



CYPEN & CYPEN

NEWSLETTER

for

July 5, 2018

Copyright, 1996-2018, all rights reserved
Stephen H. Cypen, Esq., Founding Editor
Robert D. Klausner, Esq., Senior Editor

Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. EXTRACTION OF “AGENCY FEES” FROM NONCONSENTING PUBLIC-SECTOR EMPLOYEES VIOLATES THE FIRST AMENDMENT:

Illinois law permits public employees to unionize. If a majority of the employees in a bargaining unit vote to be represented by a union, that union is designated as the exclusive representative of all the employees, even those who do not join. Only the union may engage in collective bargaining; individual employees may not be represented by

another agent or negotiate directly with their employer. Nonmembers are required to pay what is generally called an “agency fee,” *i.e.*, a percentage of the full union dues. Under *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235–236, this fee may cover union expenditures attributable to those activities “germane” to the union’s collective-bargaining activities (chargeable expenditures), but may not cover the union’s political and ideological projects (non-chargeable expenditures). The union sets the agency fee annually and then sends nonmembers a notice explaining the basis for the fee and the breakdown of expenditures. Here it was 78.06% of full union dues. Petitioner Mark Janus is a state employee whose unit is represented by a public-sector union (Union), one of the respondents. He refused to join the Union because he opposes many of its positions, including those taken in collective bargaining. Illinois’s Governor, similarly opposed to many of these positions, filed suit challenging the constitutionality of the state law authorizing agency fees. The state attorney general, another respondent, intervened to defend the law, while Janus moved to intervene on the Governor’s side. The District Court dismissed the Governor’s challenge for lack of standing, but it simultaneously allowed Janus to file his own complaint challenging the constitutionality of agency fees. The District Court granted respondents’ motion to dismiss on the ground that the claim was foreclosed by *Abood*. The Seventh Circuit affirmed.

On certiorari to the United States Court of Appeals for the Seventh Circuit, the United States Supreme Court held:

- The District Court had jurisdiction over petitioner’s suit. Petitioner was undisputedly injured in fact by Illinois’s agency-fee scheme and his injuries can be redressed by a favorable court decision. For jurisdictional purposes, the court permissibly treated his amended complaint in intervention as the operative complaint in a new lawsuit. *United States ex rel. Texas Portland Cement Co. v. McCord* [citation omitted].
- The State’s extraction of agency fees from nonconsenting public-sector employees violates the First Amendment. *Abood* erred in concluding otherwise, and *stare decisis* cannot support it. *Abood* is therefore overruled. For the reasons stated, States and public-sector unions may no longer extract agency fees from nonconsenting employees. The First Amendment is violated when money is taken from nonconsenting employees for a public-sector union; employees must choose

to support the union before anything is taken from them. Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.

Janus v. State, County, and Municipal Employees, 585 U.S. ____ (June 27, 2018).

2. CORPORATE AND PUBLIC DB ASSETS INCREASE, WHILE DC FALLS IN FIRST QUARTER:

Brian Croce says that corporate defined benefit plan assets rose by \$9 billion in the quarter ended March 31, to \$3.212 trillion, a 0.28% increase, according to the Federal Reserve's latest report. Corporate defined contribution plans decreased by \$40 billion in the first quarter, or 0.64%, to \$6.249 trillion. According to the Federal Reserve's Financial Accounts of the United States report — formerly known as the Flow of Funds Accounts — state and local government defined benefit plan assets added \$58 billion in the quarter ended March 31 to \$5.859 trillion, a 1% increase from the end of the previous quarter. Meanwhile, state and local government defined contribution plan assets totaled \$494 billion as of March 31, down 0.8% from Dec. 31. State and local government DB plans' funded status — total defined benefit and other assets minus pension benefit claims — fell in the fourth quarter to \$4.203 trillion, down from \$4.282 trillion in the previous quarter.

3. ISSUE SNAPSHOTS:

Issue Snapshots are IRS employee job aids that provide analysis and resources along with audit tips or issue indicators for retirement plan topics. The most recent [Issue Snapshots](#) for retirement plans are:

- [Treatment of 415\(c\) Dollar Limitations in a Short Limitation Year](#) - How to adjust the IRC Section 415(c) defined contribution dollar limitation for a short limitation year, resulting from, for example, an initial, amended or terminating plan year.
- [Treatment of 401\(a\)\(17\) Limitation in Defined Contribution Plan in a Short Plan Year](#) - How to adjust the IRC Section 401(a)(17) limit in a short plan year, such as an initial, amended or terminating plan year.
- [Borrowing Limits for Participants with Multiple Plan Loans](#) - A qualified retirement plan may permit a participant to have multiple loans if IRC Section 72(p) is

satisfied.

