



EQUAL JUSTICE UNDER LAW

THE JANUS EFFECT

by Ken Girardin

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The U.S. Supreme Court in 2018 ended New York’s decades-long practice of forcing state and local government employees to pay a labor union as a condition of employment.

This arrangement, known as “agency shop,” required workers who were represented by unions to either join and pay membership dues or pay an “agency-shop fee” for typically the same amount. These compulsory payments were a significant windfall for the state’s unions, and they resulted in an increase in their formal membership.

New York City first began requiring employees to pay a union in 1969.ⁱ The state Legislature in 1977 permitted public employee unions in school districts and local governments outside New York City to negotiate over agency fees – and explicitly allowed state employee unions to collect them.ⁱⁱ Finally, in 1992, state lawmakers made agency fees mandatory for all union-represented state and local government workers.ⁱⁱⁱ

The Civil Service Employees Association, the state’s second-largest public employee union, estimated in 1977 the newly adopted agency-shop law would enable it to collect mandatory dues-like fees from about 40,000 workers it represented, above and beyond its estimated 150,000 dues-paying members.^{iv} By 2017, CSEA’s membership rate had risen from 79 percent to 93 percent (with the remaining 7 percent of represented workers still required to pay).^v

But in June 2018, ruling in *Janus v. AFSCME*, the Supreme Court held these mandatory payments violated the First Amendment of

the United States Constitution because they forced people to support the union’s political speech. Prior court decisions had barred both public- and private-sector unions from making non-members fund their overtly political activities, such as lobbying and campaign donations. *Janus* ended any effort to distinguish between political and apolitical activity in public-sector unions, reasoning that unions representing public workers are attempting to influence government in some form in everything they do.

Janus applied to upward of one million New York state and local government employees, including tens of thousands who were paying an agency-shop fee when the decision was handed down. The exact number of fee-payers is unlikely to ever be known because employers in many cases weren’t differentiating in their record-keeping between voluntary dues and involuntary union fees, since they were typically the same amount. Government payroll offices counted many workers improperly as union members, while in other cases they were unaware if workers had signed membership cards.

The unions had moved to pre-empt the decision’s impact with a multi-pronged push to shore up their ranks (and their balance sheets). The effort ranged from successfully lobbying state lawmakers to make it more difficult to stop paying union dues, to sending groups of union activists to make unannounced appearances at the homes of public employees.

In the months after the ruling, many public employees exercised their new “Janus rights”

and resigned their union membership, while some fee-payers became members.

Some forecast *Janus* would sound the death knell for government employee unions. Governor Andrew Cuomo had said ending the unions' ability to force people to pay them would "effectively end public labor unions."^{vi}

Absent the ability to extract involuntary payments, how successful have unions been in maintaining membership? Data from New York's two largest public employers – the City of New York and the State of New York – indicate the rate of union membership among eligible workers initially rose after *Janus* but has since declined.

