Labor History: The Abood Decision

By Ed Leavy

Most of the gains that labor has made are due to courageous and principled stands by working men and women. It would be naïve, however, not to acknowledge the role that court cases have played in shaping our rights. For public employees, one of the most important decisions was the Abood v. Detroit Board of Education decision. Since the Supreme Court handed down opinion on May 23. 1977, public unions – unless prevented by state law – have the right to assess "fair share" fees on employees who choose not to join the union.

Educators in the Detroit public school system are represented by the Detroit Federation of Teachers, AFT local #231. In the mid-1970s, a number of cases were in the judicial system challenging the right of the DFT to assess union dues on all of its members; the cases, in effect, challenged the right to a "closed shop" for public employees. These cases were ultimately combined under the plaintiff D. Louis Abood, a teacher who had chosen not to join the union and did not want to be assessed agency fees. The Court had previously decided that unions had the right to assess agency fees in the private sector (Hanson v. the National Railroad Association), but this case was specific to public employees. The question ultimately became is all bargaining for public employees, who work for a government that is run by elected leaders, inherently political speech and thus protected by the First Amendment. If it is, then public employee unions are intrinsically different from private employee unions.

Justice Potter Stewart wrote the decision for the majority. He recognized that "permitting public employees… [the right] to unionize and a union to bargain as their exclusive representatives gives the employees more influence in the decision-making process than is possessed by employees similarly organized in the private sector." Public employee unions through political activity have more say in who they are bargaining against. The DFT, for example, can campaign for a mayoral candidate whom they believe is more likely to give them raises; a Ford worker has no ability to impact who the president of Ford is. Stewart recognized the importance of political activity for public-sector unions, but was unwilling to say that the unions therefore have the right to use members' money for these campaigns: "We do not hold that the union cannot constitutionally spend funds for the expression of union views… [only] that such expenditures be financed from charges, dues, or assessments paid by employees who… object to advancing those ideas…"

Potter asserted that "no special dimension results from the fact that a union represents public employees rather than private employees." While the employees cannot be compelled to pay for explicitly political campaigns, they do not have the right to decide specifically what they are willing to pay for. "The furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote the cause which justifies bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy." This statement ultimately forms the core of the "right to work" argument. Does the individual's right to free speech trump the "furtherance of the common cause," even when the individual benefits from it? The question created dissension on the court at the time of the decision. Justice William Rehnquist wrote, "I am unable to see a Constitutional distinction between a governmentally imposed requirement that a public employee be a Democrat or a Republican… and a similar requirement that a public employee contribute to the collective-bargaining expenses of a labor union." Justice Lewis Powell added, "Collective bargaining is 'political' in any meaningful sense of the word… [even] when bargaining focuses on such 'bread and butter' issues as wages, hours, vacations, and pensions." These distinctions may seem arcane, but Stewart's Abood decision has been the law for 38 years, at least in states that have not passed "right to work" legislation that extends to public employees, or who did not specifically remove the provision for public employees did as Governor Scott Walker did in Wisconsin. As a much, much more conservative Court decides

whether in effect to overturn the Abood decision in the Fredericks v. California Teachers Association case, it is important to reflect on what public employees stand to lose.

Most of the information for this article comes from the Supreme Court decision, which is available online.