I.R. NO. 2019-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODLAND TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2019-047

CHATSWORTH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based upon an unfair practice charge alleging that the public employer unlawfully issued a letter to all Association members of a broad-based public school collective negotiations unit requiring them to provide new written authorizations to make dues deductions by a specified date. The charge alleges that the public employer was aware of each member's decision previously authorizing such deductions, pursuant to N.J.S.A. 52:14-15.9e. The charge alleges that the employer's conduct violates section 5.4a(1), including the Workplace Democracy Enhancement Act, and 5.4a(2) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Designee determined that the Association had established the necessary standards for granting interim relief, including that it would suffer irreparable harm if the Board's demand for re-authorization was not rescinded during the pendency of the unfair practice charge. The Designee ordered the public employer to immediately retract its letter and write to all members that no authorizations are required and that their authorizations shall continue unless it receives timely notification(s) from each of them expressing their desire to withdraw from membership.

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Appearances:

For the Respondent
Parker McCay
(Amy R. Guerin, of counsel)

For the Charging Party
Selikoff & Cohen, attorneys
(Steven R. Cohen and Keith Waldman, of counsel; Hop T. Wechsler, on the brief)

INTERLOCUTORY DECISION

On August 10, 2018, Chatsworth Education Association (Association) filed an unfair practice charge against Woodland Township Board of Education (Board), together with an application for interim relief, a proposed Order to Show Cause with Temporary Restraints, a proposed Order Granting Preliminary Injunction, certification, exhibits and a brief. The charge alleges that on or about July 30, 2018, the Board sent a letter to the employees

in the collective negotiations unit (comprised of certificated and non-certificated staff) represented by the Association, ". . . demanding that they provide new written authorization to make dues deductions by no later than August 15, 2018." An attached copy of the letter, on Board letterhead, advises "staff members" desirous of having deductions made from their compensation, ". . . for the purpose of paying dues and/or fees to the bona fide employee organization that you designate [to] please sign and return this authorization with your signature . . . no[t] later than August 15, 2018." The letter advises that the Board is "required" to obtain such authorizations ". . . pursuant to the U.S. Supreme Court's decision in Janus v. AFSCME [138 S.Ct. 2448, 585 U.S. ___ (2018)] (Janus) and consent

requirements of N.J.S.A. 52:14-15.9e."[1/] The returnable form is part of the one-page document.

The charge alleges that within a short time after a unit employee is hired, ". . . each member of the Association submitted a written request to the Board, by and through its disbursing officer, indicating his or her desire to have deductions made from his or her compensation for the purpose of paying dues to the Association." The charge alleges that the

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1/ The statute provides, in a pertinent part:

> Whenever any person holding employment, whose compensation is paid by this State or by any county, municipality, Board of education or authority in this State, or by any Board, body, agency or commission thereof shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation, for the purpose of paying the employee's dues to a bona fide employee organization, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.
>
> Any such written authorization may be withdrawn by such person holding employment at any time by the filing of notice of such withdrawal with the above-mentioned disbursing officer. The filing of notice of withdrawal shall be effective to halt deductions as of the January 1 or July 1 next succeeding the date on which notice of withdrawal is filed.

Board is aware of each member's decision authorizing deductions and is required to maintain records of those requests.

The charge alleges that on August 1, 2018, the Association President, who received a copy of the Board letter, issued an email to the Board Superintendent advising that if the Board did not cease and desist ". . . from its reauthorization demand" and did not continue membership deductions as it historically has done, the Association would proceed with legal remedies.

The charge alleges that the Board's conduct violates section 5.4a(1) and (2)[2/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), including its recent amendment at section 5.14(a)[3/] [Workplace Democracy Enhancement Act].

The application seeks an Order requiring the Board to cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the Act; immediately retract the memorandum sent to Association members;

2/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization."

