a loss of funding of some 40%. 40% is the number of bargaining unit members who are currently “agency fee payers” and thus are not members eligible to vote or participate in union activities. These agency fee payers will no longer have to pay anything, so the union will lose 40% of its revenue. This will certainly diminish our capacity to negotiate contracts, represent members in individual or collective grievances, and lobby at the State Capitol for funding and faculty rights. Part of the reason agency fees exist in the first place is to balance the power at the bargaining table against a well-funded large employer. In practice, it allows unions to have the resources to negotiate against corporate attorneys outside of Connecticut. Further, pay cuts, higher contributions to healthcare and retirement, diminished voice in the workplace all result from right to work. In the long term, if more employees succumb to the allure of such slogans as “give yourself a raise,” the existence of the chapter will be in jeopardy.

We all know that there have been some difficult pills to swallow in the recent contract, but not having a contract and a voice at all will be far worse. With the rhetoric coming from Hartford, the need to have a strong and robust union is essential for the future of UConn and public higher education. So, if you don’t like the prospect of living under right to work, if you don’t want to diminish, if not eliminate, your voice at UConn over your economic security and working conditions, then become a member. If you are a member already (thank you!), then ask how you can help others become members so that our power to represent you isn’t lost via judicial fiat.

SAVE THE DATES:
- April 23, 2018 – UConn-AAUP Excellence Awards Reception – State Capitol #310 – 9am
- April 25, 2018 – UConn-AAUP Annual Chapter Meeting – SU#330 – 12 noon
- May 10, 2018 – UConn-AAUP Child Care Reimbursement Submission Deadline