

OFFICE OF EMPLOYER/EMPLOYEE RELATIONS

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August 1, 2018

Dean Adams, Regional Director
Colleen Wheaton, Regional President
CSEA Central Region 5 Office
6595 Kirkville Rd.
East Syracuse, NY 13057

Dear Ms. Wheaton and Mr. Adams:

My name is Dominic D'Imperio and I am the Director of the Jefferson-Lewis BOCES Office of Employer/Employee Relations and Legal Services. I have been made aware that Mr. Adams has reached out to some of the Superintendents in the school districts my office represents with regards to those districts' responsibility to withdraw union dues from employees' wages. Further, it is my understanding that CSEA's position is that school districts only need a list of union members' names provided by CSEA to justify an employing school district's deduction of union dues from such employee/member wages. CSEA appears to be relying heavily on a recent memorandum from the Governor's office and the resulting Department of Labor's Guidance issued earlier this month, *to wit*, that CSEA's provision to public employers of "membership lists" is somehow sufficient to justify public employers' deduction of membership dues from employees' wages.

My office does not believe that CSEA's position in this matter is legally sustainable. The clear requirements imposed on public employers under New York Law as well as the Supreme Court's decision in *Janus* dictate that all local school districts as public employers must ensure they have sufficient authorization to make deductions from employees' paychecks *prior* to making such deductions. The Supreme Court in its decision in *Janus* ruled:

Neither an agency fee nor any form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.

The Court went on to further hold:

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..... Rather, to be effective, the waiver must be freely given and shown by "clear and compelling"

*evidence.... Unless **employees** clearly and affirmatively consent before any money is taken from them, this standard cannot be met. (emphasis added)*

It is this office's opinion that the Supreme Court's core holding is that dues deductions may only be made when an employer possesses "*clear and compelling*" evidence of employees' authorization for such deduction, and that "*Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.*"

Regardless of the Supreme Court's decision in *Janus*, an ancillary effect of the Court's decision has been the review by public employers in New York of their statutory obligations related to the deduction of union dues from public employees. My office has advised and worked with many of our component Districts to conduct this review. It is clear from this office's review that New York Law not only supports this office's position, but requires public employers to have on file affirmative, written authorizations from employees in order to deduct dues from employees' paycheck.

New York Law Civil Service Law Section 208(1)(b) and New York General Municipal Law Section 93-b(1), both of which apply to public employers like school districts, impose a clear duty to only deduct dues "*upon presentation of dues deduction authorization cards signed by individual employees*" in an "*amount that such employee may specify in writing filed with such fiscal or disbursing officer for the payment of dues in a duly organized association or organization of civil service employees.*" These statutory obligations on public employers reinforce the Supreme Court's *Janus* requirement of clear and compelling evidence of employees' affirmative consent to the deduction of dues. To the extent the Department of Labor's recent guidance is construed as casting doubt on these statutory and legal requirements, presumably through the Department's authority concerning payroll deductions as derived from Article 6 of the Labor Law, as you know, this is an Article of the Labor Law that does not apply to government or municipal entities.

Simply stated, my office has recommended to Districts we advise that they should not deduct membership dues from any employee for whom they do not have a dues deduction authorization signed by the employee. Each District has provided their respective Unions with dates for which they are requesting the provision of signed authorizations where the District is lacking such authorizations, but this date should not extend past the first payroll date in September. Anything less than an authorization signed by the employee authorizing the District to make such deductions from the employee's wages fails to rise to the required "*clear and compelling evidence*" that the employee "*affirmatively consents to such deductions*".

To be clear, my office is not advising Districts that they are required to demand post-*Janus* dues authorization cards. Nor is my office advising Districts that if they have prior dues authorizations cards pre-*Janus* that those cards are somehow invalid. However, it is this office's considered professional opinion that in order to satisfy the bare minimum requirements of New York Law and the Supreme Court's decision in *Janus*, Districts must have some signed authorization from each and every employee granting Districts permission to make a deduction from employees' paycheck. This has been the consensus of my colleagues in other labor relations offices from around that State with whom I have had the opportunity to discuss this matter and I suspect that CSEA has found the same consistent message.

My office is willing to review and work with CSEA to meet the above articulated requirements on behalf of our Districts. To that end, if you would wish to meet with the intent of trying to collectively achieve a possible resolution to this issue, my office is open to such an opportunity. My office cannot, however, recommend that any District continue to make payroll deductions from its employees governed by a collective bargaining agreement with CSEA if the District lacks the necessary documentation to support such deductions. If you wish to discuss this matter, I can be reached at the above-listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "D'Imperio", written over a horizontal line.

Dominic D'Imperio, Esq.
Director of Employer/Employee Relations

Cc: Stephen Todd, District Superintendent, Jefferson-Lewis BOCES
Superintendents of Schools, Jefferson-Lewis BOCES Region