NEW YORK STATE

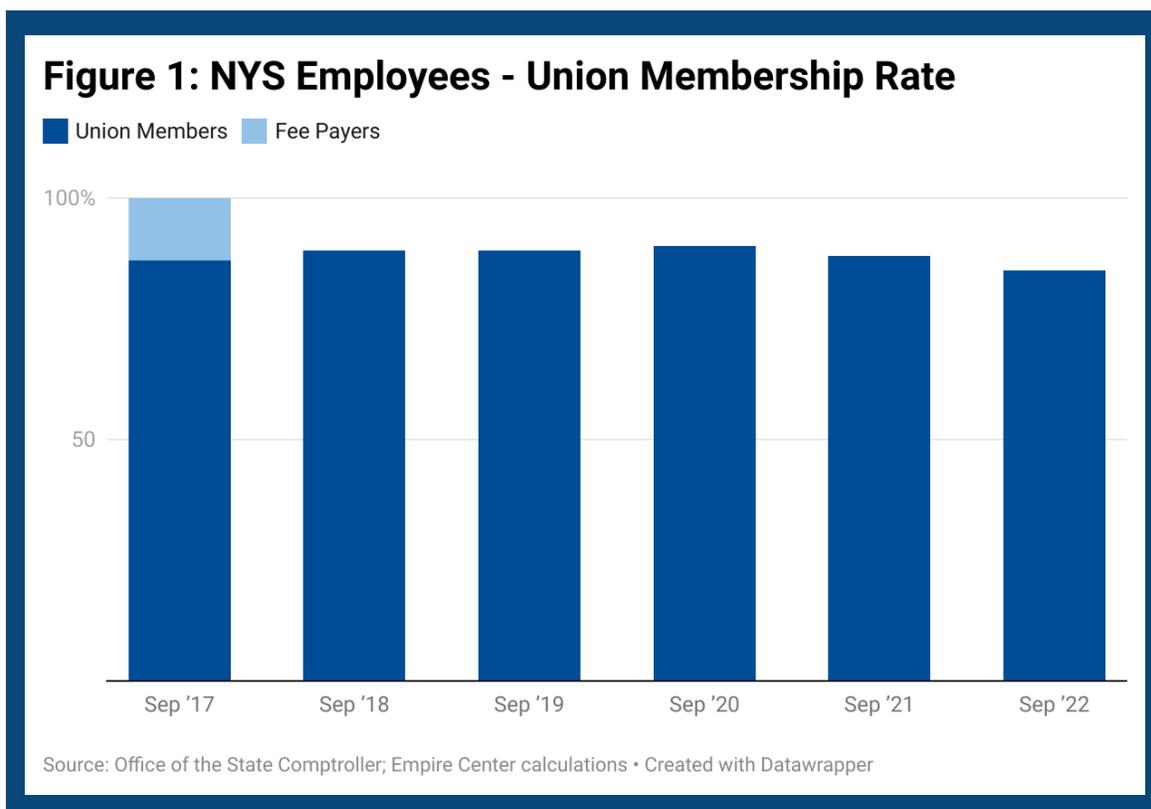
In September 2017, 196,123 New York state employees (86.7 percent) were members of the labor union that bargained on their

behalf. Meanwhile, public employee unions took agency-shop fees from 29,966 New York state employees (including SUNY and CUNY graduate students). (Figure 1)

Just as many employees were not clear on their union membership status prior to *Janus*, neither were some public payroll systems. In the case of graduate students at SUNY, nearly all were classified as agency-fee payers by the state payroll system.

Labor unions, recognizing the court was likely to strike down agency-shop arrangements, hustled to get fee-payers to sign membership cards. By September 2018, three months after the decision, 89 percent of unionized (union-represented) state employees were members. It was relatively unchanged a year later.

With the onset of the novel coronavirus pandemic in early 2020, state hiring slowed



and the number of union-represented workers dipped. However, the union membership rate hit a post-*Janus* peak, in part because the unfilled positions – particularly university adjunct professors – tended to have a lower rate of union membership.

Looking at 2021 and 2022, however, a new trend appears to have become more dominant: the unions, in many cases, do not appear to have persuaded newly hired state employees to join at nearly the same rate as those they were replacing – many of whom had spent their entire careers believing they had no choice but to pay.

As of late September 2022, New York state agencies had approximately 209,031 employees represented by a union.^{vii} Of them, 178,470 (85 percent), paid dues – and 30,561 did not.

The combined effect of *Janus* and reductions in the state workforce reduced the number of New York state employees paying a union by

