315 Fifth Ave S Suite 1000
Seattle, Washington 98104
phone - 206.676.7000
fax - 206.676.7001

Client Alert

FROM: **Dan Swedlow**
Labor & Employment Group

DATE: **January 22, 2016**

RE: ***Friedrichs v. California Teachers Association***

Last week the U.S. Supreme Court heard oral arguments in a case that could have a significant impact on public sector labor unions nationwide. Here in Washington, the effect of this case may dramatically alter the landscape of public employment. The questions asked during the oral arguments, from both the liberal and the conservative Justices, strongly suggest that the Court will ultimately side with the plaintiffs who seek to overturn 40 years of settled law.

The fundamental issue in this case is whether the Court should overrule the 1977 case *Abood v. Detroit Board of Education*. In *Abood*, the Court held that public employees in unionized workplaces who choose not to be members of the union must pay "fair share" or "agency" fees to help cover the costs of negotiating and administering collective bargaining agreements. Unions derive their income entirely from dues and most unions allocate the vast majority of that income to contract negotiation and administration, primarily in the form of union staff salaries. Because unions must fairly represent all the workers in a particular bargaining unit, even those who do not join the union, the *Abood* Court held that it was only reasonable that the non-member employees contribute their fair share. Otherwise, reasoned the Court, they would be "free-riders" benefiting from the wages, benefits and working conditions achieved through collective bargaining, but without paying for it.

The portion of union dues that is not allocated to contract negotiation and administration is typically spent on political activities. Non-member employees do not have to pay that portion of the dues because it would violate the First Amendment if they were compelled, by virtue of financial support to their union, to support political causes or candidates that they do not actually support.

Friedrichs v. California Teachers Association was brought by a group of teachers in California who argued that they should not have to pay any union dues at all, including the "agency" fees. Their argument, in a nutshell, is that all collective bargaining with a public employer is inherently political activity and compulsory union dues are therefore a violation of their First Amendment right not to support political positions with which they disagree. When a union bargains with a public employer over wages, benefits and working conditions, it is taking a position regarding the allocation of the public budget. Elected officials are the ultimate decision makers and the taxpayers are footing the bill. That sort of collective bargaining, argue the

plaintiffs, is an inherently political activity. Five of the nine Justices appeared to agree with this argument during the oral arguments. The Court's decision is expected sometime in June.

If the Supreme Court decides to overrule *Abood*, the impact will be immediate and extensive. All public sector employees would have the right to stop paying union dues regardless of contract language stating otherwise. A substantial number of those employees will certainly take advantage of that opportunity. Many unions would no longer be able to pay staff salaries and layoffs of business representatives would quickly follow.

While only 7% of the private sector is unionized, nearly a third of all government workers belong to a union. The Court's decision in *Friedrichs* could eviscerate the ranks, and thus the power, of organized labor virtually overnight. Unions everywhere are watching this case very closely and trying to prepare for the worst case scenario. Proactive unions are trying to organize and mobilize their members so that employees will want to voluntarily remain union members when it's no longer a job requirement. That is an uphill battle against a sometimes hostile membership. Nevertheless, there is little else unions can do at this point. Their fate lies in the hands of nine people whom seem poised to strike a devastating blow against the public employment labor movement.