- [Qualification Requirements for Non-Electing Church Plans under IRC Section 401\(a\)](#) - Identifies sections of the Internal Revenue Code that a non-electing church plan must satisfy to be a qualified plan under IRC Section 401(a).
- [Vesting Schedules for Matching Contributions](#) - The different vesting requirements for matching contributions to a defined contribution plan, other than a non-electing church plan or a governmental plan.
- [Plan Forfeitures Used for Qualified Non-elective and Qualified Matching Contributions](#) - Proposed Treasury Regulations change one of the rules governing qualified non-elective contributions and qualified matching contributions.

[Applications for Pre-Approved Defined Contribution Plan Opinion Letters](#) - The IRS is accepting applications for opinion letters for pre-approved defined contribution plans for the third six-year remedial amendment cycle.

[EP & EO participating in 2018 IRS Nationwide Tax Forums](#) - TE/GE, Employee Plans and Exempt Organizations will participate in the 2018 IRS Nationwide Tax Forums in five cities starting in July.

Employee Plans News, June 8, 2018

4. INTEREST RATES REMAIN THE SAME IN THE THIRD QUARTER OF 2018:

The Internal Revenue Service today announced that interest rates will remain the same for the calendar quarter beginning July 1, 2018, as they were in the quarter that began on April 1. The rates will be:

- 5 percent for overpayments, 4 percent in the case of a corporation;
- 5 percent for the portion of a corporate overpayment exceeding \$10,000;
- 5 percent for underpayments; and
- 7 percent for large corporate underpayments.

Under the Internal Revenue Code, the rate of interest is determined on a quarterly basis. For taxpayers other than corporations, the overpayment and underpayment rate is the federal short-term rate plus 3 percentage points. Generally, in the case of a corporation,

the underpayment rate is the federal short-term rate plus 3 percentage points and the overpayment rate is the federal short-term rate plus 2 percentage points. The rate for large corporate underpayments is the federal short-term rate plus 5 percentage points. The rate on the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the federal short-term rate plus 0.5 of a percentage point. The interest rates announced today are computed from the federal short-term rate determined during April 2018 to take effect May 1, 2018, based on daily compounding. [Revenue Ruling 2018-18](#), announcing the rates of interest, is attached and will appear in Internal Revenue Bulletin 2018-26, dated June 25, 2018.

Issue Number: IR-2018-136

5. AMERICANS PLACE RETURNS ABOVE VALUES FOR INVESTMENTS:

According to Rebecca Moore, while 34% of Americans describe the stock market as “volatile,” that concern does not deter most from investing, according to the latest [Merrill Edge Report](#), a survey of more than 1,000 mass affluent Americans. Most Americans (57%) say they made money in the stock market in the past year. Seniors (68%) and Generation Xers (67%) cite the most financial gains, with Generation Z (ages 18 through 22) at 54%. Investors are prioritizing [social investments](#) and community welfare when choosing where to put their money. Americans say they are more likely to invest in companies that:

- Pay women and men equally (87%);
- Promote diverse senior leadership (85%);
- Demonstrate a commitment to environmental sustainability (82%);
- Provide three or more months of family leave (78%);
- Support the LGBTQ community (61%); and
- Share their religious beliefs (62%).

However, the survey found Americans still value financial gains over social values, as they are most apt to invest in stock based on market performance (88%), closely followed by the stock’s ability to pay dividends (85%). In addition, 60% of respondents say they would be more likely to invest in a profitable company whose values they disagree with than a struggling company whose values they agree with (40%), as well as the most profitable company regardless of its sector (57%) over a company with a focus on environmental

assets (43%).

Looking to others for financial advice

One in three Americans say their financial stability is dependent on receiving an inheritance. This is true for 20% of Baby Boomers, 36% of Gen Xers, 32% of Millennials, and 63% of Gen Z. In addition, respondents are becoming more likely to rely on input from others than their own instincts when making major life decisions, such as investing money (36%) and retiring (22%). One in five respondents are more apt to rely on digital than in-person advice, and 69% of Americans believe all financial decisions will be made with the help of technology in their lifetime. Forty percent of respondents are already comfortable consulting artificial intelligence (AI) for financial guidance; many would trust AI to provide spending and saving guidance (45%) and make investments (32%). However, survey results show [in-person advice is still king](#). When it comes to making financial decisions, 81% of Americans are most likely to turn to a financial adviser over their closest confidants, including wealthiest friends (70%), older generations (69%) and even finance apps (50%). “While we’re seeing rapid adoption of emerging technologies, investors truly want the best of both worlds—digital and physical—when it comes to decision-making, not one or the other,” says Aron Levine, head of Merrill Edge.