3/ This provision directs public employers, "not [to] encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization and shall not encourage negotiations unit members to revoke authorization of the deduction of fees to an exclusive representative employee organization."

notify members in writing that no new "opt-in" is required and advise them that unless it (the Board) receives timely notification from them expressing a wish to withdraw membership, it will continue voluntary dues deduction; restraining the Board from conduct that encourages members to revoke authorization dues deductions; requiring the Board to make whole the Association for losses incurred as a consequence of the Board's unlawful action.

On August 13, 2018, and acting in my temporary absence as Designee, Commission Acting General Counsel issued an Order to Show Cause with Temporary Restraints enjoining the Board from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act; failing to continue to treat Association members as members, including the continuation of voluntary dues deductions, regardless of whether members have provided written reauthorization of dues deductions, pursuant to the Board's letter; engaging in any conduct that encourages unit members to resign or relinquish their membership in the Association; and engaging in any conduct that encourages negotiations unit members to revoke authorization of dues deductions to the Association. The Temporary Restraint also enjoins the Board from failing to continue treating Association members, ". . . as members in all respects," including the continuation of voluntary dues deductions, regardless of whether any member returned the Board's letter. The Order and cover

letter further advises that the Board may seek to dissolve or modify the temporary restraints; that the Board's answering brief, together with proof of service, was due on August 22, 2018 (changed upon Board request to August 24th) and argument on the application shall take place in-person on August 29, 2018 in the Commission's Trenton offices.

On August 21st, Counsel for the Board filed a letter advising that it hadn't received a copy of the executed Order with Temporary Restraints from the Board until August 20th and requesting an extension of time until August 24th to file its opposing documents. The request was approved. On August 22nd, the Board filed a Motion to Dissolve Temporary Restraints, together with a certification and brief. On the same date, I wrote to the parties advising that I would first hear argument on the Board's motion on the return date of the Order. On August 24th, the Board filed its papers opposing the Order to Show Cause, together with certifications and a brief.

On the return date, the parties appeared and argued their cases on the record. The following facts appear.

The Board and Association have signed a series of collective negotiations agreements, the most recent of which extends from July 1, 2017 through June 30, 2020. Article VII (Deductions from Salary) provides:

A. Association Payroll Dues Deduction

a. Such deduction will be in compliance with N.J.S.A. 52:14-15.9e and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to the NJEA.

b. The NJEA or its representative shall certify to the Board, in writing, the current rate of membership dues. If the Association changes the rate of its membership dues, the Association shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from members' salaries money for local, state and/or national Association services as said members individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such Association or Associations.

The practice among the parties has been that shortly after the hiring of new Board (unit) employees, they are provided membership applications to join the Association and affiliated organizations. If the employee chooses to join the Association, he or she completes, signs and returns the application form, which provides a written authorization to the Board to deduct from his or her compensation membership dues, payable to the Association. The Association sends the authorization to the NJEA, which then sends the authorization to the Board. The form, entitled in bold print, "NJEA-NEA ACTIVE MEMBERSHIP APPLICATION," solicits the employee's name and other personal information, and

facts regarding employment location, position(s), length of workweek, salary, etc. It also provides in a pertinent part immediately above a "required" signature line and date:

> I hereby request and authorize the disbursing officer of the above school district to deduct from my earnings, until notified of termination, an amount required for current year membership dues and such amounts as may be required in each subsequent year . . . to be paid to such person as may from time to time be designated by the local association. The authorization may be terminated only by prior written notice from me effective January 1 or July 1 of any year. I waive all right and claim for monies so deducted and transmitted and relieve the board of education and its officers from any liability therefore.

Upon a review of Board files, ". . . it was discovered that the Board does not have any written authorization from any Association member to deduct Association dues from their paychecks."

On or about July 30, 2018, the Board sent letters to its employees, providing in a pertinent part:

> Pursuant to the United States Supreme Court's decision in Janus v. AFSCME and the consent requirements of N.J.S.A. 52:14-15.9e, the District is required to obtain written authorization bearing either a physical or electronic signature, for each employee who desires to have deductions made from their compensation for the purpose of paying dues and/or fees to a bonafide employee organization.

The letter solicits those desirous of having money deducted for that purpose to complete, sign and return the attached form to the Board Business Administrator by August 15, 2018.

