



BARGAINING ADVISORY

Senate Bill 866 (2018)

Background

Senate Bill 866 (2018) enacted several statutes that clarify existing laws governing dues deduction, employee orientations, and employer communications about employees' rights to join a union. This advisory is meant to be used in conjunction with the Joint C4OB/Legal advisories on the "Potential Loss of Fair Share Fees" (3/23/2018) and the "*Janus v. AFSCME Decision*" (7/6/2018). The provisions of SB 866 outlined below became effective immediately when signed by the Governor on June 27, 2018.

Employee Orientations

AB 119 (2017) provided the exclusive representative access to employee orientations (see the July 2017 Joint NODD (C4OB)/Legal Bargaining Advisory, "Mandatory Union Access to New Employee Orientations & Right to Member Data," available at www.CTASearch.org). Following passage of AB 119, some employers proposed allowing competing or opposing groups access to the orientations and/or publicizing the orientations to encourage opposing groups to attend and protest the existing exclusive representative. These actions were intended to discourage new employees from joining the union. To avoid this, SB 866 amends Government Code section 3556 to prohibit the employer from disclosing the date, time, and location of employee orientations to anyone other than the employees, the exclusive representative, and vendors that are contracted to provide services for the orientation.

Employer Neutrality

In 2017, SB 285 added section 3550 to the Government Code, which states that "a public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization." The intent of that legislation was to prohibit employers from trying to "...convince their employees not to become union members or to withdraw from the union." (see Legislative Analysis, 3/14/2017).

SB 866 extends this provision by amending Government Code section 3550 to clarify that existing law prohibiting employers from deterring or discouraging employees from becoming or remaining members of a union also applies to *applicants for employment*. Employers are thus prohibited from attempting to discourage employees *and applicants* from authorizing or retaining representation and dues deductions.

Employer Mass Communication Regarding Right to Join and Support a Union

SB 866 adds section 3553 to the Government Code. This new provision requires the employer to meet and confer with the exclusive representative *prior* to sending any mass communication to



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employees or applicants about their rights to join, support, or to refrain from joining or supporting a union (it should be noted, this requirement does not apply to all mass communications from the employer, only those relating to this topic). If the employer and exclusive representative cannot agree on the content of the communication and the employer wishes to go forward with the communication, the employer must send a message of reasonable length from the exclusive representative in conjunction with the employer's mass communication. The exclusive representative is responsible for providing the employer with adequate copies of its communication for this transmission.

Dues Deduction Authorizations

SB 866 amends Education Code sections 45060 and 45168 to apply to all "public school employers," making clear that dues deduction provisions apply to charter schools, as well as traditional public-school employers. As such, districts and charter schools must continue to honor and comply with payroll dues deduction authorizations, as specified in the employee's authorization form or card.

As amended, Education Code sections 45060 for certificated PreK-12 employees, 87833 for Community College faculty, 45168 for classified PreK-12 employees, and 88167 for classified Community College employees, clarify that the authorization, terms, and rescission of dues deduction agreements are *internal union matters*, and that the employer's role is largely limited to the technical processing of dues deductions as reported by the union.

Public school employers are required to honor the terms of their employees' written authorizations for payroll deduction. These authorizations are to be maintained by the union, not the employer. An employer *must* process payroll dues deductions for all employees whom the union reports as having written authorizations. A union may provide the employer with copies of the employees' authorization agreements but is not required to do so unless there is a dispute about the existence or terms of the agreements.

SB 866 also clarifies the process for employee revocation of dues deduction authorizations. The amendments provide that: 1) a dues deduction authorization can only be revoked in writing; and, 2) any revocation must comply with the terms of the employee's authorization. Further, the amendments clarify that the *union* remains in control of any revocation: revocation requests must be directed to the union; the union decides whether a revocation request is valid; and, employers *must* rely on the union's decision as to whether the revocation is effective.

The bottom line is that the employer must honor the union's list of bargaining unit members that have authorized dues deductions and the union's determination as to whether an employee has properly revoked a prior authorization. In most cases this will not be an issue. Employers have long accepted electronic or paper lists and even emails with names for dues adds and drops.



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However, as usual, some employers will seek to make this process more difficult than the law now allows, requiring us to be diligent in enforcing these rights.

In exchange for control over the dues deduction authorization process, unions are required to indemnify the employer against any claims made by an employee regarding payroll deductions made based on information provided by the union to the employer.

Application and Enforcement

Taken together, SB 866 provides important protections for unions and bargaining unit employees from direct and indirect employer interference with their rights. However, as is often the case with new laws, these provisions may be tested by aggressive or poorly-advised employers. Careful analysis of the statutes and management behavior will be necessary moving forward.

Staff and leaders must be vigilant in correcting inappropriate characterizations of the *Janus* decision and SB 866 statutes. *Janus* did not address member dues obligations or the procedures for deduction or payment of those dues. *Janus* only addressed the constitutionality of requiring employees to pay fees *without their consent* and invalidated the collection of fees *in that context only*. It did not address whether or when members may revoke dues deduction authorizations (see the Joint Legal/C4OB Advisory "*Janus v. AFSCME Decision*," 7/6/2018). SB 866 clarifies and expands existing law, which establishes that *member dues obligations* are a matter of private agreement between members and their unions. This is a critical distinction.

Union membership forms may require the continued payment of dues. Consistent with the provisions of SB 866, management must refer members who wish to revoke their membership and/or cease paying dues to the employee organization. Questions of whether members may revoke their membership are improper for the employer to answer and may invite employer liability if they provide inaccurate information. Employer communications that urge employees to drop membership and/or cease paying dues should be characterized as a violation of the required employer neutrality statute, and the chapter should take appropriate action to correct such behavior.

Enforcement of these neutrality provisions and/or the processing of dues payment authorizations may entail the filing of an unfair practice charge or a request for writ of mandate. However, prompt clarification of the *Janus* holding, as well as the provisions of SB 866, should, in most cases, deter improper management behavior.

Bargaining Advice

Consistent with the Joint Legal/C4OB Advisory regarding the *Janus* decision (7/6/2018), chapters are advised to remove any language pertaining to agency or fair share fees, maintenance of membership, and maintenance of dues from their collective bargaining agreements (CBAs). Although these



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provisions may be rendered void by law and/or severed by contract, it is important to physically remove them from the CBA to avoid unnecessary confusion or disagreement. This can be accomplished by clerical cleanup if the chapter is currently bargaining or by a Memorandum of Understanding (MOU) that is appended to the current CBA, pending normal bargaining and eventual removal from the contract itself.

For further guidance on SB 866 or other *Janus*-related issues, please contact your Primary Contact Staff and/or C4OB Specialist.