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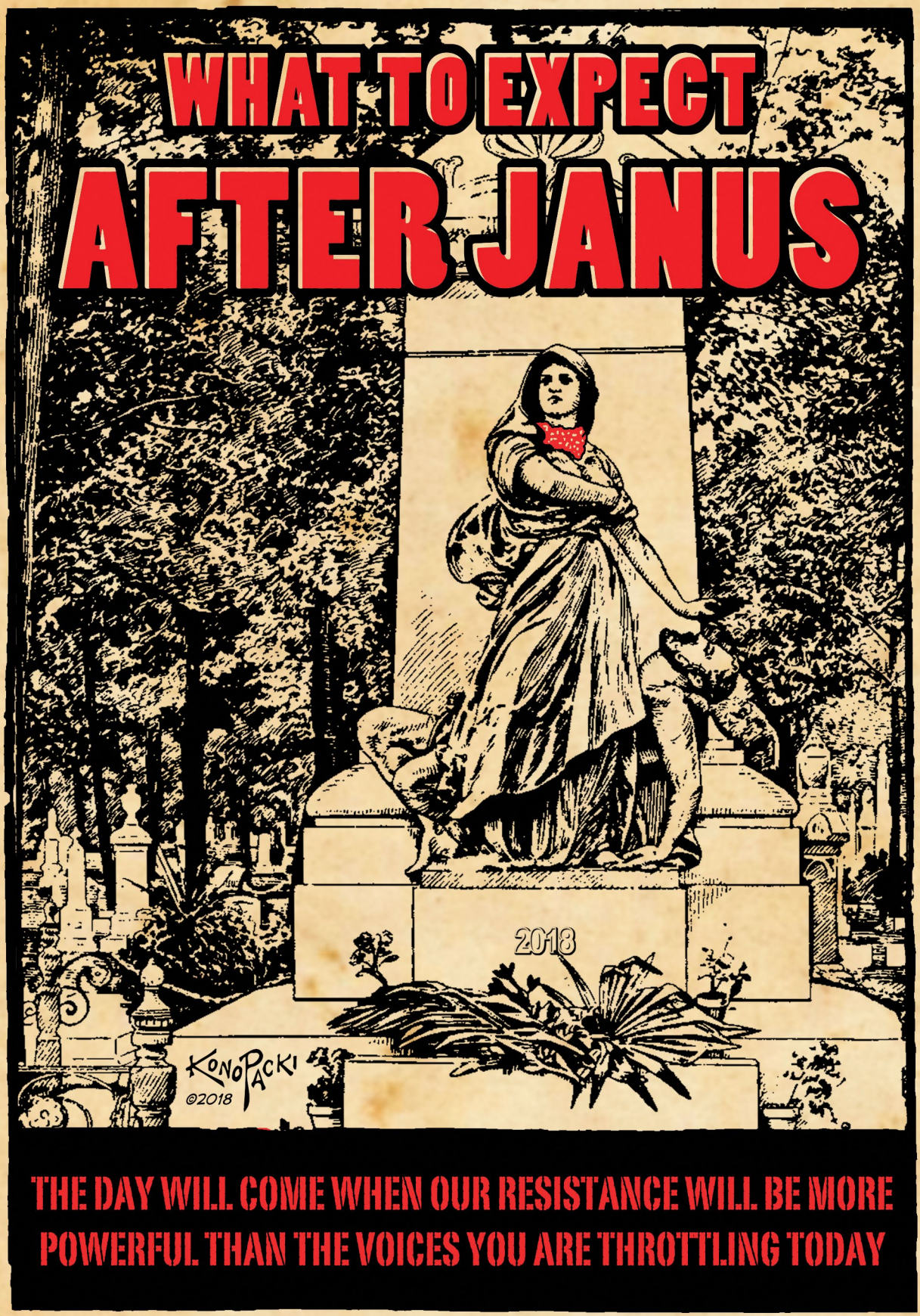


After *Janus*: What to Expect

> "They (unions) won't go away until we drive the proverbial stake through their hearts and finish them off for good."
>
> Freedom Foundation fundraising letter, October 2017.

The *Janus* Supreme Court case, just like the Wisconsin and Michigan so-called "right to work" laws, isn't about freedom to choose—they are about taking away workers' freedom to have a say and some power to improve our lives. Anti-union forces, from the right-wing think-tanks like the Freedom Foundation to big businesses to lobbyists to others, see unions as the single greatest obstacle to unbridled profit and control.

