



## Supplemental Questions and Answers for Unit Presidents After the Supreme Court's Decision in *Janus v. AFSCME* [Initial *Janus* emailing to Unit Presidents occurred on 7/6/18 and was repeated on 7/17/18]

**Q: What actions do labor unions have to undertake in light of the United States Supreme Court ruling in *Janus vs. AFSCME* as it relates to the collection of employees' union dues?**

A: The Supreme Court specifically ruled that the collection of “agency fees” (sometimes called “fair share fees”) by unions (sometimes called “bargaining units” or just “units”) from nonmembers violates the First Amendment of the United States Constitution. The Court stated “[n]either an agency fee **nor any other payment to the union** may be deducted from a non-members’ wages, nor may any other attempt be made to collect such a payment, **unless the employee affirmatively consents to pay.**” (emphasis added). To effectively waive their First Amendment Free Speech rights, each union member must “clearly and affirmatively consent before any money is taken from them”. Thus, under the *Janus* decision, affirmative written consent from every union member authorizing the employer to deduct union dues must be on file with the employer before dues can be deducted. Note: A union member paying dues by cash, check or credit card does not need to provide the employer with anything. Written notice applies only to those having the employer deduct dues through payroll deduction.

**Q: What constitutes acceptable written consent to have union dues deducted by the employer?**

A: As a practical matter in the short term, units will have to provide the written consent as acceptable to the employer to effectuate payroll deduction. Certain districts have already processed payroll deductions utilizing our regular renewal forms, both individual and group. There have already been differing opinions among school districts attorneys, the governors’ office and the Department of Labor, among others, as to exactly what the change in the law requires. If the district will not accept our traditional renewal methods, we believe the dues deduction form we developed (<https://saanys.org/wp-content/uploads/2018/07/Payroll-Deduction-Authorization.pdf>) satisfies all of the various interpretations of the *Janus* decision. We expect there will be increased clarity on this point in the near future.

**Q: What should unit presidents do first?**

A: First, determine whether the college, BOCES, or school district employer has on file written dues deduction forms/cards signed by each union member authorizing the deduction of union dues from their wages. If the unit president is aware of agency fee members or non-union members, the president should present a dues deduction card/authorization form to these individuals for signature. A model letter to those

potential members from whom you have not yet heard may be accessed here: <https://saanys.org/wp-content/uploads/2018/07/Janus.UP-Letter.08.pdf>. Those that decline to join the union will be denied critical services. Without an employee's affirmative consent, the employer is prohibited from deducting union dues from their wages.

**Q: What if there are no dues deduction cards/authorization forms on file?**

A: If the Union leadership determines that there are no dues deduction cards/authorizations on file with the employing college, BOCES or school district, the union should have every member sign a dues deduction card/authorization form and submit it the employer. The link to the form is in this document in the answer to the second question and may also be found on the SAANYS website (click the scrolling Janus banner on the front page of the website and then click "Unit Leader Resources").

**Q: By when should deduction cards/authorization forms be filed with the employer?**

A: As soon as possible. SAANYS membership year begins on September 1, and the membership status of those who are not renewed by September 1 will be unknown to us. We will work with unit presidents to timely process membership renewals and to ensure that critical services are maintained for all members.

**Q: May an individual decline to join and later change their mind and join late?**

A: Yes, but with an IMPORTANT condition. An individual who joins late will be ineligible for legal representation in matters that arose prior to his/her renewal or in matters that arise within six months of his/her renewal. The purpose of this condition is to discourage joining only after a matter has arisen, or when it becomes clear a matter is about to arise. Without such a condition the cost of such representation would be borne by those that joined at the outset of the membership year, and that would be unfair to our members. This condition does not apply to new hires and units new to SAANYS.

We have not yet definitively determined what will constitute being "late." We are sensitive to the fact that this is the first year of a changed legal environment relative to membership, and that we are all adjusting. It is likely that some point this fall (mid-October is currently under consideration) will be considered "late," but we will not determine a specific date without first advising both unit presidents and those we know did not renew their membership from last year.

Please do not hesitate to contact the SAANYS legal or membership departments with any questions.