



FEDERAL ELECTION COMMISSION

125 K STREET NW
WASHINGTON, D.C. 20463

THIS IS THE END OF TUE # 283 / 350

Date Filmed 3/16/79 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

February 16, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Peacos
R D 1 Coppermine Rd.
Princeton, N.J. 08540

Re: MUR 350(76)

Dear Mr. Peacos:

We have received your letter requesting an update of the complaint you filed concerning the New Jersey Education Association.

Enclosed you will find a copy of the conciliation agreement entered into by the New Jersey Education Association, the New Jersey Education Political Action Committee, and the Federal Election Commission. At the time this agreement was accepted the Commission decided to close the file in this matter.

We apologize for the oversight in not having informed you earlier of the final disposition of this matter.

Sincerely,

William C. Oldaker
General Counsel



7901011420

ACC 20

STERNS, HERBERT & WEINROTH
COUNSELLORS AT LAW
132 WEST STATE STREET
TRENTON, NEW JERSEY 08608

FEDERAL ELECTION
COMMISSION

(609) 392-2100

A PROFESSIONAL CORPORATION

10 NASSAU STREET
PRINCETON, N. J. 08540
(609) 824-2108

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1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
(202) 296-3432

JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAN
W. S. GERALD SKEY
JOHN H. DUMONT
JOHN M. DONNELLY

OF COUNSEL
ERNEST S. GLICKMAN

'78 JAN 10 AM 11:50

80001

January 6, 1978

James Altman, Esq.
c/o Office of Legal Counsel
National Education Association
1201 16th Street, N.W.
Washington, D.C.

Re: Dismissal of Suit Against N.J.E.A.

Dear Jim:

On January 4, I went to Washington to meet with Ken Gross of the F.E.C. to consummate the final draft of a conciliation agreement leading to the dismissal of administrative complaints against the N.J.E.A., captioned MUR Nos. 283 and 350 (76). The following day, the Commission approved this conciliation agreement. I am enclosing herewith a copy of it for your files. You will note that it is carefully worded so as not to in any way prejudice the legal position of N.E.A. and other defendants.

As I discussed with you over the phone today, this conciliation agreement was entered into by N.J.E.A. with the understanding that the civil action against it, captioned Docket No. 77-1705 would be dismissed with prejudice. In that regard, I approved a draft of a Stipulation of Dismissal when I met with Mr. Gross on January 4. The F.E.C. is prepared to execute that Stipulation of Dismissal immediately but needs an acknowledgment by the N.E.A. and other defendants that the dismissal as to N.J.E.A. will not prejudice any claims it may have against other defendants. I do not have a final copy of that Stipulation of Dismissal, but because time is of the essence, we have asked Mr. Gross to have a copy hand delivered to your office for review. We would very much appreciate it if you could acknowledge approval of this dismissal so that N.J.E.A. will not have to remain in this litigation.

Your prompt attention is most appreciated.

Very truly yours,
Michael J. Herbert
Michael J. Herbert

Enc.
cc: Kenneth Gross ✓
Mr. Walter O'Brien (w/enc.)

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STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608

Mr. Kenneth Gross

Federal Election Commission

1325 K Street, N.W.

Washington, D.C. 20463

RECEIVED

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PS Form 3811, Apr. 1977

OC NURS 283/350

1. The following service is requested (check one):

Show to whom and date delivered.

Show to whom, date, and address of delivery.

RESTRICTED DELIVERY
Show to whom and date delivered.

RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Michael J. Herbert, Esquire
132 West State Street
Trenton, New Jersey 08608

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
944121

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: 1-16-78

5. ADDRESS (Complete only if requested):

6. UNABLE TO DELIVER BECAUSE:

POST OFFICE: TRENTON, NJ 08608
JAN 16 1978

CARRIER'S INITIALS:

680 : 107 - O-234-227



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 12, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael J. Herbert, Esquire
Sterns, Herbert, and Weinroth
132 West State Street
Trenton, New Jersey 08608

Re: MUR 283 (76)
MUR 350 (76)

Dear Mr. Herbert:

On January 4, 1978, the Commission voted to accept the conciliation agreement which was agreed upon and signed by you in our offices. Accordingly, upon my recommendation, the Commission has decided to close the files in the above-referenced matters.

If you have any further inquiry concerning this matter, please contact Kenneth A. Gross (523-4060) the staff attorney handling this case.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William C. Oldaker".

