U.S Supreme Court Holds that Illinois Homecare Workers Are Not Required to Pay an Agency Fee to Union

On June 30, 2014, in the case of Harris v. Quinn, a divided U.S. Supreme Court addressed the issue of whether quasi-public homecare employees must pay an "agency fee" to a public sector union. In a 5-4 decision, the Court held that the First Amendment prohibited the collection of any agency fee from such employees who did not want to join or support the union. Although this decision is a setback for public sector labor interests, it could have been much worse for public sector unions, because the Court did not overrule the 1977 Supreme Court case of Abood v. Detroit Board of Education. The Abood decision held that state employees who chose not to join a public sector union may be compelled to pay an agency fee to support union work that concerns the collective bargaining process.

By way of background, Illinois has a statutory Rehabilitation Program which allows Medicaid recipients who needed institutional care to hire a personal assistant ("PA") to provide homecare services. The homecare recipients are called customers, and by statute these customers were deemed the employers of the PAs. The State of Illinois amended its public sector labor statute (which allowed for agency fee provisions in public sector collective bargaining agreements) to characterize these homecare workers as State employees for the very limited purpose of only public sector collective bargaining. SEIU Healthcare Illinois & Indiana (the Union) became the representative of a bargaining unit that included the Rehabilitation Program PAs. The State entered into a collective bargaining agreement with the Union which included an agency fee provision. Under the agency fee or "fair share" provision, all bargaining unit members, including those employees who didn't want to join the Union, had to pay a fee for the cost of certain activities that were tied to collective bargaining. The plaintiff employees contended that this agency fee requirement violated their right to free speech under the First Amendment by requiring them to pay for speech that they didn't support.

Not surprisingly, the Illinois Governor and the Union defendants in the case argued that public sector employees could be required to pay agency fees based on the Abood case. The Court, although critical of the analysis contained in Abood, declined to overrule it. Rather, the Court focused on whether the homecare workers were in fact public employees, and concluded that they were not. By statute, the customers were the employers of the PAs and controlled typical employment decisions, such as hiring, firing and evaluating performance. Pay rates, a subject that a union typically would bargain over, were set by statute. These homecare workers were excluded from the many benefits associated with being a true State employee – for example, the homecare workers didn't receive health insurance or retirement benefits through the State, and they were not covered by the State's workers compensation coverage or by other laws which afforded State workers certain protections.

Based on these case-specific considerations and the Court's criticisms about the reasoning of the Abood Court, the Court declined to extend the Abood holding to the homecare workers because they were not "full-fledged" public sector employees. Turning to a First Amendment analysis, the Court concluded that the agency fee provision did not serve a compelling state interest that could not be achieved "through means significantly less restrictive

of associational freedoms." In reaching its decision, the Court was unpersuaded by the defendants' argument that the agency fee furthered labor peace, noting "[a] union's status as exclusive bargaining agency and the right to collect an agency fee from non-members are not inextricably linked."

The financial stakes in the Harris case were high – the PAs have paid the Union more than $3.6 million a year in agency fees. The Court's decision protected the First Amendment rights of the homecare workers who didn't support a union, and by leaving the Abood decision intact, avoided a potentially disastrous outcome for public-sector unions.

While the Court's focus was the Illinois statute this case bears watching in New Hampshire especially with regard to public sector homecare workers. Agency fees are permitted in New Hampshire under our public sector labor relations statute, RSA 273-A. A Right to Work bill passed the House and Senate a few years ago but Governor Lynch vetoed it. The Bill, if it became law, would have been the first of its kind in New England and it would have prohibited applicants from being forced to join a union as a condition of employment. A similar National Right to Work bill stalled in Congress again this year. This case, by contrast, could actually provide public sector employees in New Hampshire who chose not to join a union and objected to paying agency fees a toe hold to challenge those fees. Stay tuned.

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