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REPORT OF LEGAL COUNSEL
February 19, 2014

Public Employee Unionism in Question

The United States Supreme Court heard oral arguments on January 21, 2014 in ***Harris v. Quinn***, 134 S. Ct. 48 (2013), a case that raises significant questions about labor relations in the public sector — an issue that is stirring up a great deal of agitation around the country, especially in state and local government.

Facts of the Case

In 2003, then-Governor Rod Blagojevich issued an executive order that declared all Illinois home healthcare aides to be state employees. The rationale behind this decision was that these workers are paid, in part, out of state Medicaid dollars. By becoming state employees, they would also be allowed to form unions; the rationale was that as public employees, they would be easier to organize into unions than they had been while considered private workers. Several months later in 2003, 20,000 home health care aides voted to unionize and selected SEIU as their exclusive representative in collective bargaining. As is characteristic in states that allow government workers to unionize and bargain collectively, workers who became union members had to pay dues, while those who did not still had to pay "fair share" fees. Currently, the Service Employees International Union receives some $3 million a year from the state's home-care workers.

However, one aide, Pamela Harris, represented by the National Right to Work Foundation in the litigation, objected to the agency fees and sued the state. Harris advanced arguments on two fronts. First, Harris objected to the agency fees on First Amendment grounds, arguing that she is being forced to contribute to an organization of which she is not a member. Second, Harris is contesting the state's authority to declare itself the home-care aides' employer through executive order.

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On both issues, the district court dismissed Harris' claims. On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed. The appellate court held that the state may require its employees, including personal assistants such as the plaintiffs, to pay fair share fees.

Legal Questions before the Supreme Court

Does the fair share provision in the collective bargaining agreement between the state of Illinois and the union representative violate the First Amendment rights to freedom of speech and freedom of association of personal assistants who are not members of the union?

Can the state declare itself the home-care aides' employer through executive order?

What are the potential implications of the Harris case?

The first argument must clear a high hurdle. To prevail, the court must strike down well rooted precedent set in the 1977 *Abood v. Detroit Board of Education* decision involving Detroit schoolteachers. In *Abood*, the court concluded that workers could not be forced to become union members—effectively outlawing the "closed shop"—but they could be forced to pay their proportion of the costs of collective bargaining. The logic is that workers should be prevented from free-riding on the organization of others. If they are going to benefit from exclusive representation and collective bargaining, they must pay for it.

As to the first argument, there is significant concern from the union side bar that the court would be guided by an earlier decision, written by Justice Samuel A. Alito Jr. Writing for the majority in June 2012, he stated that the primary purpose of letting unions collect fees from nonmembers was to prevent so-called free-riding in which workers shared in the benefits of having a union without sharing the costs incurred. Justice Alito wrote, "Such free-rider arguments, however, are generally insufficient to overcome First Amendment objections."

On the second argument, should the court declare that the state lacked the authority to declare the home-health aides public employees, unions would necessarily lose several hundred thousand members in Illinois and other states. Home-health aides have been an area of expansion for public employee unions in recent years.

We will keep an eye on this case and present a report on the Court's decision when it is issued.

Respectfully submitted,

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