

SPECIAL EDITION DATA DELAWARE: Tuesday, September 17, 2019
SUBJECT: HOW TO ESCAPE THE UNION (*Podcast transcript*)

DISCLAIMER: This transcript is produced from Data Delaware podcast electronically; the conversion is being offered on a best-efforts basis.

- Dace Blaskovitz: Welcome back to Money and Politics in Delaware. Welcome back Bill Messenger.
- Bill Messenger: Good morning.
- Dace Blaskovitz: And Bill Messenger, in a way of a formality is an attorney. He's an attorney with the National Right to Work Foundation. He's been a guest before and today we're back for more altruism. We're going to, I believe, examine the Janus decision, and bigger picture, walk through for the Delaware teachers how to escape the proverbial union. So with that said, Bill Messenger, welcome back. And you know how we play the game, 30 seconds about you and 30 seconds about what you do.
- Bill Messenger: Yes, and so I'm an attorney, as you said, with the National Right to Work Legal Defense Foundation. And what we do is we give free legal aid to employees who are suffering from abuses of compulsory unionism, which means being forced to support a union against their will. The foundation has been around since 1968, although I have not, a working continually on the cause of worker freedom. I've been at the foundation since 2001 and I've had the opportunity to litigate a number of cases on behalf of workers and that includes Janus.
- Dace Blaskovitz: Janus has significance obviously, and we're going to go to the weeds, but before we do that, I'm going to put you in front of a hypothetical eighth grade class. I'm looking for a primer on Janus.
- Bill Messenger: Sure. So Janus simply holds that the government cannot not force any employee to pay union dues against their will. So the First Amendment of course protects everybody's individual right to choose what speech and what organization they want to support. The government can't force anyone to support the Republican Party or the Democratic Party or any other special interest group. Unfortunately for many years there was a special exception just for unions. States, including Delaware, forced employees whether they liked it or not, to subsidize the union. And this should have always been unconstitutional, because a public sector union is no different than any other special interest group.
- Bill Messenger: In fact, its job is actually to lobby the government. But the Right to Work Foundation, since 1968, has been plugging away trying to end this special exemption the unions had to the First Amendment, and through a number of cases that ultimately culminated in Janus, we ultimately succeeded. And in Janus, the Supreme Court said, "Yes, the First Amendment protects an individual's right not to support a union if they don't want to." And as a result of Janus it's now unconstitutional for a state to take money from a public school teacher or any other public employee without their affirmative consent.

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Dace Blaskovitz: Janus, one more paragraph... Janus was a real person, correct?

Bill Messenger: Oh, absolutely. It's funny. He often says that, you know, he used to be a person and now he's a noun and a verb. But yes, Janus is Mark Janus. He was an employee with the state of Illinois and he simply didn't want to support the AFSCME union, which represented all state employees because he disagreed with a number of the positions the union took both at the bargaining table and very much politically. So Mark, you know, was brave enough to step forward and the free legal help from the Right to Work Foundation, the Liberty Justice Center, brought his case, his lawsuit, and ultimately at the Supreme court... it was just Mark Janus. He was the only plaintiff left in the case at that time. So it was Mark Janus vs. all of big labor. And Mark Janus ultimately won. And people enjoy the rights they have in part because Mark was willing, you know, to step forward.

Dace Blaskovitz: Same question a different way. What would you like to share with your attorney brothers and sisters? We do have time constraints, but from a professional standpoint regarding Janus?

Bill Messenger: I would say that the fight goes on. Unfortunately after Janus, the unions, their political allies, simply didn't give up, but they've been erecting a number of roadblocks to an employee's ability to exercise their First Amendment Rights under Janus, and this includes in Delaware. And the main thing they're doing is restricting the ability of employees to stop the deduction of union dues from their wages. So for example, Delaware passed a law that said if you authorized union dues deductions in the past, you can only revoke them either A, pursuant to the terms of the authorization or B, if the authorization doesn't limit when you can get out, you can only get out during one 15 day period per year. So as a practical matter, Delaware has prohibited current union members from exercising their Janus rights for about 350 days of each year. We alleged that's unconstitutional, and this battle is being fought all over the country of whether or not unions and their political allies can force employees to only be able to exercise their Janus rights during certain small escape periods.