On July 31, 2018, Association President Tracy Derkas, a Board teacher and unit employee, received the Board's letter seeking written authorization for dues deductions. Neither she nor any officer of Association received advanced notice of the Board's intention to solicit authorizations or an advanced copy of its letter.

On August 1, 2018, Derkas emailed Board Superintendent Misty Weiss, with a copy to the Business Administrator, demanding that the Board "cease and desist" from seeking authorizations from members, writing that Janus addresses only, ". . . whether involuntary fair share fee or agency fees are permitted and holds that they are not." She wrote that if the Board insisted that, ". . . existing members affirmatively opt-in," the Association would pursue its legal remedies. She requested a written reply not later than August 6, 2018.

On August 6, 2018, Derkas phoned Weiss. Weiss said she had not received Derkas's August 1 email. Derkas re-sent her email, setting forth a new reply date of August 7, 2018. Weiss subsequently replied to Derkas that her email had been forwarded to Board Counsel.

On August 20, 2018, Superintendent Weiss wrote to Derkas, advising that Janus placed "a responsibility" on the district to have "clear and compelling evidence that employees clearly and affirmatively consent to the deduction or collection of an agency fee or any other payment to the union from their wages." The Superintendent also wrote that the WDEA requires written authorization from employees for deductions of membership dues to a bona fide employee organization, citing N.J.S.A. 52:14-15.9e. The penultimate paragraph provides that the Board's [July 30] letter:

> . . . reflects the School District's obligation to verify that all future payroll deductions for either union dues or agency fees will fully meet the requirements of the Janus decision and the WDEA. As a public employer, we must have written documentation from every employee authorizing us to make deductions from their salary . . .

The Superintendent wrote that she "encourages" Derkas to have members return the letter as quickly as possible.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate that it has a substantial likelihood prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying

relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 36 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

A public employer violates 5.4a(1) of the Act if its actions tend to interfere with an employee's statutory rights and lack a legitimate and substantial business justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978); N.J. Sports Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979). In Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20, 21 (¶3007 1998), the Commission explained:

> [W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees. . . . If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act.

The Commission need not determine whether an action actually interfered or was intended to interfere with employee rights. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983).

A public employer violates 5.4a(2) if its conduct dominates or interferes with the formation, existence or administration of an employee organization. In Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission explained:

> Domination exists when the organization is directed by the employer, rather than the employees. . . . Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity. [12 NJPER at 765]

The Commission has also written that the type of activity prohibited by 5.4a(2) must be, ". . . pervasive employer control or manipulation of the employee organization itself." North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

In State of New Jersey (Local 195), P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984), the Commission found that the State violated 5.4a(1) and (2) of the Act when it discontinued dues deductions of an employee transferred between two negotiations units who did not execute a revocation or withdrawal notice. The employee had signed a dues deduction authorization, ". . . making known to [his employer] his desire to have deductions made from his compensation for the purpose of paying dues to [the union], a

bona fide employee organization of which [the employee] is a member," pursuant to N.J.S.A. 52:14-15.9e. Id., 11 NJPER at 53-54. See also, Passaic Cty. and SEIU, Local No. 389, P.E.R.C. No. 88-64, 14 NJPER 125 (¶19047 1988) [app. dism. App. Div. Dkt. No. A-2911-87T1 (6/22/88)].

In this case, the legal right underpinning the Association's claim is the unfettered continuation of membership dues deductions that originated in the unit employees' initial written authorizations (soon after their hire dates) and were forwarded to the Board, pursuant to N.J.S.A. 52:14-15.9e. The only prescribed method of revocation under the statute is the employee's "notice of withdrawal" to the "disbursing officer" -- the Board Business Administrator.

