

# Why Graduate Unionization Matters Even More in the Age of Janus

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With the start of the new academic year underway, students and instructors will again enter into a millennia old relationship built on mentorship, trust and mutual respect. However, this school year, instructors will be walking into a very different classroom not because the this relationship has changed, but because the Supreme Court has signaled it does not politically support the casue of teachers advocating for working conditions that strengthen this bond.

On the final day of its 2017-18 term, the Court upended 41 years of precedent established in *Abood v. Detroit Board of Education*, the landmark case that cemented the collective strength of teachers by ruling against the concept of fair share/agency fees in *Janus v. AFSCME Council 31*. In doing so, as Justice Kagan noted in her dissent, “the majority has weaponized the First Amendment” against the labor movement. [1] But *Abood* created a false sense of security among us labor advocates who took fair share payers and even membership for granted. We forgot that the Court has not always been friendly to our cause and, during the *Lochner* Era (1905–1937), the Court invalidated many federal and state statutes regulating worker rights by arguing that they violated the “liberty of contract”, contending that government had no right to intervene in an arrangement established by two consenting parties no matter how unjust the relationship. [2] It was not until the New Deal Era did the Court finally abandon this principle, paving the way for pro-worker policies like minimum wage laws, however, it appears to have once again embraced this reasoning at a time when the country is returning to the socioeconomic inequality characteristic of turn-of-the-century America. But this regression also brings opportunity for progression. With *Janus*, teachers’ unions, and public-sector unions as a whole, can reorganize and rebrand their message for a new age and new generation.

A fresh start might involve evangelizing to the generation most receptive to the message of unions in a place known for its progressive ideology. Since the National Labor Relations Board (NLRB) ruled in 2016 that graduate students at private institutions who hold teaching or research assistantships can be considered employees, there has been a flurry of graduate employee organizing nationwide. Prior to the NLRB’s ruling, there were 33 graduate employee labor unions, but in the two-year period since, 18 unrecognized unions have attempted to hold formal votes. [3] This rapid growth can be explained by a combination of forces: the socioeconomic concerns of Millennials, the corporatization of higher education, and the volatile political climate. Labor leaders throughout the country should take note since the same forces acting on the ivory tower are at play nationally and may portend hope for a movement whose relevance is being questioned by the very individuals it represents, such as Mark Janus.

Millennials have come of age in a time of economic and political instability, specifically the Great Recession and the election of Trump. They benefited the least from the recent economic recovery, as average incomes for Millennials fell at twice the general population's total drop and they are likely to be on a path toward lower incomes for at least another decade. [4] Despite the fact that Millennials have higher degree attainment rates of any generation, many are stuck in low-paid jobs, with the percentage of such young adults working in low-wage industries rising from 23% to 33% from 2000-2014. [5] Moreover, Millennials have some of the lowest rates of home ownership - 35.3% compared to an overall rate of 64.2% for all age groups - leading to delayed life milestones such as marriage and family. [6] Such a bleak economic picture may explain why Millennials overwhelmingly supported Democratic primary candidate Bernie Sanders and almost half have a more favorable view of socialism compared to capitalism. [7, 8] Millennials are also famously known for their socially liberal views including support for the rights of historically marginalized groups and restrictions on hate speech with not only 40% supporting censorship of such offensive speech, but also participating in demonstrations against far-right advocates who seek to spread their message on college campuses. [9] Inflamed by the political rhetoric and policies of the Trump administration, the 2018 midterm elections have seen a bumper crop of Millennials and their allies running for political office with Alexandria Ocasio-Cortez in New York and Ayanna Pressley in Massachusetts amongst the most high profile candidates. In an age of Black Lives Matter, #MeToo and LGBTQ equality, Millennials are coming into political and economic consciousness just as they begin to eclipse Baby Boomers as the largest demographic and working age population.

At the same time, universities have undergone a dramatic transformation. Just as low tuition and a booming postwar economy made higher education affordable to previous generations, the reverse is true for Millennials. The average cost of attendance has increased a whopping 260% since 1980, more than double the rate of all other consumer goods. [10] With student loan debt approaching \$1.5 trillion, many Millennials are questioning the value of a college education, especially since as recent as 2012, half of all new college graduates were still unemployed or underemployed. [11] Perhaps equally alarming is that universities have adopted corporate attitudes with divestment in their instructors, central to university life, at the forefront. Between 2005-2015, the number of tenure-track faculty positions declined 1.3%, while the number of non-tenure track faculty, including adjuncts who work on a contractor basis with no benefits, grew by an unsettling 21.5%. [12]

In what may amount to a silver lining, the growing corporatization of higher education has motivated more graduate assistants to view themselves as expendable employees and not just aspiring scholars. During my tenure as President of the Temple University Graduate Students Association (TUGSA), we experienced a dramatic increase in our union's membership in large part due to the union's ability to leverage the socioeconomic and political upheavals taking place within and outside the academy to promote awareness and advocacy. As a union that neither collects fair share fees nor mandates membership and has high turnover, continuous education and engagement with the graduate employee community was both central to increasing membership and a necessity to ensuring our survival - a practice more storied public-sector labor unions must now adopt in the age of *Janus*. Throughout my tenure, TUGSA consistently argued to students and administrators alike that graduate employees live perhaps the most precarious lives of all University employees thanks to not only a paycheck that barely qualifies as a living wage, but also the conflicting state in which employees simultaneously labor under the tutelage of an employer who also serves as an academic adviser capable of influencing one's career well after graduation.

