

Lame-Duck Lawmakers Sneak One Past the New Jersey Public

THE SPECIAL INTERESTS WIN AGAIN!

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MAY 24, 2022



SUNLIGHT
POLICY CENTER
— OF NEW JERSEY —

LAME-DUCK LAWMAKERS SNEAK ONE PAST THE NEW JERSEY PUBLIC THE SPECIAL INTERESTS WIN AGAIN

This is the sort of eleventh-hour, backroom deal that gives New Jersey politics a bad name.

So now we know that the “Responsible Collective Negotiations Act” (RCNA)¹ was passed by both houses of the New Jersey legislature on January 10, 2022 - *the very last day of the 2021 legislature* - and sent to Governor Murphy, who dutifully signed the bill into law as P.L. 2021, Chapter 411 on January 18.

Special interests routinely benefit from the opaque, insider-driven lame-duck process. It seems tailor-made for their kind of political influence. The RCNA provides an excellent example of this.

The RCNA benefited New Jersey’s public-sector unions, including the Communications Workers of America (CWA), the United Service Workers of America and the New Jersey Education Association (NJEA).² But the case of the NJEA is particularly illuminating because it reveals how the process works as well as the profound influence exerted by deep-pocketed special interests over New Jersey’s political system.

Substantively, the RCNA built upon and modified prior NJEA-friendly legislation, the 2018 Workplace Democracy Enhancement Act (WDEA, discussed below).³ The WDEA is a strongly pro-NJEA law enacted in anticipation of the US Supreme Court’s *Janus* decision that ruled agency fees unconstitutional. The RCNA grants the NJEA greater control over teachers who have opted out of NJEA membership. It also amends WDEA provisions that had become legally problematic while still preventing teachers from ceasing dues payments immediately upon opting out.

But the process by which the RCNA was passed reveals even more. *Every one* of the 25 sponsors and co-sponsors of the RCNA was supported by NJEA money,⁴ as was the governor who signed it into law. All are Democrats. Furthermore, passage was kept below the radar screen. The Sunlight Policy Center of New Jersey, which follows both New Jersey’s public-sector unions and their influence over the legislature closely, was

¹ State of New Jersey, 221 Legislature, Senate, No.3810, January 18, 2022, <https://www.njleg.state.nj.us/bill-search/2020/S3810/bill-text?f=PL21&n=411>

² Sunlight will use “NJEA” as a proxy for both the NJEA and the various county and local associations, all of which are funded by unified dues that flow directly to the NJEA and are distributed back down to the constituent associations.

³ State of New Jersey, 218 Legislature, Senate, No.2137, March 5, 2018, <https://njleg.state.nj.us/bill-search/2018/A3686/bill-text?f=PL18&n=15>.

⁴ Primary sponsors: Sens. Sweeney, Addiego, Greenstein; ASM Benson. Co-Sponsors: Sens. Rice, Pou, Turner, Gill, Diegnan, Cunningham; ASMs Reynolds-Jackson, Murphy, Giblin, Verrelli, Zwicker, Chaparro, Sumter, Jasey, McKnight, McKeon, Stanley, Lopez, Wimberly, Caputo, DeAngelo. See <https://www.njleg.state.nj.us/bill-search/2020/S3810>.

not aware of this new legislation because it was buried amid the flood of lame-duck bills up for passage during the final days of the 2021 legislative session. There were no news stories covering its passage. Two main beneficiaries of the new law, New Jersey's two largest public-sector unions, the NJEA and CWA, did not issue press releases. The bill passed through the lame-duck session quickly and silently with no hearings or debate.⁵

The RCNA certainly benefits the NJEA. It's harder to see how it benefits teachers. It clearly does not benefit school districts or the taxpaying public. The evidence of NJEA influence is manifest – in the substance of the legislation, in the NJEA monetary support of *all* the sponsors and co-sponsors – but ordinary teachers, school districts and the taxpaying public appear to have been shut out from the lame-duck session. This is how New Jersey politics works for powerful, deep-pocketed special interests like the NJEA. But what about the rest of us?

Lame-Duck Opacity Enables Special-Interest Influence

Lame Duck. As reported in *NJSpotlight*, lame duck sessions are notorious for the rush of legislation where the public has little meaningful input and bills are “pushed through without the normal committee hearings and waiting periods before passing from one house to another.” *NJSpotlight* quotes New Jersey Policy Perspective's Jon Shure: “Closed-door legislating inevitably favors the privileged few and shuts out those who don't have lobbyists.”⁶ That is precisely what appears to have happened here.

NJEA Money and Influence. New Jersey's most deep-pocketed special interest, the NJEA, certainly appears to be one of the “privileged few,” per Shure. It has a large team of professional lobbyists armed with \$140 million of teachers' dues to exploit backroom, lame-duck politics: *Every single one of the 25 legislators who sponsored or co-sponsored the RCNA has been supported by NJEA money.* Six of the sponsors and co-sponsors are among the top-ten recipients of NJEA monetary support from 2011-2020. Lead-sponsor then-Senate President Steve Sweeney saw the Super PAC that supported his election in 2021 – American Democratic Majority – get \$1.3 million from the NJEA's Super PAC, Garden State Forward. And, of course, Governor Murphy has benefited from \$15.5 million of the NJEA's largesse. See Table 1 below.

