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VERMONT ATTORNEY GENERAL ADVISORY:
Public Sector Labor Rights and Obligations Following *Janus*

Public sector employees - including firefighters, police officers, teachers, public health employees, and other state workers - play a vital role in our communities across Vermont. They work hard every day to ensure public safety, protect public health, educate our children, and provide other essential services to Vermonters.

Attorney General T.J. Donovan issues this Advisory in response to the recent United States Supreme Court decision in *Janus v. AFSCME Council 31*, 585 U.S. ____ (2018). *Janus* overturns decades of well-established law and practice relating to public employers' deduction of fair share agency fees from public sector employees who decline union membership. Under *Janus*, a public employer may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.

All other collective bargaining rights and obligations of public sector employees and employers remain the same under state law. Public employees retain their statutory rights under Vermont law to organize, join unions, and engage in collective action for mutual aid and protection. The Vermont Attorney General's Office issues this Advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Vermont law, the rights of public sector employees are unaffected by the *Janus* decision. These employees maintain the right to:
 - Organize.
 - Form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment.¹
 - Engage in lawful, concerted activities for the purpose of bargaining or other mutual aid or protection.² 3 V.S.A. §§ 903(a), 1012; 16 V.S.A. § 1982; 21 V.S.A. § 1721.
- Public employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982; 21 V.S.A. §§ 1726, 1728.

¹ Certain classes of public sector employees may not be entitled to all of these enumerated rights including state workforce classified managers, confidential employees, and deputy sheriffs.

² A State employee may not strike or recognize a picket line while in the performance of his or her official duties. 3 V.S.A. § 903(b).

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. 3 V.S.A. §§ 961, 1016, 1026; 16 V.S.A. §§ 1982, 2001; 21 V.S.A. §§ 1725, 1726.

Dues and Agency Fees

- An employee whose position is within the bargaining unit of a union, and who chooses to be a member of the union, pays membership dues. An employee whose position is within the bargaining unit of the union, but who chooses not to be a member of the union, previously paid an agency fee to the union.
- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The *Janus* opinion only impacts the collection of agency service fees by public employers from individuals who decline union membership.
- Under *Janus*, a public employer may not deduct any agency fees from a nonmember's wages without the employee's affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018, may choose to become a dues-paying union member.
- Public employers may not threaten or coerce employees regarding union membership. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982(c), 21 V.S.A. §§ 1726, 1728.
- Membership dues may still be collected through a payroll deduction.