One particularly acrimonious area of contention between the union and the University was the latter's adoption of a zero-based budgeting model known as Responsible Center Management (RCM). Imported from the world of business and carelessly applied to a public institution, RCM required Temple's constituent colleges for balancing their budgets based on student enrollment - a

practice that is particularly devastating to liberal arts departments who have naturally lower enrollments compared to their STEM or professional counterparts. Consequently, RCM encouraged more expensive tenure track lines and even graduate assistantships, which carry tuition compensation and healthcare coverage, to be eliminated in favor of cheaper non-tenure track and adjunct lines. In fact, almost half of TUGSA's grievances filed during my tenure were connected to RCM model, underscoring the importance of how management's approach to finances have an indelible effect on the working conditions of their employees. Grievances ranged from unexplained terminations or non-renewal of graduate employee contracts (often the result of budget shortfalls) to transitioning graduate employees to adjunct employment during the later years to, in extreme cases, paying graduate employees under the table to circumvent collective bargaining requirements. The issues associated with RCM took on a social as well as economic justice component when it was revealed that the University was seeking to spend \$130 million on the construction of a new football stadium in the heart of North Philadelphia - one of the poorest regions in the country. Consequently, the union allied itself with groups such as Stadium Stompers, arguing that such a project, which would cost nearly a quarter of the University's endowment, would be much better spent on developing faculty and students as well as engaging in community development.

Perhaps most importantly, when the union engaged in its latest round of collective bargaining last academic year, the leadership saw it as an opportunity to educate the graduate employee community of the flawed logic that was the University's proposals. When Temple refused to waive student fees for graduate employees that amounted to almost \$1,000 annually, or 5.5% of pretax income - a practice common at many universities - the union argued that the fee essentially amounted to an "employment fee" since one could not be a graduate employee without also being a student. In some instances, collective bargaining became an opportunity to unite the graduate employee community behind the long forgotten international graduate employee population, which was subjected to a special "international student fee" and whose families are not only barred by federal law from seeking employment, but also abandoned by the University who rejected the union's proposal to extend subsidized healthcare coverage to dependents. Thus, TUGSA saw collective bargaining negotiations as an opportunity to construct a narrative that membership is more than just paying dues, it is about collectively taking ownership of working conditions, addressing issues of social and economic injustice for diverse constituents, and even owning a piece of the union. This narrative, which the broader labor movement must now wrestle away from antilabor groups, was essential to helping us secure significant pay increases. While the University did not accept all proposals at the bargaining table, even those vacated became a rallying cry to convince the entire bargaining unit to become more involved. Our motto continues to be that the union is you and me; better gains can only be made through a greater show of power and strength in the form of increased membership and engagement.

There is no doubt that the *Janus* decision will embolden Right-to-Work champions now that fair share fees have been struck down in 22 states. And with the impending confirmation of Brett Kavanaugh to the highest court, Republicans will push this once-in-a-lifetime opportunity to cement their anti-labor agenda despite vocal public outcry and the spectacle of a kangaroo court that is Kavanaugh's nomination hearings. While it comes as no surprise that Kavanaugh prefers siding with the employers in labor disputes, what is particularly disturbing is his blatant disregard for the labor rights of vulnerable groups, who often most need organized protections. When workers at a meatpacking plant owned by meat wholesaler Agri Processor voted to join a union in 2005, the company refused to bargain, arguing that most of the employees could not be covered by collective bargaining law because they were undocumented immigrants. While the NLRB and the majority of judges for the U.S. Court of Appeals for the District of Columbia Circuit rejected Agri Processor's claim, Kavanaugh wrote the dissenting opinion in favor of the employer. [14] For labor activists, *Janus* will mark a new age in which the Court's probable solid rightwing majority will be the

spearhead for future attacks on labor. But the lessons for the labor movement are clear: As the nation moves backwards in terms of labor rights, we must move forward with a new strategy that leverages the current socioeconomic and political instability to mobilize and educate all individuals about the critical role unions play in advocating for justice and hedging against inequality. Millennials in higher education offer an avenue by which the labor movement can gain new adherents particularly as the movement continues to grey. And while anti-labor advocates may feel they have the upper hand, it is worth remembering that Millennials will be running for office, participating in public demonstrations, and influencing policy for far more years to come.

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