⁵ There were hearings and debate in June 2021, as well as several news stories, but the bill changed substantially before it was re-introduced in late December 2022.

⁶ Colleen O'Dea, “Does lame-duck law-making put the public last?” *NJSpotlight News*, January 21, 2022, <https://www.njspotlightnews.org/2022/01/lame-duck-session-700-measures-lawmakers-transparency/>.

Table 1. NJEA PAC Contributions and Super PAC Expenditures

Candidate	Party	Amount
Governor Phil Murphy (2018-2021)	D	\$ 15,500,000 ⁷
Sen Steve Sweeney (2021)	D	\$ 1,265,000 ⁸
ASM Dan Benson (2011-2020)	D	\$ 115,291
ASM Wayne DeAngelo (2011-2020)	D	\$ 96,891
ASM Mila Jasey (2011-2020)	D	\$ 74,700
Sen Linda Greenstein (2011-2020)	D	\$ 72,541
ASM Benjie Wimberly (2011-2020)	D	\$ 68,150
Sen Pat Diegnan (2011-2020)	D	\$ 63,450

Source: Election Law Enforcement Commission

The RCNA Is Intended to Benefit the NJEA. The NJEA gains from the RCNA because it augments and modifies the 2018 WDEA. RCNA lead-sponsor Sen. Sweeney, who was also the lead-sponsor of the WDEA, made clear the purpose of the RCNA: “The *Janus* ruling was a direct assault on unions, their members and all the employees who could be harmed by the anti-union decision. This legislation will help safeguard those rights so workers are able to continue doing meaningful work on behalf of the public.”⁹ As Sweeney’s words make clear, there is simply no doubt that the RCNA is pro-NJEA legislation.

The Passage of the RCNA Was a Backroom, 11th-Hour Deal. After introduction and hearings in the Senate Labor Committee in May and June of 2021, the RCNA was quietly amended (with only Democratic votes) in late December and recommitted to the Senate Budget and Appropriations Committee on January 4, 2022, the first day of the lame-duck session that ran from January 4 -11. It was reported out of committee on January 6 apparently without any hearings. It was then passed by the full senate and the full assembly on January 10, the last voting session of the 2021 legislature. There appears to have been no debate on January 10, only votes.¹⁰ Gov. Murphy signed the RCNA into law on January 18. So it only took a week in lame duck to recommit and pass the bill and another week to make it the law of the state.

The fact pattern sure looks like NJEA lobbyists used their access and the NJEA’s deep pockets to get their bill passed and signed into law in a most efficient, expeditious and quiet way.

⁷ Garden State Forward independent expenditures: \$10.5 million to New Direction New Jersey, \$2.5 million to Our NJ and \$2.5 million to Committee to Build the Economy, all pro-Murphy Super PACS.

⁸ Garden State Forward contributions totaling \$1,265,000 to American Democratic Majority, [a Super PAC supporting South Jersey legislative Democrats led by Sen. Steve Sweeney](#).

⁹ Samantha Marcus, “N.J. unions would gain power under new plan pushed by top lawmaker,” NJ Advance Media for NJ.com, June 20, 2021, <https://www.nj.com/politics/2021/06/nj-unions-would-gain-power-under-new-plan-pushed-by-top-lawmaker.html>.

¹⁰ For the timeline, see <https://www.njleg.state.nj.us/bill-search/2020/S3810>.

How the RCNA and WDEA Work Together to Empower the NJEA

The WDEA. The WDEA was designed to replace the coercion implicit in agency fees with structural coercion. Agency fees had forced teachers who were not members of the NJEA to pay fees up to 85% of regular dues, thus ensuring that 99%+ of teachers would join the NJEA. The WDEA:

- Grants the NJEA gained the exclusive right to meet with newly hired employees.¹¹
- Requires school districts to send the NJEA the personal contact information of all new (and existing) employees.
- Prohibits school districts from encouraging employees to quit or not join the NJEA.
- 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.¹²

The Case of a New Teacher Operating Under the WDEA. The WDEA's implicit coercion is well demonstrated by considering the hypothetical 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 over 95% of the teachers belong to the NJEA and is required to attend a mandatory, exclusive "persuasion" session with NJEA officials. The new teacher will then be pressured to join the NJEA and have NJEA dues withheld from her paycheck. She is likely to succumb to this pressure, especially since it is unlikely anyone would have informed the teacher of her First Amendment right not to join. Having joined the NJEA, dues will be withheld, personal contact information will be sent exclusively to the union, and the teacher's ability to leave the NJEA will be circumscribed. Going forward, the union will be a regular presence in the teacher's workday, with union meetings held on school property and union emails coming over the school's internal email system.