William C. Oldaker
General Counsel



UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
)
NEW JERSEY EDUCATION ASSOCIATION)
and)
NEW JERSEY EDUCATION ASSOCIATION)
POLITICAL ACTION COMMITTEE)

MUR Numbers: 283 & 350 (76)

CONCILIATION AGREEMENT

This matter was initiated on the basis of two written complaints filed with the Federal Election Commission (FEC). An investigation was conducted, and the Commission has found reasonable cause to believe that the respondent, New Jersey Education Association (NJEA), and New Jersey Education Association Political Action Committee (NJEA-PAC), violated §§441b(b)(3)(A) and 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq., (FECA). Now, therefore, the NJEA and NJEA-PAC and the FEC, the respective parties herein, having entered into conciliation pursuant to 2 U.S.C. §437g(a)(5)(A), do hereby agree to the following:

1. The FEC has jurisdiction to investigate, conciliate and thereafter seek relief in the United States District Court concerning the allegations made against respondents NJEA and NJEA-PAC.
2. NJEA is a labor organization maintaining its offices at 180 West State Street, Trenton, New Jersey, and is an affiliate of the National Education Association (NEA).

7974011425

3. NJEA-PAC is a separate segregated fund established and administered by NJEA for the purpose of supporting candidates for state and federal offices.

4. In September 1976 NJEA instituted a system that required that each active member of NJEA remit a political contribution to NJEA Political Action Committee (NJEA-PAC) and NEA Political Action Committee (NEA-PAC) through the employee's payroll deduction. These monies were refundable if the employee requested in writing that the monies be returned. This system of collection is known as the reverse check-off procedure.

5. According to sworn statements by an official of NJEA:

(a) NJEA discontinued the reverse check-off procedures in January, 1977 after the New Jersey Attorney General's office issued an opinion rendering the method of collection of political contributions violative of state law.

(b) all monies collected through the reverse check-off procedure were held in a separate segregated fund and were not contributed to any federal candidates.

(c) all political funds collected through the dues check-off process were returned to the individuals by crediting a future payroll deduction.

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6. According to the public records filed with the FEC, no NJEA-PAC funds were sent to NEA-PAC from September, 1976 to the date of this agreement.

7. Those members who paid their dues in cash and paid the \$2.00 NJEA-PAC professional payment in cash as well were informed that the monies would be returned to them by filing out a form and submitting it to NJEA. According to sworn statements, all members requesting such refunds have received their money from NJEA-PAC.

8. NJEA will not reinstate the reverse check-off procedure with respect to candidates for federal office, whether the funds be contributed through NJEA-PAC or NEA-PAC, but reserves the right to do so in the event its legality is ultimately upheld.

The Federal Election Commission and NJEA and NJEA-PAC entered into this conciliation agreement under the following General Condition:

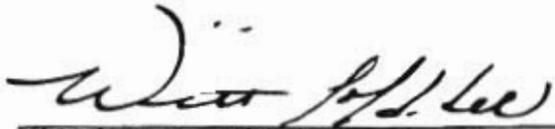
If a complaint is filed pursuant to 2 U.S.C. §437g(a)(1) or upon the motion of the Commission, alleging violations of this agreement, the Commission may review compliance with the terms of this agreement. If the Commission believes that any term has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia. This agreement shall become effective as of the moment that all parties hereto have executed same and the Commission has approved the entire agreement.

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Disposition of Pending Complaints:

Based upon the terms of this conciliation agreement, the
FEC hereby dismisses MUR numbers 283 and 350 (76).

FOR THE FEDERAL ELECTION
COMMISSION

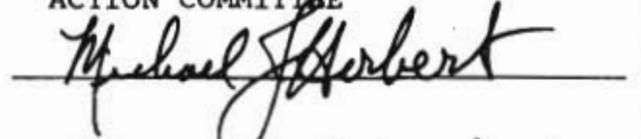


William C. Oldaker
General Counsel

1/10/78

Date

ATTORNEYS FOR
NEW JERSEY EDUCATION
ASSOCIATION and NEW JERSEY
EDUCATION ASSOCIATION POLITICAL
ACTION COMMITTEE



Stems, Herbert & Wenzel

January 4, 1978

Date

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BEFORE THE FEDERAL ELECTION COMMISSION

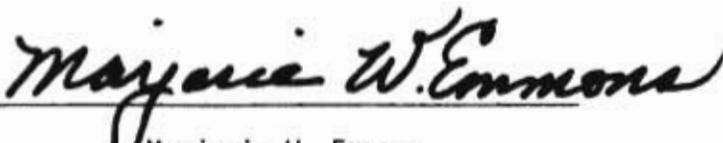
In the Matter of)
New Jersey Education Association) MURs 283 and 350 (76)
and)
New Jersey Education Association)
Political Action Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on January 4, 1978, the Commission approved by a vote of 4-0 the Conciliation Agreement submitted by the General Counsel on December 30, 1977, in the above-captioned matter.