After the Supreme Court's ruling (expected as early as April and as late as June), anti-union people will be talking to members of our unions about dropping their membership. I know, because I am the former president of SEIU Local 925, a public sector union in Washington State made up of family child care workers and other public service employees. After the Supreme Court decision in *Harris v Quinn*—which did to home care and child care workers what *Janus* will do for all public employees—the Freedom Foundation came after our members. The Freedom Foundation is a business non-profit in Washington State, and they spent boatloads of money trying to convince union members that we could save our dues or agency fee money and lose none of our rights. They even sent Christmas cards to our members, with the holiday message, "give yourself a raise." Most importantly, they encouraged members to abandon the political agenda they called the union's. (We call it the members'.) But the Freedom Foundation folks forgot to tell them about their own political agenda: privatize public education, end health care for those in need, roll back worker and environmental protections, and cut taxes for the very wealthy people and corporations based in our state.

The Freedom Foundation used every conceivable method for talking to Local 925 members—they got lists of union members through public information requests, and then used mail, email, telephone, website, videos to get their pro-business, anti-union message out. Most appalling, they went door to door, visiting members at home!

I recognize all those tactics because they're the ones we use—at election time, and during new organizing drives. At our union, we recognized Harris as an organizing opportunity, and we used those tactics. Any union can – and I encourage you to!

I'm sorry to say this kind of frontal assault is not limited to Washington State: The Freedom Foundation is only one of over 60 similar organizations, at least one in every state, that is affiliated with the

WHAT IS *JANUS*, AND WHY D

Half of the labor movement could go "right-to-work" depending on the outcome of a pending Supreme Court decision. In *Janus v. AFSCME*, the justices are weighing whether union shop contract clauses that compel represented workers to join or pay a representation fee should be illegal in the public sector. With 7.2 million union members' participation at stake, the case represents the latest in the unrelenting corporate assault on union power and financial resources.

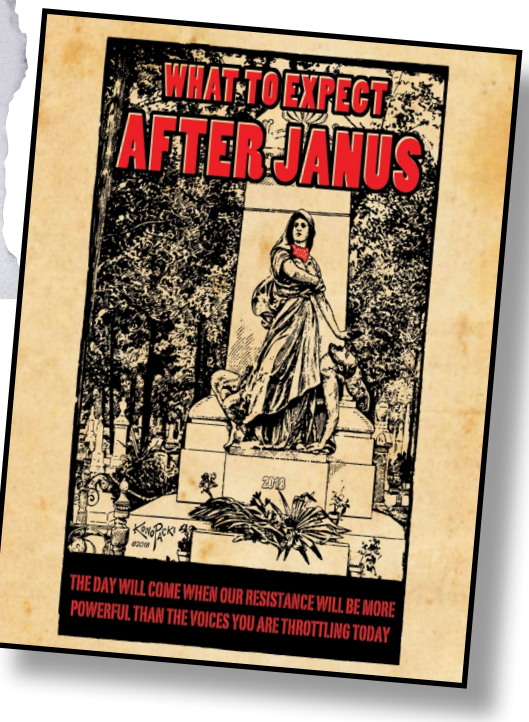
Part of what the right wing is exploiting in this case is that for public sector workers, their employer is, in some sense, "the government." That makes their union contracts more vulnerable to challenges from outsiders. Indeed, public sector workers won the right to negotiate for the same union shop clause that private sector unions have enjoyed for over a century in a 1978 Supreme Court case called *Abood v. Detroit*.

That long-settled precedent has been under sustained attack in recent years, with Supreme Court Justice Samuel Alito leading the charge. He inserted the argument—that every interaction that a union has with the government is inherently political—into the Court's 2014 decision in *Harris v. Quinn*. That decision maligned unions representing state-funded, but home-based, child and elder care workers and took away their right to bargain for the union shop.

In *Harris*, Alito strongly signaled that he and the rest of the conservative Court majority would support a court challenge to mandatory union fees as "compelled" political activity that violates the First Amendment. Lo and behold, *Friedrichs v. California Teachers Association* rocketed through the courts the following year. It deadlocked in a 4-4 tie only because Justice Antonin Scalia died in 2015.

