



January 18, 2023

E-MAIL AND CERTIFIED MAIL

Dr. Gabriel Trujillo
Superintendent of Tucson Unified School District
1010 East 10th Street
Tucson, Arizona 85719
Fax: 520-225-6060
Gabriel.Trujillo@tusd1.org

Re: Union Dues Deduction Revocation Restrictions

Dear Superintendent Trujillo:

The Goldwater Institute is a public policy and public interest litigation organization, dedicated to upholding the constitutional rights of all citizens. I write to highlight an alarming restriction found in various collective bargaining agreements entered into by the Tucson Unified School District (“TUSD” or “the District”) that infringe on the free expression and associational rights of TUSD employees. The District appears to have also adopted policies and practices that exacerbate this unconstitutional activity. We request that the District immediately act to bring these agreements and policies and practices made pursuant to them into compliance with federal and state law.

As you know, the District has entered into memoranda of understanding with four labor organizations: the American Federation of State, County, and Municipal Employees, Local 449, AFL-CIO (“AFSCME”); the Communications Workers of America (“CWA”); Educational Leaders, Inc. (“ELI”); and the Tucson Education Association (“TEA”). The latter is party to two separate agreements with the District: a “Consensus Agreement” and a separate “White Collar and Food Service Agreement.”

We have reviewed these documents and believe that the provisions creating annual dues deduction revocation windows¹ or deadlines² do not comport with federal or state law.

¹ The Memorandum of Understanding with AFSCME—the worst of the five agreements—restricts membership cancellation and dues deduction revocations to just two weeks out of the year: May 1 – May 15. *See* MOU, pp. 9–10. Similarly, the Supervisory/Professional Agreement with CWA only allows members to cancel their membership and dues deductions during the month of July. *See* Agreement, p. 9.

² The two contracts with TEA impose an annual revocation deadline of August 1. *See* Consensus Agreement, p. 11; White Collar and Food Service Agreement, p.8. Likewise, the “Meet and

Additionally, the District’s requirement that an employee receive union authorization before the District will stop an employee’s dues deduction is also unlawful. These provisions impermissibly restrict when an employee may terminate their union membership and thereby halt the deduction of union dues from their paychecks. Currently, even if an employee revokes their consent, the District continues to deduct dues from each paycheck until the next opt-out period commences or the current membership year ends and until the employee receives union consent to opt-out. This is not only unfair and predatory—it is also unconstitutional.

As you are likely aware, in *Janus v. AFSCME*, 138 S. Ct. 2448, 2459–60 (2018), the United States Supreme Court held that compelling public employees to subsidize a union violates the First Amendment. The Court observed that, “[t]he **right to eschew association** for expressive purposes is ... protected.” *Id.* at 2463 (emphasis added) (citing *Roberts v. U.S. Jaycees*, 468 U. S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a **freedom not to associate.**”) (emphasis added), and *Pacific Gas & Elec. Co. v. Pub. Util. Comm’n of Cal.*, 475 U.S. 1, 12 (1986) (plurality opinion) (“[F]orced associations that burden protected speech are impermissible.”)). Thus, the Court held that, “[n]either an agency fee *nor any other payment to the union* may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, *unless the employee affirmatively consents to pay.*” *Janus* at 2486 (emphasis added). Such consent must be proven by “clear and compelling evidence.” *Id.* (citation and internal quotation marks omitted).

Arizona law contains even broader protections. *See, e.g., Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 282 ¶ 47 (2019) (a violation of First Amendment principles “necessarily implies” a violation of Arizona’s broader free expression principles). In particular, Arizona’s Right to Work laws—Arizona Constitution, article XXV and A.R.S. §§ 23-1301–07— forbid government entities from imposing “the requirement that any person participate in *any form or design* of union membership.” *AFSCME Local 2384 v. City of Phoenix*, 213 Ariz. 358, 367 ¶ 23 (App. 2006) (emphasis added).

TUSD’s restrictions force employees to remain union members and pay for union dues through payroll deductions unless they receive union approval, even *after they have expressly revoked their consent*, until the next annual opt-out period rolls around. An employee revocation is obviously evidence that an employee does not affirmatively consent to pay union dues. Additionally, the *District* bears the burden of proving affirmative consent, and mandating opt-out windows and requiring union authorization to stop dues deductions show that the District has not and cannot meet this burden of proof.

In order to prevent ongoing and future unconstitutional activity, the District must immediately revoke or revise any MOU provision that includes a union dues opt-out period and any requirement that a labor union must approve an employee’s request to stop the deduction of union dues. The District must also revise any policy and procedure that imposes these unconstitutional conditions.

Confer Agreements” with ELI require cancellations to be submitted on or before the first Friday in August.” *See Agreements*, p.4.

Our staff is available to discuss these matters with you at any time.

We appreciate your prompt and thoughtful consideration and look forward to receiving confirmation that the District has taken actions to bring its labor agreements into compliance with the U.S. and Arizona Constitutions.

Should you have any questions regarding this matter, please do not hesitate to contact me directly at pjackson@goldwaterinstitute.org or by calling our main office at 602-462-5000.

Sincerely,



Parker Jackson
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

cc: (via email only)

TUSD Governing Board
governingboard@tusd1.org

Jennifer Eckstrom, TUSD Board Member
jennifer.eckstrom@tusd1.org

Natalie Luna Rose, TUSD Board Member
Natalie.LunaRose@tusd1.org

Val Romero, TUSD Board Member
val.romero@tusd1.org

Dr. Ravi Shah, TUSD Board Member
ravi.shah@tusd1.org

Sadie Shaw, TUSD Board Member
Sadie.Shaw@tusd1.org

Robert S. Ross, Jr., TUSD General Counsel
Robert.Ross@tusd1.org

Maricela Meza, TUSD Director of Employee Relations
Maricela.Meza@tusd1.org