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Opinion



Supreme Court tie in teacher case delivers a crucial victory to unions

by ANGELA CORNELL

March 30, 2016

The U.S. Supreme Court handed an important victory to unions and working people this week when it issued an early decision in the controversial public-sector dues case, *Friedrichs v. Calf. Teachers Association*

The case threatened to substantially weaken public-sector unions and destabilize collective bargaining across the country when 10 public school teachers, supported by conservative groups, challenged their legal obligation to pay union agency fees.

Unions have long been permitted to charge non-members agency fees to help support the cost of bargaining, contract administration and grievance adjustments, but must segregate the costs of political



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campaigns that non-members are not required to support.

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Unions have a duty to fairly represent all employees in the bargaining unit, even if they are not members of the union. If unions were not permitted to charge agency fees, it would exacerbate the free-rider problem since unions would still have legal obligations to these non-members. The Supreme Court upheld the constitutionality of mandatory agency fees charged to public sector employees close to 40 years ago.

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The lawsuit filed by the 10 public school teachers in *Friedrichs* argued that the obligation to pay mandatory agency fees infringed on their First Amendment Rights. These teachers were opposed to union representation, but only comprise a very small minority in the bargaining unit. Unionization in the U.S., like politics, is based on the preferences of a majority.

A majority of the teachers in the bargaining unit wanted union representation, which is also a constitutionally protected right.

Upholding the challenge of agency fees by these 10 teachers would have

necessarily undermined the collective organization of the majority of teachers in the bargaining unit, substantially weakening the effectiveness of the union.

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The Court heard the oral argument on Jan.11, 2016 and many thought the conservative justices were leaning toward the 10 teachers, but the outcome of the case was likely altered by the unexpected death of Justice Antonin Scalia. Without Justice Scalia, the conservatives on the Court could not muster a majority and the Court tied 4-4, resulting in the 9th Circuit decision favoring the union and mandatory agency fees being upheld.

The significance of the Supreme Court decision goes beyond the ability of public-sector unions to collect agency fees from non-members; it more importantly answers affirmatively whether public-sector unions can function at all.

The *Freidrichs* challenge was really an attack on the freedom of association of the majority of the teachers in the bargaining unit.

It is a rejection of the right-wing effort that has been aggressively pursuing a number of anti-union initiatives, many tied to union dues, like the right-to work campaigns that have been pursued in several states.

The efforts are a frontal assault on unions and seek to undermine their ability to function by restricting their access to dues and agency fees. Unions cannot function without dues and agency fees from those they represent. But this week, the views of a very small conservative minority that opposed agency fees, and indeed unionization at all, were defeated with the tie vote on the Supreme Court.

The fundamental collective rights and organization of the majority were upheld.

Angela Cornell is clinical professor of law at Cornell Law School and the founding director of the school's Labor Law Clinic. She teaches labor law, practice and policy, as well as related courses.

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