**Ill. Union Must Still Represent Nonmembers, Judge Says**

By [**Lauraann Wood**](https://www.law360.com/employment/articles/1219080/ill-union-must-still-represent-nonmembers-judge-says?nl_pk=a43e19de-2ba9-4f5b-aab5-c57e462217f1&utm_source=newsletter&utm_medium=email&utm_campaign=employment&read_more=1&attachments=true)

Law360 (November 12, 2019, 8:29 PM EST) -- A Chicago-area engineering union hasn’t presented a convincing enough case to prove it should be exempted from exclusively representing public employees who do not contribute to the union, an Illinois federal judge said Tuesday.

To find unions’ exclusive representation of public employees who don’t pay agency fees unconstitutional would require a broader reading of the [U.S. Supreme Court](https://www.law360.com/agencies/u-s-supreme-court)’s Janus v. [AFSCME](https://www.law360.com/companies/american-federation-of-state-county-and-municipal-employees) decision than what was intended, U.S. District Judge Sharon Johnson Coleman said.

The high court's [**landmark decision**](https://www.law360.com/articles/1033381) held that public-sector workers who aren’t union members can’t be forced to pay "agency fees" that cover the cost of collective bargaining. But in reaching that decision, the court also said that designating a union as the exclusive representative for all employees in a unit and obtaining those so-called fair share fees are not “inextricably linked,” Judge Coleman said.

Plus, the Seventh Circuit’s decision [**earlier this month**](https://www.law360.com/articles/1217323) not to let namesake plaintiff Mark Janus recoup his already-paid agency fees held that the only right the high court’s decision recognized was “that of an objector not to pay any union fees,” Judge Coleman said.

She granted the state summary judgment in the suit, finding the claims brought by the Local 150 of the International Union of Operating Engineers asked her to read Janus too broadly and ignore recent Seventh Circuit precedent.

Dale D. Pierson, general counsel for the union, told Law360 on Tuesday that Judge Coleman seems to have addressed a question that wasn’t presented in the union’s suit. He said he and the union are exploring their legal options before determining their next step.

“Local 150 is not challenging the exclusive representation principle in this lawsuit,” he said. “What we are challenging is what was framed by the court in Janus as the option for unions not to represent nonmembers in disciplinary grievances.”

Representatives for the state did not immediately respond Tuesday to a request for comment.

Local 150 and member James Sweeney [**launched their suit**](https://www.law360.com/articles/1015531) against Illinois’ governor, attorney general and labor relations board four months before the Supreme Court issued its Janus decision. It claimed that if the high court sided with nonunion members over their fare-share fees, then unions should not have to represent those nonmembers in negotiated contracts and other matters.

Continuing to devote resources to collectively bargaining for and otherwise representing those who would refuse to join the union but still enjoy the benefits of a negotiated contract would be forced speech, as collective bargaining is a product of the First Amendment, the complaint alleged.

Local 150 represents more than 23,000 workers across Illinois, Indiana and Iowa, although only 3,000 of them are subject to the Illinois Public Labor Relations Act, which requires unions to represent nonmembers in negotiations and other matters. The union’s suit claimed that it’s only fair to be freed from its obligation to represent nonmembers under the law if those nonmembers will no longer be required to pay the fair share fees.

The state asked Judge Coleman for a quick win over those claims in July.

The Janus decision overturned more-than-40-year-old precedent allowing unions to collect agency fees from nonmembers but did not call other long-established concepts into question, such as a union’s right to be a unit’s exclusive representative and its duty to represent all members fairly, the state argued.

Local 150 and Sweeney are represented by Dale Pierson, Kenneth Edwards, Elizabeth LaRose, Robert Paszta and James Connolly Jr. of Local 150’s legal department and Marc Poulos, Kara Principe and Joseph Sweeney of the Indiana, Illinois, Iowa Foundation for Fair Contracting.

The state is represented by Thomas Ioppolo and Michael Dierkes of the [Illinois Attorney General's Office](https://www.law360.com/agencies/illinois-attorney-general-s-office).

The case is Sweeney et al. v. Raoul et al., case number [1:18-cv-01362](https://www.law360.com/dockets/5dcaea0e4d058b04e2c517ea), in the [U.S. District Court for the Northern District of Illinois](https://www.law360.com/agencies/u-s-district-court-for-the-northern-district-of-illinois).