Unsurprisingly, the WDEA worked exactly as planned. Lead-sponsor Sen. Sweeney commented on the fact that since *Janus*, public-sector union membership had not declined: "When *Janus* was first coming out, people were projecting enormous losses of membership, especially for the public sector. We [the legislature] wanted to make sure that unions had equal footing and access to membership, and obviously it's worked."¹³

¹¹ The value of this meeting cannot be underestimated. The NJEA's parent, the National Education Association, says these meetings have an "'outsized' and 'lasting' impact on the strength of unions," and "boost membership numbers and build a foundation for later activism." National Education Association, "NEA's Guide to New Hire Orientations," *nea.org*, accessed May 3, 2022, <https://www.nea.org/resource-library/new-educator-campaign>. Download "New Employee Orientation Guide."

¹² This provision was modified by the RCNA. See below.

¹³ David A. Lieb., "Public unions see only modest decline after court ruling," Associated Press, July 12, 2019, <https://apnews.com/b7d0ab46b3b94d2a8baa13dcde8a7651>.

It is easy to see why the NJEA lobbied hard in support of 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 NJEA's administrative tasks. It is difficult to see how teachers benefit from this. Perhaps this explains why the NJEA was strangely muted after the passage of such a significant legislative victory as the WDEA.¹⁴ School districts and the taxpaying public clearly do not benefit.

The RCNA Augments and Modifies the WDEA. The RCNA addresses some problem-areas in the WDEA and further augments the NJEA's power over teachers:

- Requires that school districts provide the NJEA the name, job title and description, work location, work email and work phone number for all teachers who are *not* NJEA members.
- Provides that teachers who were NJEA members prior to the enactment of the WDEA can opt out of the NJEA consistent with the law when they joined the NJEA, which for most teachers means that they can opt out at any time but only with an effective date of either July 1 or January 1.
- For teachers who joined the NJEA after the WDEA, rather than be limited to a 10-day window, these teachers can opt out at any time but only with an effective date of 30 days after the hiring date anniversary.
- The school district must notify the NJEA within five days of all opt-outs.

The RCNA benefits the NJEA in several ways. First, it gives the NJEA privileged access to non-members, enhancing its ability to "persuade" these teachers to join the NJEA. As with the WDEA, the school district acts as the NJEA's business administrator on the taxpayer's dime.

Second, the RCNA addresses problem-areas in the WDEA legislation. The WDEA's narrow, 10-day opt-out window appears to be contrary to the language of the *Janus* decision and has been a litigation magnet. Teachers across the country and in New Jersey have filed lawsuits against this provision. It seems only a matter of time before it would be ruled unconstitutional - after a protracted and expensive legal fight. Moreover, the WDEA changed the legal regime for teachers who had joined the NJEA before the WDEA. Typically, such teachers would be "grandfathered," or exempted from the new law's provisions, but they were not under the WDEA. The RCNA rectifies that. But all teachers choosing to opt out would still be required to pay dues until their effective date (usually July 1 and January 1).

¹⁴ 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 Sunlight 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*.

Third, teachers who joined the NJEA after the enactment of the WDEA are rid of the legally problematic 10-day opt-out window but are likewise still required to pay dues after they have opted out. In addition, they still labor under an opaque system that depends on the anniversary of their hire date. Different teachers have different hire dates and thus have different effective dates for opting out. This makes it more difficult for a teacher to determine when she would stop paying dues and results in a situation where, after opting out, a teacher could continue to pay dues for as long as almost a year if the opt-out is ill-timed.¹⁵

Finally, the RCNA requires that the school district notify the union of teachers who opt out within five days, so the NJEA will have ample opportunity to “persuade” that teacher to rescind her opt-out before it becomes effective.

As with the WDEA, it’s easy to see how the RCNA benefits the NJEA. It’s much harder to see how it benefits teachers, and it certainly does not benefit school districts or the taxpaying public.

Conclusion

The passage and enactment of the RCNA represents New Jersey politics at its worst. Powerful, taxpayer-funded special interests with millions to spend on professional lobbyists and political influence have once again exerted their dominance over New Jersey’s political system, and a majority of New Jersey’s lawmakers appear happy to comply. And they have exploited the lame-duck session to pass this legislation in the least transparent way: behind closed doors, with no public hearings or debate.

The New Jersey public – the people the government is supposed to serve – was shut out of the process and kept in the dark. Who spoke up for the ordinary teachers who must live under this regime, especially those who are not members of the NJEA? Who spoke up for the school districts that will be saddled with yet more administrative burdens on behalf of the NJEA? Who spoke up for the taxpayers who fund the school districts and a government that operates for the benefit of special interests?

Jon Shure had it right: like so much lame-duck legislation, the passage of the RCNA represents government for the “privileged few” – the special-interest privileged few. Once again, New Jersey government under Governor Murphy and our Democrat-controlled legislature: run by and for the special interests.

¹⁵ A recent lawsuit in New Jersey federal court challenges this type of regime as a violation of the plaintiffs’ civil rights. Larry Higgs, “South Jersey bus drivers sue over union dues they say they shouldn’t have paid,” NJ Advance Media for NJ.com, May 3, 2022, <https://www.nj.com/news/2022/05/south-jersey-bus-drivers-sue-over-union-dues-they-say-they-shouldnt-have-paid.html>.