6. SOCIAL SECURITY TRUSTEES WARN OF IMPENDING DEPLETION WITHOUT CONGRESSIONAL ACTION:

The Social Security Board of Trustees, writes John Manganaro, released its annual report on the long-term financial stability of the Social Security trust funds, finding the combined asset reserves of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds are projected to become depleted in 2034, the same as projected last year, with 79% of benefits payable at that time. According to the report, looking specifically at the Old-Age and Survivors Insurance (OASI) Trust Fund, this is projected to become depleted in late 2034, as compared to last year’s estimate of early 2035, with 77% of benefits payable at that time. The Disability Insurance Trust Fund will become depleted in 2032, extended from last year’s estimate of 2028, with 96% of benefits still payable. In the 2018 annual report to Congress, the Trustees announce the asset reserves of the combined Trust Funds increased by \$44 billion in 2017, reaching a total of \$2.89 trillion. “The total annual cost of the program is projected to exceed total annual income in 2018 for the first time since 1982, and remain higher throughout the 75-year projection period,” the report

states. “As a result, asset reserves are expected to decline during 2018. Social Security’s cost has exceeded its non-interest income since 2010.” “The Trustees’ projected depletion date of the combined Social Security Trust Funds has not changed, and slightly more than three-fourths of benefits would still be payable after depletion,” explains Nancy Berryhill, Acting Commissioner of Social Security. “But the fact remains that [Congress can keep Social Security strong by taking action to ensure the future of the program.](#)” Breaking down the \$997 billion that flowed into the combined trust funds in 2017, the report shows \$874 billion came from net payroll tax contributions, \$38 billion from taxation of benefits, and \$85 billion from interest payments. Total expenditures from the combined trust funds amounted to more than \$952 billion in 2017. Out of this number, Social Security paid benefits of more than \$941 billion in calendar year 2017, and there were about 62 million beneficiaries. Other findings show, during 2017, an estimated 174 million people had earnings covered by Social Security and paid payroll taxes. At the same time, the cost of \$6.5 billion to administer the Social Security program in 2017 “was a very low 0.7 percent of total expenditures.” The full 2018 Trustees Report is available [here](#).

7. THREE COMMON WAYS YOUR SOCIAL SECURITY PAYMENT CAN GROW AFTER RETIREMENT:

You made the choice and now you are happily retired. You filed online for your Social Security benefits. They arrive each month in the correct amount exactly as expected. But, did you ever wonder if your Social Security check could increase? Once you begin receiving benefits, there are three common ways benefit checks can increase: a cost of living adjustment (COLA); additional work; or an adjustment at full retirement age if you received reduced benefits and exceeded the earnings limit. The COLA is the most commonly known increase for Social Security payments. We annually announce a COLA, and there’s usually an increase in the Social Security and Supplemental Security Income (SSI) benefit amount people receive each month. By law, federal benefit rates increase when the cost of living rises, as measured by the Department of Labor’s Consumer Price Index (CPI-W). More than 66 million Americans saw a 2.0 percent increase in their Social Security and SSI benefits in 2018. For more information on the 2018 COLA, visit our [website](#). Social Security uses your highest thirty-five years of earnings to figure your benefit amount when you sign up for benefits. If you work after you begin receiving benefits, your additional earnings may increase your payment. If you had fewer than 35

years of earnings when we figured your benefit, you will replace a zero earnings year with new earnings. If you had 35 years or more, we will check to see if your new year of earnings is higher than the lowest of the 35 years (after considering indexing). We check additional earnings each year you work while receiving Social Security. If an increase is due, we send a notice and pay a one-time check for the increase and your continuing payment will be higher. Maybe you chose to receive reduced Social Security retirement benefits while continuing to work. You made the choice to take benefits early, but at a reduced rate. If you exceeded the allowable earnings limit and had some of your benefits withheld, we will adjust your benefit once you reach full retirement age. We will refigure your payment to credit you for any months you did not receive payments. Your monthly benefit will increase based on the crediting months you receive. You can find additional information about working and your benefit by reading [What You Need to Know When You Get Retirement or Survivors Benefits](#). Retirement just got more interesting since you learned about potential increases to monthly payments. Social Security has been securing your today and tomorrow for more than 80 years with information and tools to help you achieve a successful retirement. Posted on June 21, 2018 by Jim Borland, Acting Deputy Commissioner for Communications.

8. NEW OFFICE ADDRESS:

Please note that Cypen & Cypen has a new office address: Cypen & Cypen, 975 Arthur Godfrey Road, Suite 500, Miami Beach, Florida 33140. All other contact information remains the same.

9. LEXOPHILES:

I used to be a banker, but then I lost interest.

10. INSPIRATIONAL QUOTES:

There are two ways of spreading light: to be the candle or the mirror that reflects it. - Edith Wharton

11. TODAY IN HISTORY:

- On this day in 1865, US Secret Service begins operating under the Treasury Department.

- On this day in 1994, Amazon.com founded in Bellevue, Washington by Jeff Bezos.

12. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.