



February 17, 2023

***E-MAIL AND CERTIFIED MAIL***

Sonia Blain, City Attorney  
City of Tempe  
21 E. Sixth Street, Suite 201  
Tempe, AZ 85281  
Fax: 480-350-8645  
sonia\_blain@tempe.gov

Re: UAEA Dues Deduction Revocation Restrictions

Dear Ms. Blain:

The Goldwater Institute is a public policy and public interest litigation organization, dedicated to upholding the constitutional rights of all citizens. I write to notify you of an unlawful provision found in the collective bargaining agreement between the City of Tempe (“Tempe” or “the City”) and the United Arizona Employee Association (“UAEA”) that infringes on the free expression and associational rights of Tempe employees. The City appears to have also adopted policies and practices that exacerbate this unconstitutional activity. We request that the City immediately act to bring this agreement, as well as any policies or practices made pursuant to it, into compliance with federal, state, and City law.

As you know, Tempe has entered into memoranda of understanding (“MOUs”) with several labor organizations: the City of Tempe Firefighters’ Unit (“Firefighters’ Unit”); the Tempe Officers Association (“TOA”); the Tempe Supervisors’ Association (“TSA”); and UAEA. While the agreements with the Firefighters’ Unit,<sup>1</sup> TOA,<sup>2</sup> and TSA<sup>3</sup> each allow employees to discontinue or amend their payroll deductions for union dues at any time,<sup>4</sup> the

---

<sup>1</sup> *City of Tempe Firefighters’ Unit Memorandum of Understanding (MOU), July 1, 2022–June 30, 2025*, Article 1 Section 8, p.6,

<https://www.tempe.gov/home/showpublisheddocument/75232/637921041012170000>.

<sup>2</sup> *Tempe Officers Association Memorandum of Understanding, July 1, 2022 –June 30, 2027*, Article 4 Section 5, p.7,

<https://www.tempe.gov/home/showpublisheddocument/75272/637926925077670000>.

<sup>3</sup> *Memorandum of Understanding between the Tempe Supervisors’ Association and the City of Tempe, July 1, 2021–June 30, 2026, Amended May 26, 2022*, Article 4 Section 6, p.9, <https://www.tempe.gov/home/showpublisheddocument/90624/637902853852670000>.

<sup>4</sup> The agreements vary slightly in language as to the required method of revocation. Firefighters’ Unit members are expressly required to submit a “written authorization,” while the TSA and

UAEA MOU<sup>5</sup> stands alone in restricting when employees may leave the union and stop the deduction of union dues from their pay.

Section 1-1(6)(C) of the UAEA MOU requires that “Unit Employees who are or become Association Members will remain members of the Association in good standing *for at least one (1) year from the date of membership enrollment.*” (emphasis added). Additionally, “[a]fter the first year, Association Members may withdraw their authorization for dues deduction upon written notice to the Association and the City *during an annual open-enrollment period of thirty (30) days preceding the anniversary date of their enrollment.*” (emphasis added).

Worse still, the written notice the City requires its employees to provide—its “Payroll Deduction Update” form<sup>6</sup>—further restricts the associational rights of Tempe employees by mandating that an employee receive union authorization before the City will stop an employee’s dues deduction. “**NOTE: UAEA employees electing to stop deductions must contact their UAEA representative and/or the UAEA president for processing per *Article 1, 6.C* of the UAEA MOU. Employees must receive a signature from the UAEA representative prior to turning their form into [sic] Human Resources.**” Attachment 1. The form requires under “Approvals” both the employee’s signature and the UAEA representative’s signature, along with the “UAEA Deduction Stop Date per MOU.” *Id.*

We believe that these restrictions are unlawful.

The City’s practices impermissibly restrict when and how an employee may terminate their union membership and halt the deduction of union dues from their paychecks. Currently, even if an employee revokes their consent, the City appears to continue deducting dues from each paycheck until the next opt-out period commences and until the employee receives union consent. 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 *Pac. 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

---

TOA agreements are silent on this point. However, in practice it appears that TSA and TOA members must also use a written form. See Payroll Deduction Update Form (“**TOA and TSA** employees may stop deductions by completing the form and submitting it to Human Resources.”).

<sup>5</sup> *Memorandum of Understanding between United Arizona Employee Association (UAEA) and the City of Tempe, July 1, 2021–June 30, 2026*, Article 1 Section 1-1(6), p. 7, <https://tinyurl.com/3mx6wtkr>.

<sup>6</sup> The Payroll Deduction Update form was provided to us by the City on September 2, 2022 in response to a public records request.

