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# NJEA: THE TAXPAYER- FUNDED SPECIAL INTEREST

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TAXPAYER FUNDING

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MIKE LILLEY

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# NJEA: THE TAXPAYER-FUNDED SPECIAL INTEREST

## The NJEA Gains Laws That Secure Taxpayer Funding

With great deliberation and persistence over many years, the NJEA used its political clout to construct a funding system that funnels taxpayer dollars directly into its coffers.<sup>1</sup> This expertly designed legislative regime had three pillars: exclusive bargaining authority, agency fees and the automatic withholding of teachers’<sup>2</sup> dues. The legislature passed each of these laws after prolonged NJEA lobbying.

Per legislation passed in the 1960s, the NJEA established itself as the exclusive representative of teachers and was empowered to collectively bargain with local school boards, which were bound by law to negotiate in good faith. The NJEA also gained “dues check-off:” the right to have teachers’ dues deducted from their paychecks automatically (after first gaining teachers’ permission). Property taxes pay teacher salaries, so dues withholding meant that teachers and school districts effectively became pass-throughs for property tax dollars to flow directly to the NJEA. The teachers never saw the money.

Finally, in 1979, after many years of lobbying, the NJEA won the right to charge a teacher “agency fees” even if the teacher did not belong to the union. Such fees amounted to as much as 85% of regular dues, so predictably fewer than 1% of teachers opted not to join the union. This law ensured that the NJEA had an enormous base of members from which to withhold dues.

## School Districts Are the NJEA’s Bill Collector

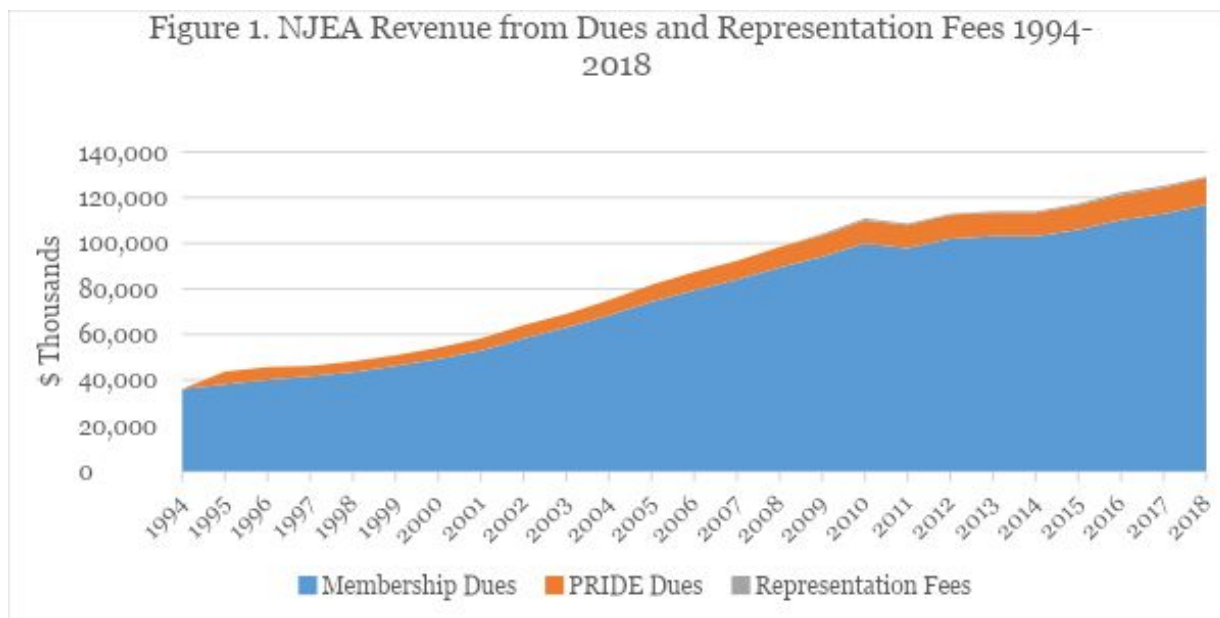
Thanks to this legislative regime, the school district essentially acts as the bill collector for a private, special interest – all on the taxpayers’ dime.

