St. Paul Pioneer Press TwinCities.com 1D
SUNDAY, JULY 15, 2018

PMN

BUSINESS & JOBS

Real World Economics

Janus decision has broad implications

Today's news cycle is such that the recent Supreme Court decision that public sector unions cannot compel nonmember workers to pay dues has faded quickly from people's immediate attention.

But it's implications will not. And as things progress, these will bleed into our politics.

The Janus v. AFSCME decision has the potential to send U.S. labor law back to where it was a century ago. This pleases libertarians and traditional business conservatives, but, if carried to its logical conclusion in law, could undermine the economic efficiency of our nation. Moreover, at a time when awareness of outcomes from high and rising economic inequality is rising, the direction the Janus decision points is one that would foster rather than abate such inequality.

This past week, the issue came to Minnesota when a St. Cloud State professor filed suit against that institution, its faculty union and MNSCU to exempt faculty who did not join the union from paying any dues, even those for collective representation rather than for political activity. Odds are that she will win based on the Janus decision.

The issue is complicated, involving both economics and labor history.

Start with economics. Theory asserts that an economy can use its resources most efficiently without government action when the conditions for "perfect competition" apply: there must be large numbers of both buyers and sellers; none may be large enough to have "market power" or ability to set price; there must be good information for everyone involved, a homogeneous product, no barriers to entry by new buyers or sellers, and so on.

Having all these conditions prevail happens seldom, if ever. Thus one issue is the degree to which markets still function well in allocating resources even though all the criteria of perfect competition are not met. A second is whether any government measures to correct a "market failure" do more good than harm.

Understand that disproportions in bargaining power are the most frequent departure from the ideal model. A single farmer or farm cooperative has little bargaining power against an Archer Daniels Midland or other large grain handlers. A single teenager seeking work has little power against McDonalds. Small producers or individual workers are "price takers" but large buyers, producers or employers are not. They have power and, in many cases, great power, to set product prices or wage rates.

Market power allows a business to move the price of the

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products it sells or of the inputs, the products it buys, including labor, away from what these might be under true perfect competition. Prices will be higher and wages lower.

If one business does not have market power, it can gain so by banding together with competitors to limit output and raise prices or to lower wages. We saw this in the era of trusts a century ago. It remains an element in many of mergers or joint ventures that go on today.

So, as was evident 150 years ago, there is plenty of very disproportionate power on the side of large employers in many labor markets. The reaction back then was formation of labor unions. Just as the sugar refiners or meat packers could raise prices in 1890 by banding together, so workers could get some raise in wages if they united to bargain as a group.

It is easy to get five or eight big companies to act in concert to set buying or selling prices. It is difficult to get thousands of workers for a large employer to do the same. If a majority cannot compel the participation of all, collective bargaining is impossible and an employer can continue to keep wages low.

Early unions faced a legal system stacked against them. Moral suasion backed by intimidation was the only way a majority of workers could get the rest to join the effort. Some recalcitrants may have had ideological or moral objections to collective

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bargaining, but others simply were willing to free-ride, enjoying the higher wages or better working conditions achieved by unions without participating in activities or paying dues.

Ironically, the situation of early unions was worsened by legislation designed to halt product price setting by business. The 1890 Sherman Antitrust Act outlawed "any combination in restraint of trade" and the Republican-dominated federal courts of the era saw much more of such combinations in labor organizing than in sugar or meat processing.

It was only with Democratic wins in the 1912 election that curbing monopoly power in business on either the product or employment side gained any traction. The 1914 Clayton Antitrust Act made clear that labor was not an "article of commerce" covered by antitrust laws. But it was not until Franklin Roosevelt's New Deal that a federal law, the 1935 National Labor Relations Act, was passed to facilitate union organization and set out rules for it.

This legislation provided that once a majority of workers voted to have a union, even those not agreeing had to participate and pay dues. Employers had to bargain in good faith with unions.

The legislation underwent many changes. Compliance from both sides was highly variable. Because unions engaged in politics, an amendment eventually specified that people who chose not to be union members could be forced to pay a "fair share" of membership dues ascribed to bargaining and representation with the employer but could be exempt from anything used for politicking.

The issue in Janus is further complicated by the fact that private sector unions once predominated. Indeed, unionization of government employees in many jurisdictions was banned by state or federal law for decades after the NLRA. The differing economics of private versus public employee unions could take up several columns. Suffice it to say that such unions eventually were sanctioned at most levels of government in most states. Indeed, public employee unions now dominate the union movement. Competition from low-wage manufacturers abroad, deregulation of transportation and hostility from the GOP administrations in the White House for 30 of the last 50 years decimated private sector unionization.

Moreover, many of the hard-fought union benefits are now standard workplace procedure, and almost required if any employer is to attract quality workers in a competitive labor market.

Unions do limit the individual liberty of members, as noted by the high court. But without unions, large employers can use their power to take a larger share of value created. There lies the rub. Such power is an important factor in the increasing share of national income captured by the highest income 10 percent of the population and the stagnation in wages for many.

Beyond these questions of fairness, there is the issue of economic efficiency. Economic students learn that both monopolistic sellers of products or monopsonistic (or single) buyers of labor cause inefficiency. Resources are wasted compared to how they would be used in more competitive markets. So squashing unions may improve liberty for some, but may reduce the total amount of goods and services available to meet the needs of society.

Yes, the issue is complicated. Conservative labor economists have myriad cases where union activity also induced economic inefficiency. The very act of workers combining is an effort to gain some market power, of achieving a monopoly in supplying labor to an employer. That, by itself, induces efficiency losses as any other monopoly.

Harvard economist John Kenneth Galbraith, famous in the 1960s but now largely forgotten, explored the idea of "countervailing power." If one side of the economy, business, had great market power, then the other sides, workers and consumers, needed some power to offset the monopoly status of large businesses. Else fairness and efficiency would both suffer. The federal judiciary now is such that unions will face opposition for decades. Yet the populist ethos embodied in President Donald Trump's support is based in large part on feelings that common workers are not getting a fair share of our nation's wealth. Congressional and presidential electioneering will reflect this, whether overtly or not.

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