The Board neither contests its receipt of those authorizations, nor its past possession of them for an unspecified period of time. No anecdotal facts indicate that any unit employee has contested a dues deduction. The Board claims only -- under less than clear circumstances -- not to possess the authorizations now. These circumstances do not provide lawful justification under the statute for the Board's direct solicitation of Association members to re-authorize deductions. In other words, I read the statute to require the Board to continue deducting members' dues unless it receives employee revocation notice(s). See Local 195, IFPTE v. State, 88 N.J. 33

(1982); City of Jersey City, I.R. No. 97-20, 23 NJPER 354 (¶28167 1997). (The Commission has jurisdiction to interpret State statutes, and specifically, N.J.S.A. 52:14-15.9(e)). In fact, the authorization form signed by the Association members and provided to the Board sets forth that statement clearly.

The Board's citation of Janus in its letter to employees further undermines the legitimacy of the solicitation. Janus holds that deductions of representation or agency fees from non-members only are unlawful. The decision does not mandate members (as the Board represents it does) to authorize "dues deductions" after having done so previously. The Court in Janus wrote:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor any other attempt be made to collect such a payment unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed [citations omitted]. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met. [Janus, slip. op. at 48]

It is axiomatic that members exercise their First Amendment rights by authorizing dues deductions. The Association members in this case exercised those rights and "consented" by having previously signed the authorization forms.

The WDEA prohibits public employers from encouraging unit employees to resign or relinquish their membership in their exclusive representative employee organization. It also

prohibits public employers from encouraging unit members to revoke their authorization of the deduction of "fees" to an exclusive employee organization. Section 5.14(a). The WDEA provides that a violation of this section violates 5.4a(1) of the Act. Section 5.14(c).

The Board's letter seeking reauthorization of membership dues by August 15, 2018 prompts employees to reconsider or discourage their membership in the Association. The Board asserts that its letter to employees does not threaten cessation of deductions. During argument, Board Counsel acknowledged that a member's repeated failure to return the reauthorization form would eventually culminate in an "administrative determination" on continuing deductions. I infer that the "determination" would be a cessation of deductions. For these reasons, I believe that the letter, having a tendency to interfere with protected rights, would violate the WDEA and section 5.4a(1) of the Act. And for all the reasons set forth, I find that the Association has a substantial likelihood of success on the merits of its 5.4a(1) charge in a final Commission decision.

I also find that the Association has demonstrated irreparable harm. In New Jersey Dept. of Law and Public Safety, I.R. No. 83-2, 8 NJPER 425 (¶13197 1982), a charge filed by the majority representative alleged that the State had undermined its status as representative by dealing with a minority organization

over terms and conditions of employment. Finding that the union had a substantial likelihood of success on the factual and legal merits of the charge, the Designee observed:

> I am also convinced that CWA does suffer some harm for which interim relief is appropriate. As the cases cited above [here omitted], especially Lullo v. International Assoc. of Fire Fighters, 55 N.J. 409 (1970) establish, relief provided at the terminal point of an unfair practice proceeding cannot remedy the loss of prestige and power the exclusive representative suffers during the time another organization is permitted to act on behalf of unit employees concerning terms and conditions of employment. [Id., 8 NJPER at 428]

In this matter, I find that the Board letter, discouraging or tending to discourage membership, or, as prohibited in the WDEA, encouraging unit employees to revoke their authorization of dues deductions, cannot be remedied after completion of litigation of this case. Interim and sustained unlawful encouragement undermines the Association's status as majority representative, implicating its power and prestige to represent its membership.

I also find that hardship to the Association if interim relief is not granted, outweighs hardship to the Board in granting such relief. Discouragement of membership, revocations of authorization, loss of membership, diminished capacity to serve effectively as majority representative in administering and negotiating collective negotiations agreements are singly and

collectively, serious threats to the viability of the Association. On the other hand, the Board, now relieved of the duty to deduct agency fees, is concerned solely with liability for membership dues deductions. (That concern appears unwarranted because employees have relieved the Board of that liability by signing the authorization form). The Board has received those authorizations, even if it does not currently possess them. The Board need only comply with its duty under N.J.S.A. 52:14-15.9e in the event it receives lawful employee revocations of membership. That obligation constitutes little, if any, hardship.