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Dace Blaskovitz: All right, so we've laid the groundwork as much bravado drama as I can do over the radio. If I am a... By the way, as a real quick side story, and you are aware of this Bill, John Stapleford as a regular to the program. He's the chair of the Caesar Rodney Institute and John published a piece that said on an inflation adjusted basis over the last, I believe it was 20 years, Delaware teachers actually make less, less. Therefore, I mean at the end of the day, you got to be nuts to be paying the union to be making less money on an inflation adjusted basis. Therefore, the call to action is, and here's my question to you, Bill, is how does a teacher... step-by-step... how does a state of Delaware teacher escape the shackles of the union?

Bill Messenger: The first step is probably to reach out for some legal assistance or at least guidance on how to do it, and there's a number of resources available on the website or on the internet, I should say. There's myjanusrights.org and there's also the National Right to Work Foundation's website, which is nrtw.org. We also have a toll free number 1-(800)336-3600 in which there's attorneys standing by to assist employees with exercising their Janus rights. And basically what the employee has to do is simply send a letter to the union and to their employer saying, "I no longer want to be a union member. I resign, please stop taking union dues for my wages." And those sample letters are on the website and can be provided at the websites that I discussed. However, here's the rub. The union, and pretty soon now the Delaware state law, is restricting people's ability to stop dues deductions except for during those short escape periods.

Bill Messenger: And so whether or not an individual teacher is subject to one of those escape periods, the only way they can really find out is to send that letter and see how the union responds. And oftentimes the union will respond, will say, "We accept your resignation, but we won't stop taking your money unless you tell us again during this one 15 day period." And then at that point the teacher would know what that period is, and then also they can consider whether or not they want to challenge the legality of the union's rejection of their revocation request.

Dace Blaskovitz: That last paragraph, challenge the legality, what did you mean there? Expand on that. Does the teacher actually have to go to court? What are you trying to say with that last bullet?

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Bill Messenger: They could. I mean what the unions and the state of Delaware unfortunately have done, is say you can only stop dues deduction during this certain window period per year. Now we think that's unconstitutional. That you can't prohibit employees from exercising their First Amendment rights except for during a 10/15 day period every year. However, the only way for an individual to find out what that period is and if they're subjected to it, is just sort of knock on the door. Because the union doesn't give people copies of their cards. So most individuals would have no idea exactly which day, what their escaped period is. So what an individual or teacher should do is if they do want to resign, which is their choice, is to send the letter and see if the union and their employer and that school will accept it. If they don't accept it, they'll almost certainly say we won't because you have to do it during this certain period. And then the teacher can decide, okay, either A, I'll just wait for that period to come around or B, they can consider their legal options to challenge it.

Dace Blaskovitz: Is it common sense, but it's better to at least say it, that letter that you reference should be sent registered mail. Is that a correct statement? So it doesn't wink, wink, get lost?

Bill Messenger: I'd recommend that, yes, to be sent by certified mail so you can prove that that it was received. There's no legal requirement that it be, but you know, it's wise to do so. And also to send copies, you know, to the school district or other government employer so they have a copy. Because ultimately it's the government that's responsible for this. It's the school district that's taking money, you know, from teacher's wages and handing it over to the union. That's the First Amendment violation if the individual doesn't consent to those deductions. So it's important not only to notify the union, but also the school district.

Dace Blaskovitz: 30 seconds, again, the website address and the phone number or numbers.

Bill Messenger: So the website address is myjanusrights.org. The website is nrtw.org or National Right to Work Foundation. And the phone number is a 1-(800)336-3600

Dace Blaskovitz: His name is Bill Messenger. Fascinating guy. Brilliant guy. National Right to Work. We'll see you back here next week for more Money and Politics in Delaware.