In the decades since its enactment and up until 2018, this funding system worked extremely well for the NJEA. Dues check-off and agency fees combined to provide the NJEA with an automatic and substantial annual stream of tens of millions of property tax dollars. From 1994-2018, the NJEA brought in a total of \$2.11 billion, reaching a record high of \$129 million in 2018 (Figure 1).

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<sup>1</sup> For a full account, see Part II of the AEI series, “And You Will Pay.”

<sup>2</sup> “Teachers” is used here to describe all the various education personnel that are represented by the NJEA, including 125,000 teachers, 49,000 education support personnel and 28,000 retired educators. New Jersey Education Association, “Fact Sheet,” <https://www.njea.org/about/press-room/>.



Source: Annual audited financial statements published in the *NJEA Review*.

**Taxpayer Subsidy.** But the value of the district’s being the union’s bill collector is worth far more than merely the costs to administer the dues withholding. Most private membership organizations must spend significant amounts to attract and retain members and keep them cutting a check every year for their dues. This requires substantial expenditures for communications channels to continuously persuade members to stay engaged and contributing.

As an organization with 200,000 members, the NJEA would likely have to spend many millions of dollars each year communicating with, persuading and collecting dues from its members. But the union gets this all for free.

Over the long term, being the NJEA’s bill collector constitutes an enormous taxpayer subsidy of a private, special interest worth tens of millions – or even hundreds of millions – of dollars. Money that the NJEA can then spend on politics.

### A New Law Replaces Agency Fees

In June 2018, the U.S. Supreme Court ruled in *Janus v. AFSCME* that agency fees were an unconstitutional infringement on non-members’ First Amendment rights.

Anticipating such a ruling, the NJEA did not sit idly by. As befits the most powerful political force in the state, the NJEA, along with its public sector union allies, went to work on legislation designed to circumvent *Janus* and keep its funding regime intact. With impressive celerity and before the

*Janus* ruling was even handed down, the New Jersey legislature passed the “Workplace Democracy Enhancement Act” (WDEA), which the governor signed on May 18, 2018. In the main, the WDEA imposes new mandates and requirements on districts that had been traditionally negotiated during the collective bargaining process, thus enhancing the power of the unions and limiting the power of local school boards. Thanks to the WDEA, in addition to being the union’s bill collector, school districts are now required to be the union’s bookkeeper and perhaps assist in the union’s political organizing – all at taxpayer expense.

In particular, the WDEA:

- Grants union officials unprecedented and exclusive access to existing and prospective members. The NJEA gained the right to meet with newly-hired employees within 30 days of their hiring. School districts are required to send the NJEA the personal contact information of all new and existing employees, which information must be updated by the district every 120 days. In effect, this contact information is provided to the union exclusively because it is exempt from any disclosure requirements and thus cannot be obtained by any other entity.

*So the district becomes the union’s bookkeeper, too – all on the taxpayers’ dime.*

- Grants the unions the right to meet with members on school premises during the work day to discuss union-related issues as well as to use a school’s email system to communicate with them. While such meetings may not be used to support or oppose candidates in partisan elections, school board elections are non-partisan, so it appears that such meetings could be used in support of union-endorsed school board candidates and other political activities.<sup>3</sup>

*Will the district be forced to assist the union’s political organizing, too? And the taxpayers to pay for it?*

- Expands the number of employees who are automatically considered part the bargaining unit to include part-time employees regardless of previously negotiated job-title or minimum-hours requirements.

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<sup>3</sup> The New Jersey Association of Counties appears to agree: its Executive Director, John Donnadio, said: “The legislation is very broad and may allow for the use of political messages, quite frankly, on the public dime.” Michael Symons, “NJ Lawmakers Want to Boost Public-Sector Unions,” nj1015.com, March 21, 2018, <https://nj1015.com/nj-lawmakers-want-to-boost-public-sector-unions/>. There are 86 municipalities that hold non-partisan elections, so, presumably, the municipal unions in these towns could also use town resources to engage in political activities.

- Prohibits school districts from encouraging employees to quit or not join the union, and holds the district liable for lost dues if it is found to have done so.
- Limits a teacher’s ability to stop paying dues and leave the union. Notice may only be provided during a 10-date window following a teacher’s hiring anniversary date.<sup>4</sup>

This last provision – and perhaps others – appear to run afoul of the *Janus* ruling,<sup>5</sup> and a New Jersey teacher has filed suit against the WDEA based on the *Janus* ruling. However, until that case is heard, the WDEA remains the law of the state in its entirety.

