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Dear Goyette & Associates Employee Association Client Leaders,

On June 27, the Supreme Court issued a decision in the matter of *Janus v AFSCME* that made the collection of agency fees from non-union members unconstitutional. Essentially, in the 22 states that had allowed agency shop arrangement, including California, the Supreme Court ruled that those arrangements are unlawful, effective immediately.

WHAT DOES THIS MEAN FOR YOU?

This memo is being sent to over 100 employee associations that are represented by Goyette & Associates, so the impact will vary, maybe even significantly, among our client groups.

- If you currently have no agency shop provision (either because you never implemented one or because you are a management unit that could not implement one), this case will not affect you very much at all.
- If you have an agency shop arrangement, and you are a peace officer unit that belongs to PORAC and its legal defense plan, we anticipate that you will have very little, if any, impact from this ruling as all of your members understand the importance of legal defense coverage as a peace officer.
- For non-peace officer associations with an agency shop arrangement, this case has the greatest potential for impact.

While you may hear dire predictions as a result of this decision – and it is far too early to tell exactly what the repercussions will be – it is notable that there are 28 states and the federal government that have had public sector unions without agency shop as an option. Certainly, agency shop has served as a guarantor of a certain level of funding for unions and employee associations in California that will now not be assured. However, our own clients' experiences should serve as a positive example of how public sector unions can survive *and thrive* without agency shop arrangements. Without calling any specific units out, we represent at least two dozen management and firefighter associations that do not have agency shops. In the firefighter

units, membership is almost always nearly 100%. In our management and professional units, the membership levels range from 65% to 95% and have been steady and/or rising in recent years. Sharing those general numbers is not intended to create a false sense of security, but rather to demonstrate that agency shop, in and of itself, is not the key to healthy and vibrant employee associations. Instead, for all of our client associations, we would encourage and remind you to critically evaluate your organization, its structure, and leadership (Is the leadership team broad-based and representative? Are there next-generation leaders being groomed? Etc.) while also sharing with all unit members the value that the association provides. All of your associations represent your members in collective bargaining and, while results may vary due to a variety of factors, that is the single most important reason your members should support the association with membership. However, through your partnership with Goyette & Associates, you also all provide your members with access to labor representatives and attorney in personnel matters, grievances, investigations and disciplinary procedures. Additionally, all of your members can reach out to Goyette & Associates on any legal issue and get advice or a referral to an expert in that area of the law.

Like it or not, whether you have been doing it already or not, you must continually remind your unit members of the value that the association provides.

DUES DEDUCTIONS

Effective immediately, any agency fee payers should no longer have any fees or dues deducted by the employer. We would recommend contacting those unit members and asking them to reconsider being members of the association. The decision to be an agency fee payer that they made is different than the one they have to make now and some folks will likely be willing to join in order to support their exclusive representative and keep their legal defense and other benefits of membership.

As far as regular members' automatic dues deductions, there is language in the Supreme Court decision that talks about the need for affirmative consent to have any fees deducted to an employee's union. We have already heard that some agencies have taken the stance that a signed authorization card needs to be on file for each employee member that has dues deducted from their paycheck. Depending on how strictly dues authorization cards have been handled in your agency, this may require some of our associations to work with their employer to identify members that don't have a signed authorization form on file and get them to sign one. This should hopefully not occur in too many places. If it affects you, please let us know.

WHAT ARE THE ASSOCIATION'S DUTIES TO NONMEMBERS?

This is an excellent question that we have been answering for many years in relation to our non-agency shop clients. The fact that now every one of our association clients has the potential of having nonmembers in their bargaining unit, makes this question relevant to everyone.

First, as the exclusive representative of the bargaining unit, your association has the duty to bargain and represent ALL unit members, whether they are or are not union/association members, fairly. In an extreme example, this means that you cannot negotiate an MOU that gives a raise only to members of the association. You also must listen to nonmembers when they bring

issues to your attention for the bargaining table or a potential grievance and the association has a duty of fair representation to consider the merits of the issues presented and take appropriate action. This may, on occasion, result in taking a position in support of a nonmember; but that is the current price for being the exclusive representative of the whole unit.

However, when it comes to discipline or non-contractual issues that a nonmember faces, there is NO obligation on the association to do anything for a nonmember. Our recommendation for associations that are approached by a nonmember facing discipline or some other workplace related issue (that is not a contract enforcement or grievance issue) is to refer them to Goyette & Associates (send them to the main office line or through your primary labor rep or attorney). (We will want to know that the individual is not a member so a heads up is appreciated.) The nonmember will then have the option of retaining Goyette & Associates privately at an hourly rate, handling the matter him/herself, or seeking out another private attorney. The advantage of simply referring to our firm is that we can ensure that any action against the employer does not interfere with past or pending issues as well as being able to identify possible contract or representational issues that ought to be addressed by the association. Also, sending the nonmember to Goyette takes the problem off the association Board and/or leadership's plate and ensures that the nonmember cannot come back and accuse the association of failing to act on their behalf (which would be a non-issue anyway, but the claim is one we would all rather avoid).

POSSIBLE MOU CHANGES

For some associations, there may be a need to amend the existing MOU, now or at the next round of bargaining, to clarify the agency shop language. Additionally, there are some units that have agreements that give certain powers with respect to disciplinary appeals exclusively to the union. This make sense in an agency shop situation but that language likely needs to be cleaned up when there may be nonmembers seeking to appeal disciplinary notices. We have assigned a small working group of our most experienced labor representatives to come up with some template language. To be clear, MOU changes are not necessary immediately as all of our contracts have language that keep the rest of the sections of a contract in place despite a change in the law that makes one section invalid (in this case, any agency shop provision).

CALIFORNIA LEGISLATIVE RESPONSE

It is anticipated that the State Legislature will respond to this decision with some changes to the California labor law framework that will impact our association clients as well. There are too many proposals floating around the Capitol to list off, but at least some will become law. When these get signed by the Governor, we will communicate with you again and make sure that we are on top of how these changes affect the issues we commented on in this memo.

This decision will have an impact on public sector organized labor in California. It is still way too early to predict exactly how it will all shake out. However, our firm's experience with association clients that have never had agency shop provides us with the confidence that ALL of our association clients have the ability to continue to remain valuable and appreciated organizations in the eyes of the vast majority of the bargaining units they represent. We are committed to helping you navigate through this time and encourage that you turn any conversations and discussions about this issue within your association into a positive evaluation of how to best serve your members.

On behalf of all of the Goyette & Associates Labor Department, thank you for entrusting your legal and labor service needs to our firm and we are optimistic about the future of your associations.

If you have any questions or concerns regarding this matter, please contact our office at (916) 851-1900.

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