Two short years, and one stolen Supreme Court seat later, *Janus* is in front of the Court with the same stale arguments backed by the same deep pockets (see unionist.com for more on the big money backing Mark Janus's case).

The anti-union argument is ironic because judges have spent most of U.S.



State Policy Network with the same anti-worker, anti-public education, anti-democratic political goals. These groups are funded by the Koch Brothers and the Walton Foundation (the Walmart heirs) — and we know what those kind of people want to do to our working conditions and our communities. Their funder reports read like a Who's Who of Corporate America. (And Canada, we know if they could come for you, they would!)

Here are three lessons for stewards anticipating *Janus* and the right-to-work onslaught—no matter if you're in a state or a province:

1 Prepare for this upcoming decision: Talk with your co-workers about why you're committed to the union, who the anti-union people really are, and what they want.

2 Prime your co-workers: Tell them to expect the antiunion onslaught. You can even make it at least a little bit fun. Find an "antiunion bingo card" with slogans to expect at www.unionist.com.

3 Don't stop at the workplace. Stewards are leaders in many areas of life, not just at work. Talk about workers rights and what kind of community we want wherever you go, from a PTA meeting, after a religious service, at the dog park, or wherever you make small talk.

Find more resources about *Janus*, and more, at www.unionist.com. How are you preparing for a new and bigger anti-union movement? Unionist is collecting your ideas on its Facebook page.

—Kim Cook is President Emeritus SEIU Local 925 and now an associate at Cornell's Worker Institute, which powers Unionist.com and this publication.

OES IT MATTER?

history denying workers any kind of free speech right to form a union. Before Congress passed the National Labor Relations Act (NLRA) in 1935, courts were more likely to treat unions as criminal conspiracies that interfered with employers' property and contract rights. But even the NLRA, which provides legal protections for union organizing and collective bargaining, does not recognize a First Amendment right to engage in union activity. Instead, it bases those rights on Congress, and its power to regulate interstate commerce—not in the civil and constitutional rights of workers.

As a result, corporations enjoy more free speech protections to beat up on workers than workers and their unions have to organize. An employer can force workers to attend mandatory anti-union presentations or be fired, and unions have no complementary right to respond. Workers can be fired for making "disloyal" statements about their company in the course of a protest. And the scope of issues that unions can meaningfully demand to bargain over has been significantly narrowed.

A ruling against AFSCME in *Janus* could provide unions with a solid First Amendment basis to challenge these and other inequities in labor law. But conservative judges could also shamelessly wave away any argument about why free speech shouldn't make collective bargaining fairer for workers, while beefing up corporate power.

Already, some are concerned that anti-union lawyers will next argue that collective bargaining regulated by the NLRA is another "inherently political" interaction between unions and the government, making any union shop—even in the private sector—unconstitutional. That this argument might even see the light of day shows how far the right wing has pushed the American political conversation.

U.S. unions are bracing for impact. Unions with substantial public sector memberships have beefed up their member-to-member organizing programs. Their immediate goal is convincing current fee-payers to join and pay dues.

This is not a drill or a false alarm, and stewards play a key role in keeping workplaces, bargaining units and unions together as all working people—union and not—come under assault. Here are three things to do:

1 Talk about *Janus* and its effect on our communities, unions, and workplaces. Unionist.com has resources from across the labor movement and around the media.

2 Expect a well-funded direct mail blitz from union busters encouraging members to quit their union to "give themselves a raise." Member-to-member organizing is critical for counteracting right-wing propaganda portraying unions as "ineffective" third parties Here, shop stewards must be the first line of defense.

3 Express solidarity with all workers. Show up at another union's picket line or rally, sure. Is there a demonstration against workplace raids by ICE in your community? Those are workers, too. Be there for them, in your union colors.

—Shaun Richman is a writer and campaign consultant. He is the author of the report "Labor's Bill of Rights." His Twitter handle is @Ess_Dog.

How to Do Right by Someone Screwing Up at Their Job

We all know someone who is always late, never pitches in when things get busy and is just not very good at their job. Often that person is management. When this person is a fellow union member, things can get sticky for a steward. Here are some ideas about what to do when a union member is disciplined and you think they are in the wrong.

