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LEGISLATIVE ACTION ALERT

Labor News Up To The Minute

by Samuel Morris

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Public Sector Union Fees Are Dead. What's Next?

By [Robert Iafolla](#) Bloomberg 360

A potential ruling that could block public sector unions from representing nonmembers would deliver another blow to organized labor, which is still reeling from the U.S. Supreme Court's recent decision that cut off the collection of union fees from public workers who are not members. A conservative advocacy group's effort to upend exclusive representation in the public sector will get its first test later this month in federal court.

The Buckeye Institute is supporting plaintiff Kathleen Uradnik, a political science professor at St. Cloud State University, in her First Amendment lawsuit challenging the Inter Faculty Organization's authority to represent her and other workers who aren't union members. A Minnesota federal judge on Sept. 20 will consider her request for a temporary order to block the union from acting as nonmembers' sole bargaining agent.

A ruling in Uradnik's favor could put the poli-sci professor and her university in uncharted territory, potentially leaving her on her own to negotiate wages and benefits while freeing the school from its obligation to bargain with the IFO. And more cases are in the pipeline. The Buckeye Institute has filed federal lawsuits on behalf of public employees in three different states, challenging a union's authority to act as the sole representative for all workers in a bargaining unit.

Union Power in a Post-Janus World

The Supreme Court's [Janus v. AFSCME](#) decision in June [banned](#) public sector unions from collecting fees from nonmembers that would be used to pay for nonpolitical expenses while also calling exclusive representation into question. Justice Samuel Alito wrote in the *Janus* majority opinion that a state's requirement that a union must serve as public workers' exclusive bargaining agent is a "significant impingement on associational freedoms that would not be tolerated in other contexts."

Relying on *Janus*, Uradnik's lawsuit says the Inter Faculty Organization's designation as her exclusive bargaining representative violates her rights to free speech and association protected by the First Amendment. "This is about the free speech rights of workers and whether they can be compelled in matters of public concern," Buckeye Institute President Robert Alt told Bloomberg Law. "*Janus* dealt with one part of this question—can you be forced to subsidize a union's speech—and raised grave questions about whether you can be forced to associate with a union."

An injunction against the Inter Faculty Organization would extend beyond just the representation of Uradnik and other employees at St. Paul State University, Alt said. The union represents professors, coaches, librarians, and other employees at seven state university campuses in Minnesota.

IFO President Brent Jeffers cast the lawsuit as “part of a nationally coordinated strategy by powerful forces aiming to destroy collective bargaining.” “It is a direct attack on our shared values and collective voice,” Jeffers told Bloomberg Law in a prepared statement.

The other lawsuits backed by the Buckeye Institute were brought on behalf of a [public university professor in Maine](#) and a [public high school teacher in Ohio](#).

Spillover Effects in Private Sector

It's unclear whether public employers would have an obligation to negotiate with unions that aren't designated as a bargaining unit's exclusive representative, University of North Carolina labor law professor Jeffrey Hirsch told Bloomberg Law.

States with anti-union officials would likely resist negotiating unless they absolutely had to, he said. Abolition of exclusive representation could also open the door to multiple members-only unions representing different factions of employees working alongside one another, Hirsch said.

Catherine Fisk, a labor law professor at the University of California at Berkeley, said a successful First Amendment challenge to exclusive representation in the public sector also could eventually bleed into the private sector. A state action that violates the First Amendment is more obvious when it's the government acting as an employer, Fisk told Bloomberg Law in an email. But there might also be state action in the private sector because government agencies, through the authority of the National Labor Relations Act or the Railway Labor Act, appoint unions as exclusive representatives if the unions win majority support of workers in bargaining units, Fisk said.

Union Armored With *Knight* Precedent

The IFO says the Supreme Court has already rejected a First Amendment challenge to a union's exclusive representation of faculty in the Minnesota community college system. It cited the high court's 1984 decision in [Minnesota State Board for Community Colleges v. Knight](#) in its bid to kill Uradnik's motion for a preliminary injunction.

The U.S. Court of Appeals for the Eighth Circuit also recently reaffirmed the constitutionality of exclusive representation under Minnesota law in its Aug. 14 ruling in [Bierman v. Dayton](#), the union said. The circuit court said in that ruling that *Janus* didn't mention *Knight* nor supersede it. But Uradnik said in her motion that *Knight* doesn't support the IFO's exclusive representation of nonmembers. While *Knight* upheld a restriction on exclusive bargaining representatives in certain bargaining activities, there was no issue of compelled speech, she said.

The case is [Uradnik v. Inter Faculty Organization, Dist. of Minn., No. 18-cv-01895, motion for preliminary injunction filed 7/31/18.](#), D. Minn., No. 18-cv-01895, motion for preliminary injunction 7/31/18