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Lawyers Weigh In On High Court's Union Fees Ruling

Law360, New York (June 30, 2014, 7:52 PM ET) -- The U.S. Supreme Court on Monday struck down a regulatory scheme that required home-care providers for Medicaid recipients to pay fees to a union, but declined to overturn precedent allowing public sector unions to collect fees from nonunion workers. Here, attorneys tell Law360 why the decision in Harris v. Quinn is significant.

Joel Barras, Reed Smith LLP
"The Supreme Court's decision is limited to just 'partial public employees.' While it is a loss for public sector unions, they averted — for today — the potentially devastating opinion many anticipated. Had the court invalidated 'agency' or 'fair share' fees for all unionized public employees, public sector labor unions could have seen a drop in their dues and agency fee revenues by 10 to 15 percent coupled with a potential increase in their expenses needed to retain their membership ranks. The majority opinion's criticism of the prior agency fee case Abood v. Detroit Board of Education foreshadows a future decision invalidating these fees."

Howard M. Bloom, Jackson Lewis PC
"According to the Supreme Court's decision in Harris, each year, personal assistants in Illinois pay SEIU more than $3.6 million in fees. Thus, the Harris decision likely will have a significant immediate financial impact on unions in Illinois and several other states that require home health care workers — who are employed by the individual and not the state — to financially support the labor union that represents them. What may prove to be most significant about today's Harris decision, however, is how labor unions react: organized labor can either take the decision to heart and decide it needs to do more to appeal to present and potential members, or it can sit back and allow Harris to cause a further erosion of its financial standing and influence. Today's decision either can serve as a wake-up call — or not."

Stuart Buttrick, Faegre Baker Daniels
"The Supreme Court's decision does not directly impact private sector labor law — its application is limited to the issue of mandatory union fees for workers who receive indirect state subsidies. There has been an effort over the last several years for organized labor, and primarily the Service Employee International Union, to organize home-based health care and child care workers who receive indirect state subsidies by having them classified as state employees for purposes of unionization — but they are not state employees for any other purpose. The end result is that labor has been able to obtain a significant amount of fees, and members, from these relationships — which it can use to further its efforts to organize private sector employers or to enhance its political lobby. Today's decision will slow, if not eventually stop, this cash cow as the impacted workers can now decide whether they want to become union members and/or pay union-related fees."

Jonathan Cohn, Sidley Austin LLP
"The Supreme Court's decision in Harris vindicates the principle that purported economic efficiency does not trump the First Amendment. As the court made clear, people cannot be compelled to subsidize someone else's speech except in the rarest of circumstances. Those exceptional circumstances do not include a state's desire to support unions or promote unionization of non-state employees."

Henry Farber, Davis Wright Tremaine LLP
"While the Supreme Court's holding in Harris v. Quinn is narrowly limited to home health care providers who are not direct employees of the state, the decision contains two issues of broader significance. First, the majority's dissatisfaction with the prior Abood decision is plain. The Abood decision found that requiring public sector employees to pay agency fees as a condition of employment did not violate the First Amendment, as long as employees were not required to fund political activities. The majority did not overrule Abood as it was unnecessary to the result of the Harris case, but the court essentially invited another challenge to Abood. Second, the court rejected the concept of exclusive representation as a First Amendment justification for a requirement that all employees pay fair share fees. The burden of 'free-riders' on a union will no longer warrant compulsory speech."

John J.P. Hasman, Armstrong Teasdale LLP
"The significance of the ruling is that public sector unions can continue collecting dues from thousands of employees across the country. The court kept its decision narrowly tailored to facts of the case and ruled for the particular plaintiffs who were not fully employed by the state of Illinois. The court did make clear that individuals not fully employed by the state cannot be forced to pay agency fees. Now states must review their employee complements to see who, if anyone, would be considered a quasi-state employee or something less than a 'full-fledged' state employee, as they cannot be forced to pay agency fees or dues."

Mark Konkel, Kelley Drye & Warren LLP
"Harris v. Quinn may not be the death knell for mandated union dues for public sector workers, but it's quite a sick call. Public-sector union dues were long the most stable and substantial source of funding for the entire labor movement until recently. The court's narrow holding that the home care workers are not state employees avoided that big issue, but the decision's significance is unmistakable. The Harris ruling shows that the court is willing, like Wisconsin and Michigan, to further erode the resources unions use to organize employees and to exert political influence in Washington."

Ronald Kramer, Seyfarth Shaw LLP
"While Harris technically is limited to so-called partial-public employees, the majority's blistering critique of Abood raises serious questions as to whether the majority would uphold Abood if it faced a case involving 'full-fledged' public sector employees. The majority all but reversed Abood, and the dissent spent much of its time defending Abood. Despite the dissent's claim that 'our precedent about precedent, fairly understood and applied, makes it impossible for this court to reverse that decision,' public sector unions dodged a bullet they might not be able to escape next time."

Gerald F. Lutkus, Barnes & Thornburg LLP
"The Supreme Court historically will avoid deciding Constitutional questions in broader terms than necessary. So, rather than overturn the court's 1977 decision in Abood — which allowed compelled dues against non-members of a public employee union — the court in Harris instead expressly limited Abood as applying only to 'full-fledged public employees' not the 'partial public employees' present in Harris. However, Justice Alito took several health whacks at Abood, saying it was subject to 'questionable' analysis, 'fundamentally misunderstood' prior cases, and 'rest[ed] on an unsupported empirical

assumption.' Though Justice Alito did not chop down the Abood tree on Monday, one wonders if that tree will survive another term of this court."

Bennett Pine, Anderson Kill PC
"While the court ruled that its 1977 Abood decision — requiring public employees to pay a 'fair share' portion of union fees to cover the costs of collective bargaining — did not extend to these privately employed home care providers compensated with Medicaid funds, it did not overturn the precedent allowing public sector unions to impose such fees on non-union workers. Rather, the decision was legally narrow, turning on factual analysis of the hybrid public/private status of these employees. While the court signaled it may one day overturn the fair share dues requirement, it did not do so here, as the union movement feared it would."

Todd L. Sarver, Steptoe & Johnson PLLC
"The court's decision represents a blow to organized labor's attempts at forced unionism in the public sector of individuals providing home health care — a segment unions have increasingly gone after to bolster numbers and revenue. However, the decision is limited to a group of individuals deemed non-traditional public sector employees. That is, they were merely recipients of Medicaid, not full-fledged public sector employees. Expect similar challenges in other states where unions have acquired representational rights of home health workers. While the court's holding narrowly affects this class of individuals, it has potentially broad implications going forward due to the court's significant questioning of the doctrinal basis for agency fees in the public sector. In addition to the home health care being affected in a number of states, the court's decision strongly signaled it would, at some point, reconsider whether public sector employees' can be compelled to make payments to public sector unions."

Peter Stergios, McCarter & English LLP
"Today's decision hurts unions by deeming unconstitutional mandatory 'fair share' payments to unions by home health care workers who were not union members. But it helps unions by preserving precedent that allows them to require such payments from public employees, finding instead that the workers were not public employees although paid by a state-sponsored program as if they were. By invalidating a state labor statute as applied, the decision is more limited than unions had feared. The Supreme Court could, however, be asked to revisit the propriety of requiring payments from public employees who decide not to join."

--Editing by Emily Kokoll.