Finally, I find that the public interest in granting interim relief will not be injured. Our statute guarantees that public employees have the right to form, join and assist any employee organization. Section 5.3. Our Legislature's most recent amendment, the WDEA, further protects employees against employer discouragement of those rights. Granting interim relief, as I do, promotes the legislated public interest.

ORDER

The Board shall immediately retract the letter sent directly to Association members by promptly informing them in writing that no new authorization of dues is required and that their authorizations shall continue unless and until it receives timely

notification from such members expressing their desire to withdraw from Association membership.

The Board shall continue to treat members as members in all respects including the continuation of voluntary dues deductions.

The Board shall cease and desist from engaging in any conduct to encourage negotiations unit members to revoke authorization of dues deductions to the Association and affiliated organizations.

The Board shall cease and desist from encouraging or discouraging employees from joining, forming or assisting the Association.

This Order shall remain in effect until the resolution of this case.

/s/Jonathan Roth
Jonathan Roth
Commission Designee

DATED: August 31, 2018
Trenton, New Jersey

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The Designee determined that the Association had established the necessary standards for granting interim relief, including that it would suffer irreparable harm if the Board's demand for re-authorization was not rescinded during the pendency of the unfair practice charge. The Designee ordered the public employer to immediately retract its letter and write to all members that no authorizations are required and that their authorizations shall continue unless it receives timely notification(s) from each of them expressing their desire to withdraw from membership.

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The practice among the parties has been that shortly after the hiring of new Board (unit) employees, they are provided membership applications to join the Association and affiliated organizations. If the employee chooses to join the Association, he or she completes, signs and returns the application form, which provides a written authorization to the Board to deduct from his or her compensation membership dues, payable to the Association. The Association sends the authorization to the NJEA, which then sends the authorization to the Board. The form, entitled in bold print, "NJEA-NEA ACTIVE MEMBERSHIP APPLICATION," solicits the employee's name and other personal information, and

facts regarding employment location, position(s), length of workweek, salary, etc. It also provides in a pertinent part immediately above a "required" signature line and date:

> I hereby request and authorize the disbursing officer of the above school district to deduct from my earnings, until notified of termination, an amount required for current year membership dues and such amounts as may be required in each subsequent year . . . to be paid to such person as may from time to time be designated by the local association. The authorization may be terminated only by prior written notice from me effective January 1 or July 1 of any year. I waive all right and claim for monies so deducted and transmitted and relieve the board of education and its officers from any liability therefore.

Upon a review of Board files, ". . . it was discovered that the Board does not have any written authorization from any Association member to deduct Association dues from their paychecks."

On or about July 30, 2018, the Board sent letters to its employees, providing in a pertinent part:

> Pursuant to the United States Supreme Court's decision in Janus v. AFSCME and the consent requirements of N.J.S.A. 52:14-15.9e, the District is required to obtain written authorization bearing either a physical or electronic signature, for each employee who desires to have deductions made from their compensation for the purpose of paying dues and/or fees to a bonafide employee organization.

The letter solicits those desirous of having money deducted for that purpose to complete, sign and return the attached form to the Board Business Administrator by August 15, 2018.

On July 31, 2018, Association President Tracy Derkas, a Board teacher and unit employee, received the Board's letter seeking written authorization for dues deductions. Neither she nor any officer of Association received advanced notice of the Board's intention to solicit authorizations or an advanced copy of its letter.

On August 1, 2018, Derkas emailed Board Superintendent Misty Weiss, with a copy to the Business Administrator, demanding that the Board "cease and desist" from seeking authorizations from members, writing that Janus addresses only, ". . . whether involuntary fair share fee or agency fees are permitted and holds that they are not." She wrote that if the Board insisted that, ". . . existing members affirmatively opt-in," the Association would pursue its legal remedies. She requested a written reply not later than August 6, 2018.

On August 6, 2018, Derkas phoned Weiss. Weiss said she had not received Derkas's August 1 email. Derkas re-sent her email, setting forth a new reply date of August 7, 2018. Weiss subsequently replied to Derkas that her email had been forwarded to Board Counsel.

