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Legal Aid lawyers sue union, claiming that dues violate First Amendment

Echoes of Janus case

Members of the Association of Legal Aid Attorneys walked a picket line last summer. The union is currently being sued by two of its members, who claim that paying union dues is a violation of their constitutionally protected free-speech rights.

Duncan Freeman/The Chief

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BY DUNCAN FREEMAN

Two public defenders at the Legal Aid Society are suing the organization, a lawyers union and New York City, claiming that paying private union dues breaches their First Amendment rights.

The suit, [filed in U.S. District Court in Manhattan last month](#) and served to the union last week, cites the Supreme Court's 2018 Janus v. AFSCME decision as a reason why the two lawyers should not have to pay dues or equivalent fees as a condition of their employment.

In its landmark Janus decision, a divided Supreme Court ruled that compelling public-sector workers who haven't joined a union to pay dues or fees violated the First Amendment's free speech protections, a finding that essentially turned public-sector unions into "open shops." The Legal Aid Society workers' suit argues that the same standard should apply to that organization since it contracts with the government and provides a constitutionally required service.

Many public defenders at the Legal Aid Society are represented by the Association of Legal Aid Attorneys, Local 2325 of the United Auto Workers. The two lawyers who sued the union, Arnold Levine and Allen Popper, are not dues-paying members but — as is the case in many private sector unions — still must pay "agency fees" that are equivalent to union dues to compensate for the services the union provides them.

Jeffery Schwab, who is representing Levine and Popper, said the First Amendment should apply to his clients since the "government is so intimately connected to the employment that it is effectively state action."

"They're employed solely for purposes of providing not only a legally required government service but a constitutionally required government service," he said in a phone interview Monday.

Schwab was the counsel for Mark Janus, the plaintiff in the Supreme Court case, and is now senior counsel at the Liberty Justice Center, which is backing the suit.

Officials with both the ALAA and The Legal Aid Society declined to comment on the suit.

'Push by anti-labor forces'

William A. Herbert, a lecturer at the Roosevelt House Public Policy Institute at Hunter College who's written extensively on the Janus decision, said that this suit is the latest attempt by "anti-union forces" to compel all workplaces to become open shops.

"This is an ongoing push by anti-labor forces that dates back to the early 20th century," Herbert said in a phone interview. "The essence of the lawsuit is [the plaintiffs] are seeking to be provided free representation by the Association of Legal Aid Attorneys for the services the union provides, not just in collective bargaining but in grievance representation."

"This lawsuit is claiming that, even though the Legal Aid Society is subject to the National Labor Relations Act, that somehow these private-sector employees are subject to the First Amendment because the Legal Aid Society is contracted with the City of New York," Herbert added.

Schwab acknowledged that the attorneys' collective-bargaining agreement is covered by the NLRA but argued that constitutional rights should supersede federal labor law.

He insisted that the effects of the suit would be "extremely limited" to organizations that are "intertwined" with the government — such as public defender organizations — and would not affect other private organizations that receive government contracts. "We are not seeking a broad application of the First Amendment or of Janus specifically to all private sector workers," he said.

But Seth Goldstein, a longtime lawyer representing workers in various unions, said the suit presents a "foolish argument."

"This is a backdoor way to get 'right to work' instead of pursuing it legislatively, which they know they can't because the American people support labor unions," Goldstein said, referring to state laws that allow union members in the private sector to opt out of paying dues.

"It's obvious that this organization will go to any length to destroy workers' rights and the NLRA," he said of the Liberty Justice Center.

Frustration with resolutions

Levine and Popper are especially frustrated with their union because the fees they pay "subsidize speech that they disagree with," according to the suit. The speech in question is two resolutions passed in a majority vote by members of the ALAA 2022 and 2023 that the pair argue are antisemitic.

The 2023 resolution called for a cease-fire in the conflict in the Gaza Strip, an end to "Israeli apartheid and the occupation and blockade of Palestinian land, sea, and air by Israeli military forces," and refers several times to Israel's incursion into the Gaza Strip as a genocide. It passed by a two-to-one margin in a December vote by union members.

Before the vote, Legal Aid Society management reportedly told the union's membership in a captive audience meeting that the resolution was antisemitic and two members at the Legal Aid Society of Nassau County sued the local to block the vote.

A judge eventually threw out that suit and the vote proceeded.

Congressional Republicans have since voiced their displeasure with that resolution and in March, Congresswoman Virginia Foxx (R-North Carolina), the chair of the Committee on Education and the Workforce, subpoenaed the ALAA for documents related to the resolution. The union has refused to comply with that subpoena.

"The city vehemently stands against all forms of hate speech," a spokesperson for the city's Law Department said in a statement when asked about the suit. "We'll review the case once served."

Herbert, the Hunter College professor, said this is the first time he has come across an argument applying Janus in this manner. He said he expects the lawyers' suit will be dismissed because of both its massive implications for private-sector unions and because it implicitly challenges the NLRB's authority.