



ROZENBLIT v. JERSEY CITY SCHOOL DISTRICT – BACKGROUNDER

Executive Summary

The Goldwater Institute’s Scharf-Norton Center for Constitutional Government has long been a leader in challenging unconstitutional government subsidies to private businesses and organizations. Among the most egregious of these abuses is a practice called “release time.” Under release time, government employees are “released” from the jobs they were hired to perform to work exclusively for government unions—all while receiving taxpayer-funded salaries and benefits. While on release time, government workers are paid to increase union membership, engage in political activities, lobby the government, file grievances against their employer, and negotiate for higher wages and benefits, among other things.

The practice of release time is prevalent throughout New Jersey¹ and in many states. But the collective bargaining agreement between the Jersey City School District and the Jersey City Education Association is particularly egregious. That agreement requires the government to pay the salaries of two full-time teachers who do not teach, but spend their full time performing union work.

That’s just the sort of direct handout that the New Jersey state constitution prohibits. The constitution’s “Gift Clause” forbids state or local governments from giving any money or property, or lending money or credit, to any association.² This guarantees that public money will only be spent for public purposes. Release time violates the Gift Clause by directly subsidizing the private interests of a union with taxpayer funds.

On January 4, 2017, the Goldwater Institute filed suit against Jersey City School District to block the practice of release time, and to end this form of government cronyism.

Background

Imagine if your city council contacted a local Walmart and offered to send over full-time city employees to do whatever Walmart wished—to work as checkout clerks, greeters, or janitors. They wear Walmart uniforms. They report to Walmart management. Walmart keeps the profits from their work. But they are still officially city employees, and their salaries, benefits, and pensions, are all paid for with tax dollars.

That may sound unlikely--but in fact, this type of arrangement happens every day across the country. It’s just that, instead of Walmart, the beneficiaries of this cronyism are unions. The practice of union “release time” (sometimes called “association business tie” or “official time”),

¹ New Jersey Commission of Investigation, *Union Work Public Pay: The Taxpayer Cost of Compensation and Benefits For Public-Employee Union Leave*, May 2012, available at www.state.nj.us/sci.

² See N.J. CONST. 1947, art. 8, § 3, ¶¶ 2, 3; see also N.J. CONST. 1947, art. 8, § 2, ¶ 1 (“[t]he credit of the State shall not be directly or indirectly loaned in any case.”).

state and local governments allow full-time public employees on the government payroll to go work for a private union instead of working for the public.

Release time is negotiated as part of the collective bargaining agreement between a government employers and a government-employee union. Release time comes in many shapes and sizes, but there are three basic types.

The first is “full-time release,” which lets public employees do nothing but union work. They report to union headquarters and their City supervisors do not know where they are or what they are doing, yet they receive full pay and benefits from their government employer.

The second type is a “bank of hours,” which gives unions a certain number of hours per employee that can be used however the union directs.

The third type is activity-specific release time, where the government gives the union power to use public employees for certain specified activities but not others. Activity-specific release time might be capped (such as 200 hours for union conferences) or can be unlimited, such as allowing for unlimited hours for contract negotiations with the government.

Activities performed by government employees on release time are varied, and often bear no resemblance to the duties for which the employees were hired. In many instances, release time employees engage in activities that are directly at odds with the interests of their public employers.

For example, release time is used to campaign for political candidates or to lobby legislative bodies on bills (in many cases taking positions on legislation that is contrary to the employer’s position). This means that taxpayers are forced to fund the political activities of a private organization that may be advocating for legislation with which the taxpayers disagree.

Additionally, release time is commonly used to file costly grievances against public employers. This is tantamount to a company paying several full-time employees to encourage their co-workers to file complaints against the company that the company must then resolve.

Release time is also regularly used to negotiate over wages, benefits, and other conditions of employment. When release time employees use release time to negotiate over wages and benefits, taxpayers are literally funding both sides of the negotiation—with no seat at the table themselves.