Given the remarkable accommodation of the NJEA’s interests to the detriment of school districts and other public employers, the New Jersey School Boards Association (NJSBA), the New Jersey Association of Counties and the League of Municipalities “strongly objected” to the union-backed bill. The NJSBA believes that the legislation “has the potential to disrupt the daily operation of our schools, and creates an unfair imbalance in the labor-management relationship.”<sup>6</sup>

In the end, the WDEA has effectively replaced the coercion implicit in agency fees with coercion based on mandated, exclusive access to employees and limitations on their ability to leave the union. Moreover, school districts are discouraged from informing teachers of their First Amendment rights as enunciated in the *Janus* decision.

The WDEA’s implicit coercion is well demonstrated by considering the case of a new teacher. Entering the building for the first time as an employee, the newly hired teacher is confronted with an entrenched, long-standing status quo where 99% of the teachers belong to the union and required to attend a mandatory, exclusive “persuasion” session with union officials. It seems highly likely that the new teacher would feel considerable pressure to join the union – especially since it is unlikely anyone would inform the

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<sup>4</sup> State of New Jersey, 218<sup>th</sup> Legislature, Senate, No. 2137, March 5, 2018, [https://nileg.state.nj.us/2018/Bills/S2500/2137\\_1.HTM](https://nileg.state.nj.us/2018/Bills/S2500/2137_1.HTM) The legislature did the NJEA another favor: by making withdrawal windows employee-specific, it is harder for third parties to notify employees of their rights because it is difficult to ascertain an employee’s hiring anniversary date.

<sup>5</sup> The Supreme Court ruled that before a union can deduct dues, an employee must affirmatively consent to pay them, and that such a waiver of First Amendment rights cannot be presumed but must be freely given and shown by “clear and compelling” evidence. The Heritage Foundation, “Right-to-Work for Public Employees is Here. Now What?” Winter 2019, Insider, December 20, 2018, <https://heritage.org/insider/winter-2019-insider/right-to-work-public-employees-here-now-what>

<sup>6</sup> New Jersey School Boards Association, “Legislative Update: Governor Signs Union-Backed Workplace Democracy Enhancement Act; NJSBA Supports Gun Control Measures,” May 22, 2018, <https://www.njsba.org/news-publications/school-board-notes>.

teacher of his/her First Amendment right not to join. Having joined the union, dues will be withheld, personal contact information will be sent to the union, and the teacher's ability to leave the union will be circumscribed. Going forward, the union will be a regular presence in the teacher's work day, with union meetings held on school property and union emails coming over the school's internal email system.

It is easy to see why the unions lobbied hard in support the WDEA: it circumvents *Janus*, enhances their access to new hires and their control over existing members, and conscripts the school district for even more of the union's administrative tasks. It is harder to see how teachers benefit from this. Perhaps this explains why the NJEA was unusually muted in its announcement of the passage of such a significant legislative victory as the WDEA.<sup>7</sup>

As a result of the WDEA and its interoperation with the other two pillars of the NJEA funding system, the NJEA will continue to benefit from the automatic, annual flow of property tax dollars into the future.

