Supreme Court hears arguments in union dues case

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On January 11, the US Supreme Court heard oral arguments in a case related to the legality of so-called agency shop agreements for public employees, also known as "agency fee" or "fair share" agreements. These agreements give a single union the exclusive right to represent a particular category of employees, and require employees who choose not to join the union to still pay a fee for costs supposedly related to collective bargaining.

The case, captioned *Friedrichs v. California Teachers Association*, was brought by the Center for Individual Rights, a right-wing law firm previously responsible for cases attacking the Voting Rights Act, undermining the separation of church and state and supporting the so-called "Michigan Civil Rights Initiative." The lawsuit was supported in the Supreme Court by a consortium of right-wing entities, including the National Right to Work Legal Defense Fund and Pacific Legal Foundation, which was founded in 1973 by former members of then-Governor Ronald Reagan's welfare "reform" team.

The aim of the case is not to defend the rights of workers against unions that regularly collaborate with the employers to betray workers' interests. Like various "right-to-work" laws, the case is aimed at undermining any efforts by workers to collectively defend themselves. The unions oppose the case, however, entirely from the standpoint of the narrow income and institutional interests of the labor apparatus.

The case was filed in the name of a group of teachers led by Rebecca Friedrichs, a teacher in Orange County, California. The chief legal theory is that the payment of the agency fee to the California Teachers Association infringed on the First Amendment rights of the teachers because it compelled them to subsidize the political activities of the teachers union. The theory goes beyond the issue of the use of union funds for traditional political activities, and would prohibit public sector unions from collecting any fees from non-union members in workplaces they represent.

There was a Kafkaesque dimension to the extended discussion in the Supreme Court of rights protected by the Bill of Rights, including free speech, in a country where whistleblower Bradley (Chelsea) Manning languishes in prison for the crime of exposing government criminality, and where ubiquitous government surveillance is the norm. In the upside-down world of Supreme Court jurisprudence, the rights of individuals can be trampled in the name of the "war on terror," and the police can get away with murder, but the supposed constitutional "rights" of corporations are jealously protected.

The constitutional rights of the teachers involved in the union dues case are being discussed in the Supreme Court only because they have been invoked in the service of a right-wing, pro-management agenda.

Under California law, public sector workers who are covered by a union contract must pay a "fair share" fee, typically equivalent to union dues, even if they opt out of joining the union. Some 20 other states have similar laws on the books. According to the unions, the purpose of the fee is to prevent "free riders" from gaining the supposed benefits of union membership without paying for it.

A ruling favorable to the plaintiffs, which appears likely, would impact public sector unions in the 25 states not currently covered by "right to work" laws that bar the payment of union dues as a condition of employment. At issue is a 1977 Supreme Court ruling in the case of *Abood vs. Detroit Board of Education*, which held that there was a distinction between two types of compelled payments. The forced payment of union dues to support political activities, such as candidate donations, was held to be a violation of the right to free speech, but the court held workers could be compelled to pay fees related to the costs of collective bargaining.

The current suit seeks to overturn that decision. It is being backed by right-wing forces that seek to obstruct any ability by workers to organize and struggle against employers and the state. These forces represent a section of the political establishment that would like to remove all legal obstacles to the control of corporations over every aspect of workers' lives.

In support of this agenda, lawyers for the teachers argued that all collective bargaining activity is inherently political. They contended that through the means of negotiations the unions are effectively lobbying for a political reallocation of society's resources toward public services and away from other areas. Such things as seniority rights, they argue, are an infringement on the free speech rights of teachers who support such regressive measures as merit pay.

As for the opponents of the lawsuit, in the first case the US

public employee unions, they are by no means opposed to attacks on teachers and other workers from any principled standpoint. It has been many decades since they have mounted even a limited defense of workers' rights. The right-wing unions of the present day function entirely as business entities, concerned primarily with expanding the perks and privileges of their well-paid functionaries, as well as with funneling money into the Democratic Party. As such, they are opposing the attack on the agency shop agreements principally from the standpoint of the protection of their dues income.

During oral arguments, the majority of the court appeared hostile to the position of the unions. Justice Antonin Scalia, a reactionary justice who in the past had evinced sympathy for arguments that the unions needed to collect fees to prevent "free riders," did not pose any questions favorable to the unions. Meanwhile, the "swing justice," Anthony Kennedy, who sometimes sides with the court's four supposedly liberal justices, also seemed hostile to the unions' case. He expressed sympathy for the argument that the current system created a class of people whose free speech had been "silenced."

If the Supreme Court decides against "agency shop" fees, it would be a further major blow to the financial base of the unions. There are currently union contracts covering some 9.5 million public sector workers. While the unions have been almost wiped out in the private sector, where they represent just over 6 percent of all workers, some 36 percent of public employees are still unionized.

A ruling favorable to the plaintiffs could, in effect, convert all states into "right to work" states as far as public employees are concerned, with serious implications for union finances. In Michigan, where "right to work" legislation took effect in 2013, union membership fell from 16.3 percent to 14.5 percent in 2014, the first full year that the law was in force.

In the lawsuit before the Supreme Court, the unions have the backing of the Obama administration and a layer of Democratic politicians, along with a few Republicans, who support the unions because of their useful role in suppressing the struggles of the working class. In the end, the conflict between opponents and supporters of "agency shop" fees is a debate over the best means of destroying workers' rights and living standards – with the help of the unions or without the help of the unions.

There are obvious short-term partisan considerations involved in the Supreme Court case. The Democratic Party relies on the unions for a considerable portion of its campaign donations, and the Republicans would like to cut off this source of funds. Meanwhile, after decades of betrayals, the unions have lost any wide popular backing and rely more and more on the patronage of the Democratic Party for their continued survival.

The incestuous relationship between the unions and a layer of the political establishment was on display in a case relating to the "fair share" fee by the Supreme Court in 2014. In that case, the court struck down an Illinois statute that required home health care workers to pay an agency fee even if they were not union members.

As part of a dirty backroom deal involving former Illinois Governor Rod Blagojevich, an affiliate of the Service Employees International Union (SEIU) was appointed the bargaining agent for home health care workers in the state. Under Illinois law, disabled residents can hire an assistant at state expense to help care for them. Many of these workers are in fact relatives of those for whom they care.

The SEIU negotiated a contract that required nonunion home care workers to pay an agency fee to the union. The deal proved a windfall for the SEIU, which took in about $3.6 million in dues each year from the home health care workers. Meanwhile, the SEIU "negotiated" the home care workers' wages to a measly $12 an hour.

At the same time, according to the *Wall Street Journal*, the SEIU donated some $1.8 million to Blagojevich's two campaigns for governor. As the saying goes, "You scratch my back and I'll scratch yours." Blagojevich was later convicted of corruption charges. One of the charges was that he attempted to sell President Obama's former Senate seat in return for a job that paid $300,000 with an SEIU affiliate.

On the one hand, it is clear that workers should give no support whatever to right-wing campaigns such as "right to work," which are aimed at undermining any ability by workers to organize and defend themselves collectively against the dictatorship of management. On the other hand, workers have no interest in paying dues to corrupt, right-wing, pro-company unions, which function only as obstacles in the path of workers who want to fight back. Effective mass resistance to the dictatorship of the employers requires the building of new, genuinely democratic organizations of struggle, independent of the existing unions.