Release time is pervasive across the country,³ and is practiced at every level of government—city, state, and federal. The Department of Veteran Affairs grants nearly a million hours of release time per year, at a cost of over \$42 million to taxpayers, all for the private benefit of unions.⁴ The practice Estimates are that the total cost of release time in the U.S. is \$1 billion per year.⁵

³ See, e.g., Collective Bargaining Agreement, Las Vegas Metropolitan Police Department and Las Vegas Police Protective Association, 2011-2013, art. 5.1 (July 1, 2011); Labor Agreement, Portland Police Association, City of Portland, 2010-2013, art. 10 (July 1, 2010); Memorandum of Agreement, City of Jacksonville and Jacksonville Consolidated Lodge No. 5-30 of the Fraternal Order of Police, 2003- 2005, art. 3.3 (October 1, 2003); State Police Bargaining Unit Contract, State of Connecticut and Connecticut State Police, 2007-2010, art. 7, § 7 (July 1, 2007); Memorandum of Understanding, Salt Lake City and American Federation of State, County, and Municipal Employees, Local 1004, 2013- 2016, art. 6 (June 23, 2013); Memorandum of Understanding, Baltimore County Administration and Baltimore County Federation of Public Employees, 2010-2012, § 2.3 (July 1, 2010).

⁴ Diana Furchtgott-Roth, “Hundreds of VA Employees Working for Union on Taxpayers’ Dime,” Washington Examiner, Jun. 11, 2013, <http://washingtonexaminer.com/diana-furchtgott-roth-hundreds-of-va-employees-working-for-union-on-taxpayers-dime/article/2531611>.

⁵ Mallory Factor, “How Public Unions Exploit the Ruse of ‘Official Time,’” Wall Street Journal, Oct. 1, 2012, <http://online.wsj.com/news/articles/SB1000087239639044332440457759129176471006>. See also Mark Flatten, “Federal Employee Unions Use Tax-Funded Official Time, Money to Building Political Muscle,” Washington

In the Jersey City School District, two full-time teachers are paid by taxpayers to perform work exclusively for the government union. The estimated cost to taxpayers is nearly \$1.2 million over five years.⁶ Under the contract currently in effect, the District grants the president of the JCEA (and anyone he designates) permission to devote all of his time to association business. That means JCEA can release teachers, counselors, and teacher assistants from their educational duties, so that they can perform union duties while still receiving full pay, benefits, and insurance coverage from the District. And the president of JCEA and his designee are paid full time salaries and benefits even though they spend their entire time performing no work as educators. In fact, even though the president of JCEA goes to union offices each day, the contract requires the District to set aside an office and a parking spot at the District's offices, regardless of whether they sit empty all day.

Legal Analysis

The basic principle here is simple: public money should be spent for public purposes. Whenever private interests are paid government money, the government should get some fair value in return for those expenditures.

That principle is embodied in the Gift Clause of the New Jersey Constitution—actually, three clauses,⁷ that together forgive state or local governments from giving or lending money or credit to private associations. While the government can *buy* things from private entities, any expenditure of taxpayer money by the government must be for a public purpose—meaning that the activity must benefit the community as a whole and be directly related to the function of government. Also, the private entity receiving the benefit must represent the controlled means by which the government accomplishes the purpose, so that the private entity becomes a special public agent—essentially an arm of the government.

The release time benefits JCEA enjoys under its agreement with the District promote the union's purposes only. They do not serve a public purpose because they do not benefit the public welfare or the community as a whole. The release time provisions also lack any provisions to ensure that the union acts essentially as an arm of the government. But that, of course, is because the union exploits these benefits for its own private purposes.

The New Jersey Constitution prohibits public funding of private activities. This case seeks to restore that important protection.

Case Logistics

The Goldwater Institute represents Jersey City taxpayer Moshe Rozenblit and New Jersey taxpayer Won Kyu Rim. The Defendants are the Jersey City School District and the JCEA. The case was filed in the Hudson County Superior Court.

Taxpayer plaintiffs seek an order declaring the release time provisions in the District and JCEA contract unconstitutional and barring their further enforcement.

Examiner, Feb. 5, 2013, <http://washingtonexaminer.com/federal-employee-unions-use-tax-funded-official-time-money-to-build-political-muscle/article/2543269> (noting that federal official time alone costs taxpayers an estimated \$155.6 million in fiscal year 2011).

⁶ *Id.*, note 1.

⁷ N.J. CONST. Article VIII, §§2 and 3.

The Legal Team

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