### The NJEA Keeps Most of the Dues for Itself

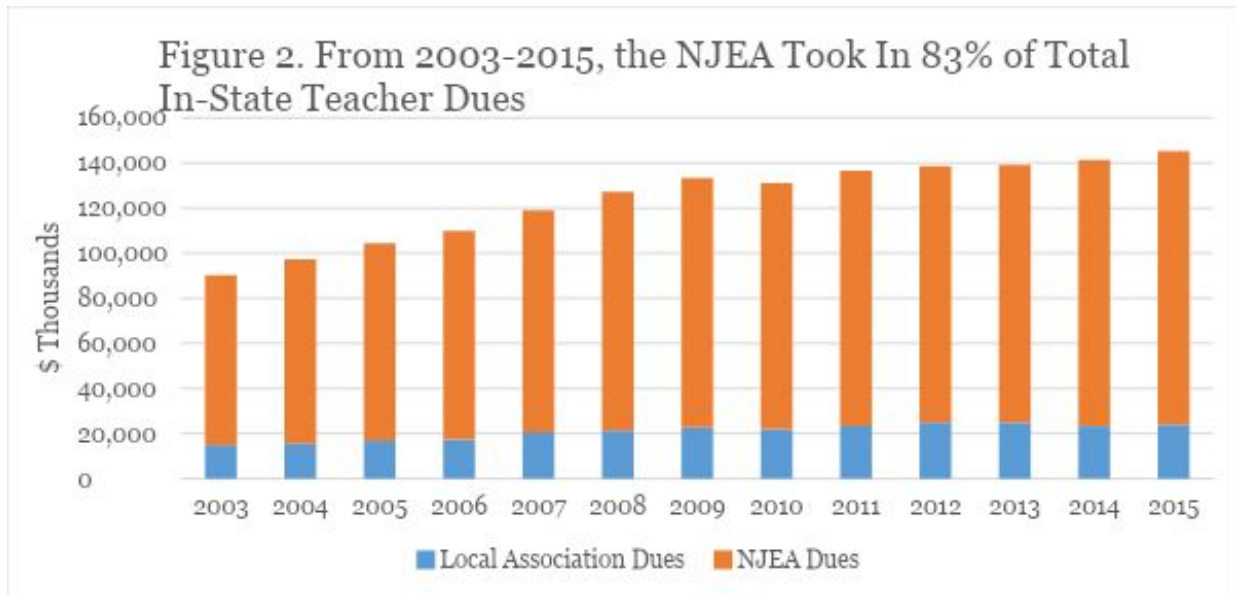
Having guaranteed this annual flow of taxpayer dollars and subsidies, the NJEA then keeps the vast majority of those dues for itself to use as it sees fit. The NJEA requires affiliates to collect "unitary dues" so that the dues for the local associations, the NJEA, and the NJEA's parent, the National Education Association (NEA), are withheld from teachers' paychecks at the local district level. The NJEA has used this system to concentrate the money in

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<sup>7</sup> Upon the enactment of the WDEA, the NJEA made no press release or public statement in a New Jersey publication. After an extensive search, the only public comment found was in an article in the national publication *Education Week*: "Honestly, I see [this law as] helping public employees in New Jersey," said Steven Baker, a spokesman for the New Jersey Education Association. "I think that's the important outcome of this: preserving the ability of the union to communicate with members, preserving the ability of the union to advocate for members." Madeline Will, "To Stem Likely Losses, Teachers' Unions Play Offense," *Education Week*, June 14, 2018, <https://www.edweek.org/ew/articles/2018/06/14/to-stem-likely-membership-losses-teachers-unions.html>. Even in its own publication for its members, the coverage was unusually muted. See June 2018 NJEA *Review*.

its own hands, with 83% of withheld dues going to the NJEA and only 17% to local associations that do most of the work representing teachers.<sup>8</sup>

Figure 2 depicts the stark reality that almost five times more teacher dues are going to fund the NJEA and its largely political activities than the local associations and their activities.



Source: New Jersey Education Association, IRS Form 990 “Parent” and “Group” filings 2003-15.

### The NJEA Is a Taxpayer-Funded and Subsidized Political Machine

The end-result is that the NJEA has rigged the New Jersey political system for its own benefit. Using its political clout, the NJEA lobbied lawmakers to construct a funding system that guaranteed the annual flow of tens of millions of dollars from property taxpayers directly into its treasury. The NJEA has used these tax dollars for its own political purposes – both at the state and the local level.

The predictable consequence of this rigged game is that the NJEA dominates state politics at all levels. While it does not win all the time, it wins most of the time because the political playing field is severely slanted in its favor. No other group has captured taxpayer funding to the extent the NJEA has, and it is the rare opponent who can compete with the NJEA in a political contest. The result is a political system that continues to do the NJEA’s bidding: the WDEA is a prime example of that. And it is an

<sup>8</sup> New Jersey Education Association, IRS Form 990 “Parent” and “Group” filings 2003-2015. Of the four local and county associations that file their own returns, and therefore are not part of the “Group” filings, only one, Jersey City, is of significant size.

entrenched political system that is highly resistant to reform or change because of the vast sums of taxpayer money behind the status quo. New Jersey's status quo is the NJEA's status quo.

The question for New Jersey's citizens is: why are their property tax dollars being funneled to a special interest that then uses those dollars for its own benefit and against their interests?