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*, 138 S. Ct. 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).

Moreover, the agreement also appears to even violate City Code. Tempe City Code Sec. 2-403(a) provides:

Employees have the right to participate on behalf of or engage in activities on behalf of an employee organization *and have the right to refrain from such activity*. Employees shall be free from any interference, *restraint*, or coercion by any employee, supervisor, or manager for *or against employee organizations*. Violations will necessitate disciplinary action.

*Id.* (emphasis added).

The MOU’s restrictions force employees to remain UAEA members and pay union dues through payroll deductions 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 *City* bears the burden of proving affirmative consent, and mandating opt-out windows and requiring union authorization to stop dues deductions show that the City has not and cannot meet this burden of proof.

The City also appears to have been aware of the potential illegality of these restrictions when the MOU was drafted, as it attempted to shield itself from liability. Section 1-1(6)(B) states, “The City assumes no liability on account of any action taken pursuant to this section. The Association agrees to indemnify, defend and hold the City, its agents, employees, and officials, harmless for taking action in conformance with this section.”

Of course, the City cannot immunize itself from constitutional requirements in MOUs. The City agreed to include these unconstitutional restrictions in the MOU, which was approved by the City Council.<sup>7</sup> That act violates the First Amendment, the Arizona Constitution, Arizona’s Right to Work statutes, and City Code.

---

<sup>7</sup> City Council Resolution No. R2021.65, adopted May 27, 2021.

In order to prevent ongoing and future unconstitutional activity, the City should immediately revoke or revise the UAEA MOU, the Payroll Deduction Update form, and any other policy or procedure that imposes these unconstitutional conditions. The City should also decline to agree to these unconstitutional provisions in future MOUs.

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 City has taken actions to bring the UAEA agreement and dues deduction form into compliance with the law.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Parker Jackson', with a long horizontal flourish extending to the right.

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

Attachment

Ms. Sonia Blain  
February 17, 2023  
Page 5 of 5

cc: (via email only)

Corey D. Woods, Mayor  
corey\_woods@tempe.gov

Jennifer Adams, Vice Mayor  
jennifer\_adams@tempe.gov

Arlene Chin, Councilmember  
arlene\_chin@tempe.gov

Doreen Garlid, Councilmember  
doreen\_garlid@tempe.gov

Berdetta Hodge, Councilmember  
berdetta\_hodge@tempe.gov

Randy Keating, Councilmember  
randy\_keating@tempe.gov

Joel Navarro, Councilmember  
joel\_navarro@tempe.gov

Andrew B. Ching, City Manager  
andrew\_ching@tempe.gov

Tom Duensing, Deputy City Manager  
tom\_duensing@tempe.gov

# **Attachment 1**

# Payroll Deduction Update



Employee Name (Please Print)

Employee ID

## Start Deductions:

Employees may **start** UAEA, TOA or TSA deductions in PeopleSoft HRMS Self-Service (*PeopleSoft HRMS > Main Menu > Self-Service > Payroll & Compensation > Union Dues*) or complete this form.

## Stopping Deductions:

TOA and TSA employees may stop deductions by completing the form and submitting it to Human Resources.

**\*NOTE:** UAEA Employees electing to **stop** deductions must contact their UAEA representative and/or the UAEA president for processing per **Article 1, 6.C** of the UAEA MOU. Employees must receive a signature from the UAEA representative prior to turning their form into Human Resources.

## Completing the Form:

1. Check one box for Start/Change or Stop for each deduction.
2. Select the correct deduction code from the CODE / DESCRIPTION box. Enter that code in the Code block.
3. Enter deduction amount that applies to the deduction selected.
4. The Effective Date is the first day of the pay period.

### DEDUCTIONS:

CODE	DESCRIPTION
ERF	Employee Relief Fund
IAFF	IAFF Local 493
UAEA*	United Arizona Employees Association (\$10.00)
TOA	Tempe Officers' Association (\$23.50)
TOA2	Tempe Officers' Association (\$24.50)
TOA3	Tempe Officers' Association (\$25.50)
TSA	Tempe Supervisor's Association (\$12.50)

☐ START/CHANGE

☐ STOP

Code

\$ Amount

Effective Date

☐ START/CHANGE

☐ STOP

Code

\$ Amount

Effective Date

☐ START/CHANGE

☐ STOP

Code

\$ Amount

Effective Date

## APPROVALS:

Employee Signature

Date

Human Resources Representative

Date

## FOR UAEA EMPLOYEES ONLY:

UAEA Representative Signature

Date

UAEA Deduction Stop Date per MOU