



# Union Access and US Supreme Court case - *Friedrichs vs. CTA*

# Union Access – Why Are We Talking About This?

- ▶ **Next year, observers anticipate the United States Supreme Court will issue a decision that will have far-reaching implications for how organized labor conducts business.**
- ▶ **This decision will potentially change how public sector unions in states like California operate and the ability of the Union to represent members.**

# Friedrichs vs. California Teachers Association, et.al. – Background

- ▶ *Friedrichs vs. CTA* was filed by the Center for Individual Rights (CIR) on behalf of 10 Orange County, CA teachers and the Christian Educators Association.
- ▶ Case was expedited through lower courts to directly challenge the 1977 Supreme Court case, *Abod vs. Detroit Board of Education*.
- ▶ *Abod* case established the principle of "agency shop" or "fair share" fees for government workers.

# What does that mean?

- ▶ *Aboud* established that states, like CA, could require all employees represented exclusively by a public sector union, to pay a "fair share" fee.
- ▶ This "fair share" fee represents an equal portion of the cost associated with bargaining over wages, benefits, working conditions and, contract administration.
- ▶ Currently, employees who are not members pay these fees because the union has the duty of fair representation and these employees are covered by contracts bargained by the Union.
- ▶ These "fair share" fees along with member dues finance union activities.

# What's the Difference between Fees and Dues?

- ▶ “Agency fees” support union activities related to collective bargaining and contract administration.
- ▶ Full union dues include money used for public education policy and political lobbying efforts on behalf of the members.
- ▶ US Supreme Court decisions in 1956 and 1961 established that workers can only be required to pay fees to support activities related to collective bargaining.
- ▶ Employees can ‘opt-out’ of paying a portion of dues used for activities considered to be political.

# Goal of Plaintiffs in *Friedrichs vs. CTA* case

- ▶ *Friedrichs* case challenges the constitutionality of requiring government workers to pay fees to support any labor union activity.
- ▶ 1) The case challenges the precedent of agency fees established for public sector employees in *Abood* and,
- ▶ 2) The case also challenges the idea of a worker “opting-out” of political fees rather than “opting-in”.

# Impact?

- ▶ **If plaintiffs win, the payment of union dues would become voluntary, a potentially crippling financial blow to unions.**

# Signals from recent Supreme Court decisions

- ▶ Recent decisions, along with statements from Supreme Court Judge Samuel Alito since 2012, lead some court watchers to expect that the Court could overturn the legal basis for “agency fees”.
- ▶ *Knox vs. SEIU* (2012) – Supreme Court ruled that a public-sector union cannot assess a special fee without members affirmatively “opting in”.
- ▶ *Harris vs. Quinn* (2014) – Supreme Court ruled that Illinois home health care workers were not full-fledged state employees and therefore not subject to agency fees.
- ▶ In the majority opinion, Justice Alito says *Abod* was erroneously decided.

# Who is Affected?

- ▶ 25 states, including California, have adopted laws establishing mandatory fair share fees that public sector employees pay to unions.
- ▶ The other states are "right to work" states which prohibit collective bargaining by public workers or, ban mandatory dues.

# Why is this important to YOU?

- ▶ **Many City unions are reacting to this threat by leading organizing campaigns to sign up "fair share" fee payers as full members of the union.**
- ▶ **They will be actively recruiting new members in as many ways as possible anticipating the outcome of this legal decision.**

# Access to Members at the Worksite

- ▶ Meyers-Milias-Brown Act (MMBA) is the California law that governs labor-management relationships within local governments.
- ▶ Under the law, union representatives and officers have the right of access to work locations, subject to reasonable regulation by the employer.
- ▶ Employer must meet and confer regarding NEW union access rules.

# PERB and Access Issues

- ▶ Decisions by the Public Employee Relations Board (PERB) have further defined access issues.
- ▶ Regulations must be
  - 1) necessary to the efficient operation of the employer's business and/or safety of its employees;
  - 2) narrowly drawn to avoid overly broad, unnecessary interference with the exercise of statutory rights.

# Current MOU Language - Example

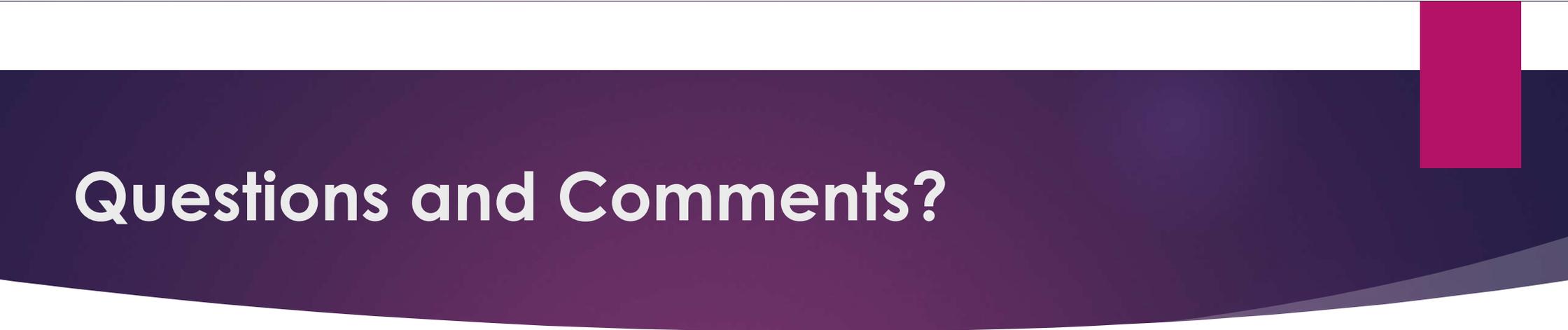
- ▶ **Union shall have reasonable access to all work locations to verify terms and conditions of the MOU are being carried out and for the purpose of conferring with employees provided that access shall be subject to rules and regulations agreed to by the parties.**
- ▶ **Union reps have reasonable right to access to non-work areas (bulletin boards, employee lounges and break rooms) and to hallways, to reach the non-work areas.**
- ▶ **Union access to work locations will not disrupt or interfere with the department's mission and services or involve any political activities.**

# Current MOU language, con't.

- ▶ Most union contracts have union access provisions and a number of departments have departmental union access policies.
- ▶ In general:
  - ▶ Union reps must identify themselves upon arrival at a City department.
  - ▶ Union reps may use Department meeting space with reasonable amount of notice, subject to availability.
  - ▶ In work units where work is of a confidential nature and in which it requires it of other non-employees, the department may require that Union reps be escorted by a department representative.
  - ▶ Departments may implement additional rules and regulations after meeting and conferring with the Union.

# Our Role?

- ▶ **NEUTRALITY** – Staff must be careful to maintain neutrality in their advice and the positions they take.
- ▶ We risk Unfair Labor Practice (ULP) charges if it appears we are restricting access.
- ▶ Enforce the contract language in the MOU.
- ▶ Make sure workers and worksites are not interrupted.



**Questions and Comments?**