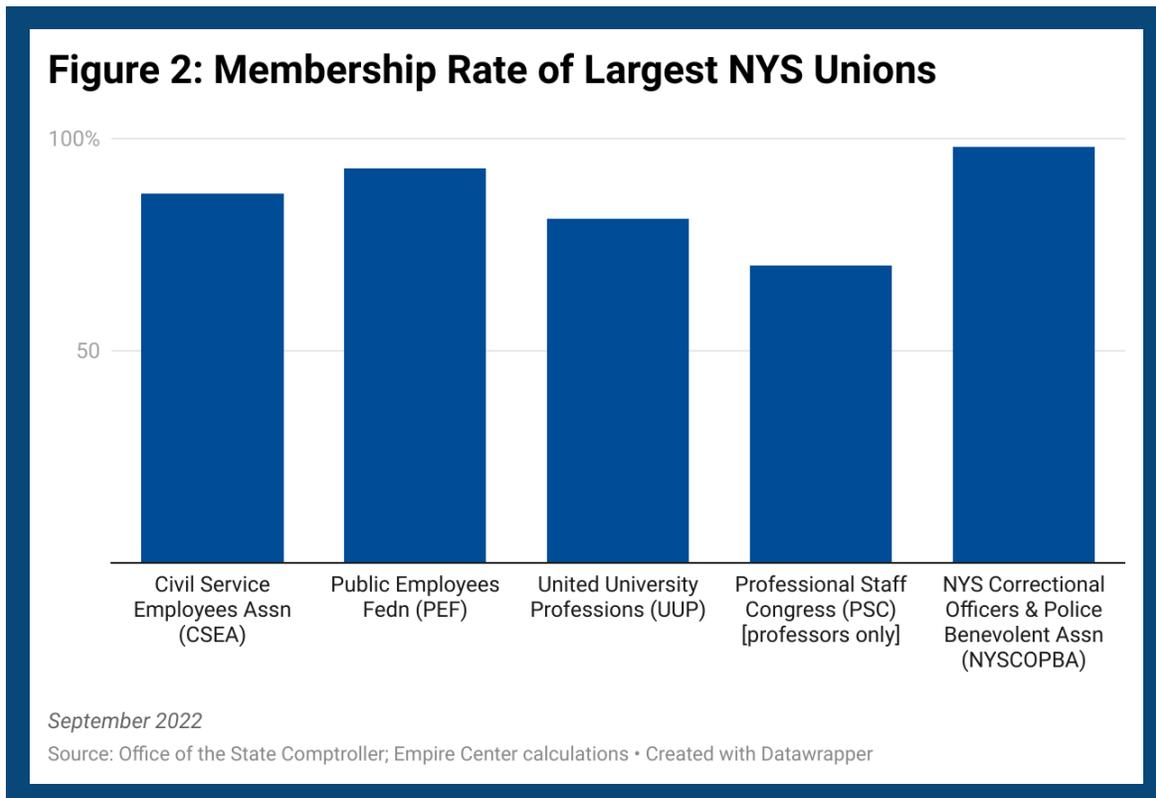
21 percent between September 2017 and September 2022, from 226,099 to 178,470.

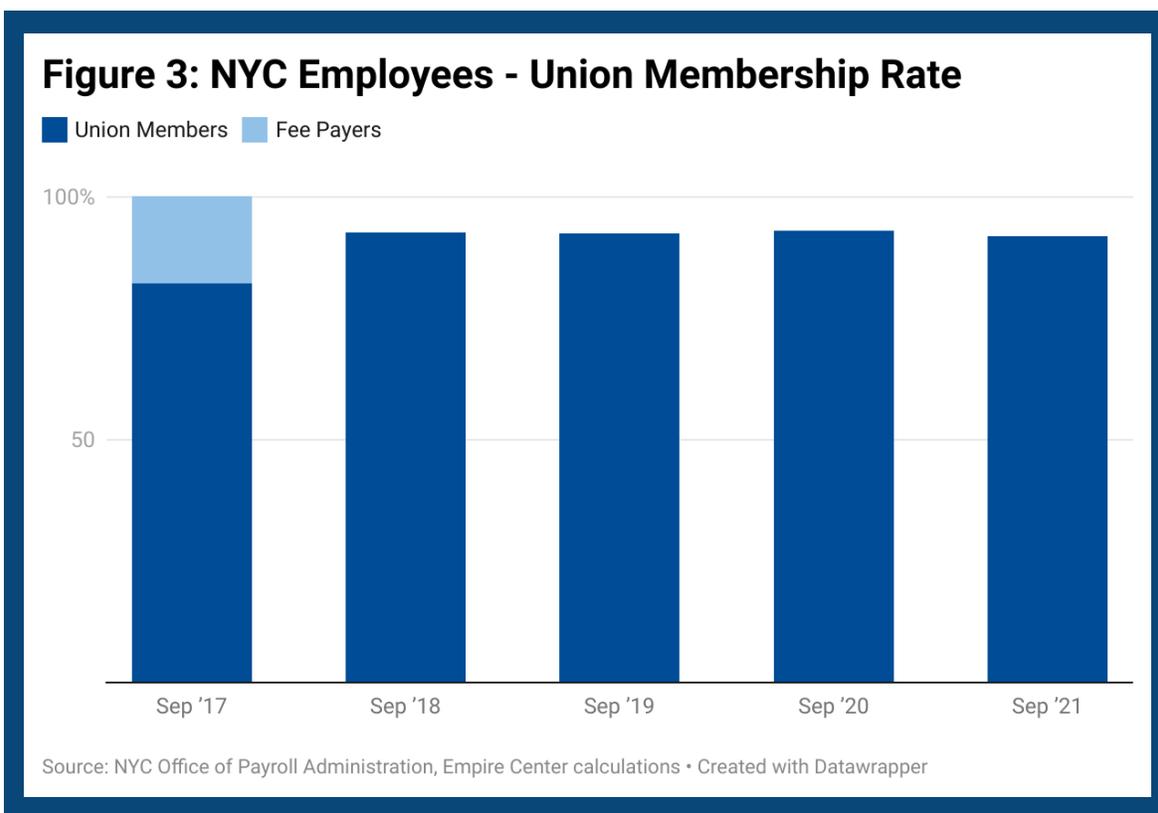
Nonmembership appears to be most prevalent at state universities. An estimated 46 percent of CUNY adjunct professors did not pay dues in September 2022, nor did most SUNY or CUNY graduate students. On the other hand, union membership rates have been highest among uniformed employees, such as state corrections officers and state troopers.