JUST CAUSE: ABOUT FAIRNESS, NOT ANY ONE WORKER

You and your co-workers fought hard for a union contract that contains just cause for discipline and discharge—usually in the form of progressive discipline and fair work rules. We fight for those things because managing a workplace is a lot of work—and often, owners or managers might be tempted to cut corners, skip the required steps and pick and choose how they discipline or fire people. Stewards often face unjust discipline and sometimes a grievance where wrongdoing is a bit muddy. Union representatives—including stewards—are bound by the Duty of Fair Representation. Here is what I coach stewards to do when a less-than-perfect co-worker gets disciplined and files a grievance:

1 Investigate the discipline: Find out the facts of the case and review the seven tests of just cause. Ask for the employee's personnel file and work record including past discipline. Interview witnesses and review any documentation. Did the employer meet their responsibility to prove they had just cause and follow all other relevant parts of the contract?

2 Follow the grievance procedure. Remember, when we meet over discipline, *it's the employer's responsibility to prove they had just cause*. Make sure they fulfill that duty. Don't let them get away with anything less than following the contract.

3 Explain to fellow union members (and sometimes fellow stewards) that this isn't a referendum on how this person does their job; rather, it's about keeping management in check and making it fair for the next person.

4 Make sure everyone is held to the same standards. It's a basic tenet of just cause that rules must be enforced equally! If the boss lets some people get away with breaking the rules, then no one can be disciplined for breaking those same rules.

SOMETIMES SOLIDARITY IS WHAT'S NEEDED

Sometimes a co-worker is failing at work because they're going through a tough time—a medical, financial, or family crisis might be to blame. When we see a co-worker struggling, our first action should be concern and compassion—some solidarity—especially when the boss is on their case.

When progressive discipline is on the table, it is important to be both kind and honest. "I do sidebars [private meetings] with my members, not in front of management, to tell them what they did wrong," SEIU steward Cameisha Shepherd told me. "Not everybody is perfect, but the boss often puts us in a bad position, so it's my job to make sure the boss doesn't abuse their power."

Here are some additional ideas for you, as a steward, to make sure they get a fair chance:

- Ask the person why they are having a hard time at work. If they've got something personal going on, remember that just cause requires that extenuating circumstances must be considered. (Also, unionist.com has a helpful article on helping co-workers emerging from a crisis.) Remember, your co-worker is in charge, and needs to make the best decision for themselves.
- Is there something the employer should do to help the situation? Does your co-worker need some time away from the workplace to get themselves together? Check your contract for benefits that might help: Leaves of absence, sick time, other kinds of time off. What about reasonable workload provisions? Be creative about health and safety on the job, too.
- Training support: Does your contract have educational, professional development or other training provisions? Training, accommodations or coaching can help a person succeed. You can work with your co-worker to help identify classes or other resources that may help. You can also do some informal support matchmaking: If Joe's really bad at something Janelle is really good at, can Janelle help Joe get up to speed? (Ask Janelle first!)

> "Check your contract for benefits that might help."

- Disability accommodations: Sometimes a work-performance problem has a medical cause. If your contract ensures health coverage, perhaps relevant tests are needed. In any case, does your contract specify accommodating someone with disabilities?
- Consult with your union representative or attorney to find out state and local laws that can help a person going through a bad time. Is there a paid leave for someone dealing with domestic violence or caring for a sick relative, for example?

As a steward, you want to be supportive while holding management accountable: dealing with performance problems are management's responsibility, and ensuring they deal with those problems fairly is the union's.

—Leah Fried is a longtime union activist, trainer, and writer. She lives in Chicago.

STEWARDS' GUIDE TO THE NEW TAX LAW

Your members might turn to you, as shop steward, for an explanation of how major policy changes affect working people. And in April, conversation often turns to taxes. President Trump signed a major new tax law in December, named The Tax Cuts and Jobs Act of 2017, also known as "the tax bill." First, the very small good news: there might be modest tax cuts for working people in the first few years. Unfortunately, that's about it: the benefits primarily favor corporations and individuals with very high net worth, and over time even the modest tax cuts for everyone else begin to disappear. It is primarily a tax bill for millionaires, billionaires, and the biggest corporations. Pro-labor economists, policy experts like me, and regular people all share deep concerns about its impact on the economy overall. Here are some of them.

WILL THE NEW LAW CREATE JOBS?

Probably not. Prior to this tax cut, US corporations held approximately $2 trillion in cash, and they weren't investing it—business investment is what creates jobs. Instead they're sitting on their cash. Giving them more cash is no help. The business media is already reporting, and most economists agree, that companies will use the extra income to buy back their own stock. This will increase the wealth of the stockholders, but not create new jobs.