On August 20, 2018, Superintendent Weiss wrote to Derkas, advising that Janus placed "a responsibility" on the district to have "clear and compelling evidence that employees clearly and affirmatively consent to the deduction or collection of an agency fee or any other payment to the union from their wages." The Superintendent also wrote that the WDEA requires written authorization from employees for deductions of membership dues to a bona fide employee organization, citing N.J.S.A. 52:14-15.9e. The penultimate paragraph provides that the Board's [July 30] letter:

> . . . reflects the School District's obligation to verify that all future payroll deductions for either union dues or agency fees will fully meet the requirements of the Janus decision and the WDEA. As a public employer, we must have written documentation from every employee authorizing us to make deductions from their salary . . .

The Superintendent wrote that she "encourages" Derkas to have members return the letter as quickly as possible.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate that it has a substantial likelihood prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying

relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 36 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

A public employer violates 5.4a(1) of the Act if its actions tend to interfere with an employee's statutory rights and lack a legitimate and substantial business justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978); N.J. Sports Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979). In Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20, 21 (¶3007 1998), the Commission explained:

> [W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees. . . . If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act.

The Commission need not determine whether an action actually interfered or was intended to interfere with employee rights. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983).

A public employer violates 5.4a(2) if its conduct dominates or interferes with the formation, existence or administration of an employee organization. In Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission explained:

> Domination exists when the organization is directed by the employer, rather than the employees. . . . Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity. [12 NJPER at 765]

The Commission has also written that the type of activity prohibited by 5.4a(2) must be, ". . . pervasive employer control or manipulation of the employee organization itself." North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

In State of New Jersey (Local 195), P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984), the Commission found that the State violated 5.4a(1) and (2) of the Act when it discontinued dues deductions of an employee transferred between two negotiations units who did not execute a revocation or withdrawal notice. The employee had signed a dues deduction authorization, ". . . making known to [his employer] his desire to have deductions made from his compensation for the purpose of paying dues to [the union], a

bona fide employee organization of which [the employee] is a member," pursuant to N.J.S.A. 52:14-15.9e. Id., 11 NJPER at 53-54. See also, Passaic Cty. and SEIU, Local No. 389, P.E.R.C. No. 88-64, 14 NJPER 125 (¶19047 1988) [app. dism. App. Div. Dkt. No. A-2911-87T1 (6/22/88)].

In this case, the legal right underpinning the Association's claim is the unfettered continuation of membership dues deductions that originated in the unit employees' initial written authorizations (soon after their hire dates) and were forwarded to the Board, pursuant to N.J.S.A. 52:14-15.9e. The only prescribed method of revocation under the statute is the employee's "notice of withdrawal" to the "disbursing officer" -- the Board Business Administrator.

The Board neither contests its receipt of those authorizations, nor its past possession of them for an unspecified period of time. No anecdotal facts indicate that any unit employee has contested a dues deduction. The Board claims only -- under less than clear circumstances -- not to possess the authorizations now. These circumstances do not provide lawful justification under the statute for the Board's direct solicitation of Association members to re-authorize deductions. In other words, I read the statute to require the Board to continue deducting members' dues unless it receives employee revocation notice(s). See Local 195, IFPTE v. State, 88 N.J. 33

(1982); City of Jersey City, I.R. No. 97-20, 23 NJPER 354 (¶28167 1997). (The Commission has jurisdiction to interpret State statutes, and specifically, N.J.S.A. 52:14-15.9(e)). In fact, the authorization form signed by the Association members and provided to the Board sets forth that statement clearly.

The Board's citation of Janus in its letter to employees further undermines the legitimacy of the solicitation. Janus holds that deductions of representation or agency fees from non-members only are unlawful. The decision does not mandate members (as the Board represents it does) to authorize "dues deductions" after having done so previously. The Court in Janus wrote:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor any other attempt be made to collect such a payment unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed [citations omitted]. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met. [Janus, slip. op. at 48]

It is axiomatic that members exercise their First Amendment rights by authorizing dues deductions. The Association members in this case exercised those rights and "consented" by having previously signed the authorization forms.