Figure 2 (below) shows the membership rate of the five largest unions that together represent 89 percent of unionized New York state employees as of September 2022.

NEW YORK CITY

Looking at the same time frame (late September), a larger share of New York City municipal employees in 2017 were, at least on paper, fee-payers (rather than union members) compared to the state workforce. Roughly





half of those fee-payers were converted to members between 2017 and 2018. The union membership rate climbed from 82.1 percent in September 2017 to 92.6 percent in September 2018. It remained just below 93 percent during the next two years, dropping to 91.8 percent in September 2021. (Figure 3)

As of late September 2021, New York City agencies had approximately 341,835 employees represented by a union.^{viii} Of them, 313,936 (92 percent), paid dues – and 27,899 did not.

The September 2021 membership rates of the five unions that together represent 62 percent of unionized New York City government workers are shown below. (Figure 4)

JANUS RIGHTS AT WORK

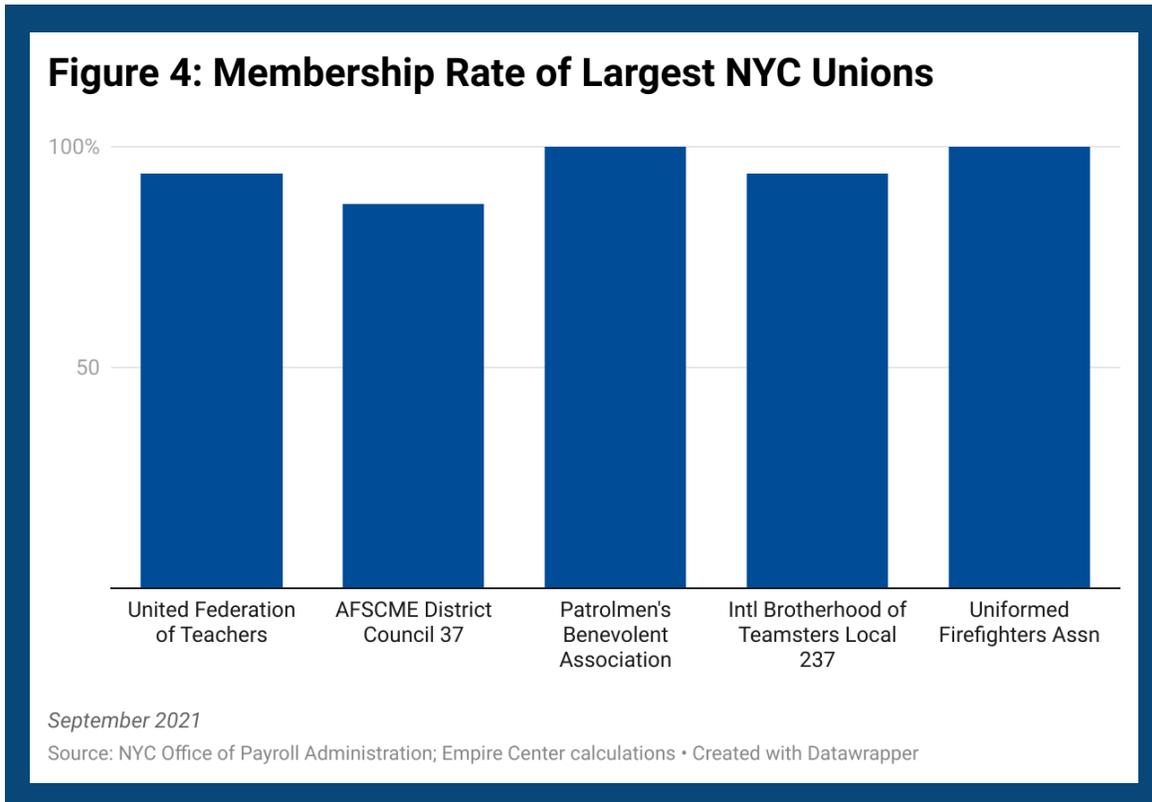
New York’s public-sector collective bargaining law, the Taylor Law, and the local law controlling unionization for most New