WHAT ABOUT A RECESSION?

Many economists express concern about a recession in the next few years. Why? Primarily because the growth of our economy is now exceeding its "potential." Whenever this happens, economists say, the risk of recession increases. The second concern has to do with deficits. Lawmakers are already using existing deficits to cut the social safety net—benefits for seniors, the disabled, and the poor—like food stamps. The deficits have two problems: first, people laid off will have fewer, or more stingy, benefits. (More on that below). And second, higher deficits give policy makers less room to maneuver to shorten or end a recession. Before she left her job, Federal Reserve Chairwoman Janet Yellen raised concerns about deficits, which are expected to grow and will give policy makers little room to respond to a future recession.

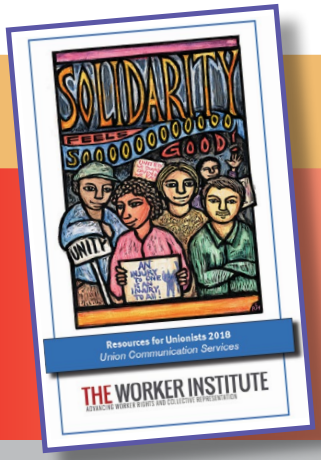
WHAT WILL HAPPEN IN GOVERNMENT?

The $1.46 trillion increase to US debt is not accompanied by more or better infrastructure, better schools and universities, or much of an increase in technology. Instead, the Act creates massive deficits and raises the debt in order to afford tax cuts primarily to the wealthy. Under a 2010 law called "Pay as You Go," (PYG) if a law adds to the deficit over time, it triggers automatic cuts in a range of social programs. Medicare will automatically face cuts under PYG. So will a range of smaller programs—including housing, childcare and other social services as well. Medicaid, Social Security and SNAP (food stamps) are technically exempt under PYG, but as the cuts impact the government's ability to do its job they will create pressure and justifications for further cuts in every sphere, such as education, housing, food, jobs, or economic development and whether or not it is required under PYG. This will harm families being served by these programs as well as put public jobs at risk: ie, layoffs. Some two million people work directly for the federal government alone; and governments at every level employ almost 20% of all workers. That workforce is the most unionized, by far, in the US. *(See the Janus coverage in this edition.)*

SO, WHO ARE THE WINNERS?

Without question, the Act benefits the very wealthy. It significantly reduces the estate tax so the very rich can keep more money in their families. This will accelerate wealth inequality and the already-existing racial gaps. (For example, it is expected that median Black wealth will hit zero in 2053.) Moreover, the Federal Reserve is likely to raise interest rates, which will make student loans, mortgages and any other borrowed money more expensive—offsetting whatever tax cut working families receive. Single parents with more than two children may find themselves paying higher taxes as personal deductions are eliminated. Finally, the Act also changes how we measure inflation, using something called Chained-CPI. This is a less generous measure of inflation: over time, families will be bumped into higher-income tax brackets but deductions linked to the Chained-CPI, such as the Earned Income Tax Credit, will grow more slowly than they should, which hurts lower-income families. Overall, the Act creates deeper inequality and inequity and threatens ever more damaging impacts over time.

—Cathy Albisa and her team at NESRI, the National Employment and Social Rights Initiative. Learn more about their work at www.nesri.org.



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OFFICE OF THE INTERNATIONAL PRESIDENT

Greetings Sisters and Brothers,

Spring is a season for growth in nature, but the challenges to grow the IAM and better inform our membership are year-round tasks.

Union stewards, like you, are crucial assets for the Machinists Union in its efforts to educate and communicate with our members across North America. Without your direct contact on shop floors, and local lodges, the resources we have available cannot effectively be implemented.

One of the tools to broaden our reach is iMail, the IAM's twice weekly email news service. As it grows in subscriptions, so does the impact it has on all our members. It is through timely communication we are able to make the union stronger, which in turn makes life better for all of us.

If you are not currently subscribed, I urge you to do so today. By promoting iMail to the members you represent, you help us increase its impact and we all benefit. It is as simple as asking them to visit iam4.me/iamemail and sign up with their name and email. It is an easy way to keep our members in touch.

The IAM is a better union because of you and the work you do every day. I sincerely thank you for your dedication.

In Solidarity,

Robert Martinez, Jr.
International President

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