The WDEA prohibits public employers from encouraging unit employees to resign or relinquish their membership in their exclusive representative employee organization. It also

prohibits public employers from encouraging unit members to revoke their authorization of the deduction of "fees" to an exclusive employee organization. Section 5.14(a). The WDEA provides that a violation of this section violates 5.4a(1) of the Act. Section 5.14(c).

The Board's letter seeking reauthorization of membership dues by August 15, 2018 prompts employees to reconsider or discourage their membership in the Association. The Board asserts that its letter to employees does not threaten cessation of deductions. During argument, Board Counsel acknowledged that a member's repeated failure to return the reauthorization form would eventually culminate in an "administrative determination" on continuing deductions. I infer that the "determination" would be a cessation of deductions. For these reasons, I believe that the letter, having a tendency to interfere with protected rights, would violate the WDEA and section 5.4a(1) of the Act. And for all the reasons set forth, I find that the Association has a substantial likelihood of success on the merits of its 5.4a(1) charge in a final Commission decision.

I also find that the Association has demonstrated irreparable harm. In New Jersey Dept. of Law and Public Safety, I.R. No. 83-2, 8 NJPER 425 (¶13197 1982), a charge filed by the majority representative alleged that the State had undermined its status as representative by dealing with a minority organization

over terms and conditions of employment. Finding that the union had a substantial likelihood of success on the factual and legal merits of the charge, the Designee observed:

> I am also convinced that CWA does suffer some harm for which interim relief is appropriate. As the cases cited above [here omitted], especially Lullo v. International Assoc. of Fire Fighters, 55 N.J. 409 (1970) establish, relief provided at the terminal point of an unfair practice proceeding cannot remedy the loss of prestige and power the exclusive representative suffers during the time another organization is permitted to act on behalf of unit employees concerning terms and conditions of employment. [Id., 8 NJPER at 428]

In this matter, I find that the Board letter, discouraging or tending to discourage membership, or, as prohibited in the WDEA, encouraging unit employees to revoke their authorization of dues deductions, cannot be remedied after completion of litigation of this case. Interim and sustained unlawful encouragement undermines the Association's status as majority representative, implicating its power and prestige to represent its membership.

I also find that hardship to the Association if interim relief is not granted, outweighs hardship to the Board in granting such relief. Discouragement of membership, revocations of authorization, loss of membership, diminished capacity to serve effectively as majority representative in administering and negotiating collective negotiations agreements are singly and

collectively, serious threats to the viability of the Association. On the other hand, the Board, now relieved of the duty to deduct agency fees, is concerned solely with liability for membership dues deductions. (That concern appears unwarranted because employees have relieved the Board of that liability by signing the authorization form). The Board has received those authorizations, even if it does not currently possess them. The Board need only comply with its duty under N.J.S.A. 52:14-15.9e in the event it receives lawful employee revocations of membership. That obligation constitutes little, if any, hardship.

Finally, I find that the public interest in granting interim relief will not be injured. Our statute guarantees that public employees have the right to form, join and assist any employee organization. Section 5.3. Our Legislature's most recent amendment, the WDEA, further protects employees against employer discouragement of those rights. Granting interim relief, as I do, promotes the legislated public interest.

ORDER

The Board shall immediately retract the letter sent directly to Association members by promptly informing them in writing that no new authorization of dues is required and that their authorizations shall continue unless and until it receives timely

notification from such members expressing their desire to withdraw from Association membership.

The Board shall continue to treat members as members in all respects including the continuation of voluntary dues deductions.

The Board shall cease and desist from engaging in any conduct to encourage negotiations unit members to revoke authorization of dues deductions to the Association and affiliated organizations.

The Board shall cease and desist from encouraging or discouraging employees from joining, forming or assisting the Association.

This Order shall remain in effect until the resolution of this case.

/s/Jonathan Roth
Jonathan Roth
Commission Designee

DATED: August 31, 2018
Trenton, New Jersey