York City workers, tend to give workers fewer opportunities to decide democratically who will represent them compared to what they’d enjoy in the private sector. For one thing, many public workplaces have been unionized under what’s known as voluntary recognition, in which no election is held.

Once a union has been designated as a group’s representative, it is extremely difficult for public employees to force an election that might replace or expel that union. Most of New York’s unionized public employees have never voted on which union represents them.

Absent that ability, public employees have over the past four years at times used their Janus rights to essentially vote with their wallets.

United Federation of Teachers (UFT) president Michael Mulgrew in July 2018 remarked that 99.2 percent of members (presumably among the bargaining unit constituted primarily



of full-time classroom teachers) had chosen to continue paying dues after *Janus*.^{ix} UFT, however, faced criticism over its handling of school reopening and employee vaccination rules. The union’s membership rate among that bargaining unit slid from 99.1 percent in September 2019 to 97.8 percent in September 2021.

The union has had less success getting other groups to support it financially: city records indicate about 15 percent of UFT-repped para-professionals had stopped paying dues by September 2021.

In other cases, *Janus* has allowed public employees to stop supporting explicit political ideology with which they disagree.

More than 180 members of the Professional Staff Congress at the City University of New York have reportedly resigned or pledged to resign from the union “as a protest over PSC-

CUNY’s political activities that are unrelated to our employment by CUNY.”^x

Janus has also acted as a mechanism of last resort when union finances are mismanaged — and when employers must continue deducting dues even if malfeasance is suspected.

Officers of the Law Enforcement Employees Benevolent Association (LEEBA) have been charged by federal prosecutors with misusing union funds. LEEBA represents about 660 employees, of whom 198 (30 percent) were not paying dues as of September 2021. This was a significant decline from September 2018, when all but 29 people represented by LEEBA paid dues.

DATA NOTES

- Pay data from the final pay period of September were used to control for seasonal variations in agency employment levels; Sept. 2022 data are not yet available from the NYC Office of Payroll Administration.
- NYS figures include estimated unit sizes for graduate students (total: 5,500) and CUNY adjunct professors.
- Per-diem employees are excluded to the fullest extent possible from both union membership and unionized employee counts to avoid double-counting.
- DC37 figure does not include two bargaining units (020 and 126) which are jointly represented by other unions. Professional Staff Congress figure excludes non-professor units.

ENDNOTES

ⁱKing, Seth S. "Agency Shop Won By Municipal Union; CITY, UNION AGREE ON AGENCY SHOP," *New York Times*, 1 Mar 1969.

ⁱⁱChapter 677 of the Laws of 1977

ⁱⁱⁱChapter 606 of the Laws of 1992

^{iv}"Agency Shop to Governor," *Civil Service Leader*, 22 Jul 1977

^vUS Dept. Of Labor Form LM-2, FY2017 (includes some private-sector employees)

^{vi}Clark, Dan, "Unions would suffer but not end because of Supreme Court decision," *Politifact*, 17 Jan 2018. [politifact.com/factchecks/2018/jan/17/andrew-cuomo/unions-would-suffer-not-end-because-supreme-court-](https://www.politifact.com/factchecks/2018/jan/17/andrew-cuomo/unions-would-suffer-not-end-because-supreme-court/)

^{vii}This figure includes approximately 5,500 unionized CUNY and SUNY graduate students. It does not include data for approximately 100 employees in 18 small bargaining units for which data were withheld by the Office of the State Comptroller for privacy reasons.

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^{ix}Michelle Ferraro, Twitter post, July 14, 2018, 3:32pm. (<https://twitter.com/michele0609/status/1018216636707475456>)

^x"Mass Resignation Pact," *Resign.PSC*, resign-psc.org



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