

## Cuomo's bad Janus advice

by Ken Girardin | July 18, 2018 | NY Torch

### Highlights

@NYGovCuomo is telling public employers to ignore state law and the Supreme Court. #JanusvAFSCME



Governor Andrew Cuomo hit a new extreme in his bid to prop up government unions, telling public employers to ignore parts of both state law and the Supreme Court ruling in *Janus v. AFSCME*.

The state Department of Labor (DOL), at Cuomo's direction, today released "[guidance](#)" on how public employers should follow last month's landmark ruling in [Janus v. AFSCME](#).

DOL claims:

"Public employee unions are not required to produce dues authorization cards for members from whom the employer has previously deducted dues."

**But that's not what the law says.** Per section 208 of the state Taylor Law, which governs public-sector collective bargaining, unions are entitled to have dues deducted "upon presentation of dues deduction authorization cards signed by individual employees."

The *Janus* ruling has major ramifications for New York in part because unions had grown accustomed to taking money from paychecks independent of whether the employee had signed a membership card, under an "agency fee" scheme.

To comply with *Janus*, employers reviewed their records and found they had never been shown union membership card for certain workers, even if the person had signed one.

DOL says unions can present "similar evidence of union membership such as membership lists"—which is a breathtaking stretch, especially considering that the governor successfully pushed in March to change the Taylor Law to hold union members and employers to the terms spelled out on the membership cards themselves.

A list of members from a union doesn't tell public employers what fine print the worker is being held to. For example, before 2018, most union membership cards allowed signers to withdraw from membership at any time—and for the public employer to be released from the obligation to collect dues. A "membership list" doesn't cut the mustard.

The guidance is likely related to difficulties experienced by the Civil Service Employees Association (CSEA), one of the state's largest government unions, which has been insisting on providing lists to public employers, while other unions are turning over copies of membership cards.

In Saratoga County, [county officials](#) had cards on file for just 3 percent of the workers that CSEA claimed were members. When the county human resources department asked for cards, the union responded with threats to protest outside the building.

CSEA, coincidentally, just [endorsed](#) Cuomo for re-election after declining to back his last two bids.

DOL's "guidance" also says:

The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues must be honored. The *Janus* decision only impacts the mandatory collection of an agency fee by individuals who decline union membership.

**But the *Janus* decision says otherwise.** Deductions are only allowed if the employee "affirmatively consents to pay" and there is "clear and compelling" evidence First Amendment rights have been waived.

This "guidance" matters for unions that now face workers who signed membership cards only because they thought they'd have to pay regardless. Cuomo and state lawmakers in March changed state law to let unions create obstacles for people who change their mind about membership, but those obstacles are unlikely to survive in federal court.

In short, Cuomo is setting up local governments and school districts to face federal litigation from workers who try to exercise their *Janus* rights.

The DOL guidance also makes an odd mention of public employees having "the right to keep their personal information protected by their employer...(with limited exceptions)." But as Tim Hoefler [explained](#) the last time the governor made noise about the issue, employee personal information has always been shielded from public disclosure.

But those "limited exceptions" DOL mentioned? They include union contract provisions requiring the employers to surrender the data to the unions so people can be contacted at home—and pressured into signing membership cards.

#### 1 Comment



**Andrea Vecchio**

Going to be a circus. News flash. Looks like Everyone except custodians in our school district is in the Teachers Union - Unit Locals of NYSUT have managed to sign up most school employees and are likely paying Teachers union agency fees . Here in East Islip it looks like we taxpayers may be reimbursing the fee through District payments to the "teachers welfare fund" Can't make this stuff up. Is this happening in any other school districts?

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