Voting for this action were Commissioners Aikens, Harris, Staebler, and Thomson. Commissioners Springer and Tiernan were not present at the time of the vote.

Signed:


Marjorie W. Emmons
Secretary to the Commission

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December 30, 1977

MEMORANDUM TO: Marge Emmons
FROM: Jeff Bowman
SUBJECT: MUR's 283 and 350(76) Staff Member-Gross

Please have the attached Conciliation Agreement on MUR's 283 and 350(76) distributed to the Commission and placed on the Compliance Agenda for the Commission meeting of January 4, 1978.

Thank you.

7904011430

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
)
NEW JERSEY EDUCATION ASSOCIATION)
and) MUR Numbers: 283 & 350(76)
NEW JERSEY EDUCATION ASSOCIATION)
POLITICAL ACTION COMMITTEE)

GENERAL COUNSEL'S REPORT

Introduction

Attached is a proposed conciliation agreement submitted by the New Jersey Education Association (NJEA) and the NJEA-Political Action Committee (NJEA-PAC). This Agreement has been negotiated between counsel for the respondents and the General Counsel's Office, with the understanding that the Agreement is conditioned upon Commission approval.

Summary of Agreement

Based upon the information and affidavits submitted by the NJEA and NJEA-PAC the reverse check-off procedure utilized in September, 1976 to January, 1977 was discontinued. It is agreed that the system will not be reinstated as to candidates for federal office, either through NJEA-PAC or NEA-PAC, unless the procedure's legality is ultimately upheld.

According to the public records none of the funds collected through the reverse check-off procedure were contributed to federal candidates through NJEA-PAC¹ nor

¹The public records reveal only one contribution by NJEA-PAC since the reverse check-off procedure went into effect. This was a \$100 contribution to Hon. James J. Florio. Although Mr. Florio is a Congressman, counsel for the respondent indicates that the contribution was made to him as a gubernatorial candidate and was erroneously reported as a federal contribution.

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were any funds transmitted to NEA-PAC since institution of the reverse check-off procedure.

All the political funds collected through the reverse check-off procedure were subsequently credited to the employees and all political funds collected through cash payments were made available for return to those employees paying their dues in cash, although this was not necessary in that the cash payors were not part of the reverse check-off procedure.

Recommendation

Based upon the information revealed by the public records and sworn statements of the appropriate officers of respondents, it is recommended that the attached Conciliation Agreement be accepted by the Commission and that MUR 283 and MUR 350 be dismissed. It is also recommended, although not embodied in the terms of the Agreement, that the Commission enter into a stipulation agreeing to the dismissal of the lawsuit against NJEA as a Rule 19(a) defendant, in the action pending in the United States District Court for the District of Columbia, styled Federal Election Commission v. National Education Association et. al, F. Supp. (D.D.C. C.A. No. 77-1705 1977).

31 December 1977
DATE


WILLIAM C. OLDAKER
GENERAL COUNSEL

7004011432

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
)
NEW JERSEY EDUCATION ASSOCIATION)
and) MUR Numbers: 283 & 350 (76)
NEW JERSEY EDUCATION ASSOCIATION)
POLITICAL ACTION COMMITTEE)

CONCILIATION AGREEMENT

This matter was initiated on the basis of two written complaints filed with the Federal Election Commission (FEC). An investigation was conducted, and the Commission has found reasonable cause to believe that the respondent, New Jersey Education Association (NJEA), and New Jersey Education Association Political Action Committee (NJEA-PAC), violated §§441b(b)(3)(A) and 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq., (FECA). Now, therefore, the NJEA and NJEA-PAC and the FEC, the respective parties herein, having entered into conciliation pursuant to 2 U.S.C. §437g(a)(5)(A), do hereby agree to the following:

1. The FEC has jurisdiction to investigate, conciliate and thereafter seek relief in the United States District Court concerning the allegations made against respondents NJEA and NJEA-PAC.
2. NJEA is a labor organization maintaining its offices at 180 West State Street, Trenton, New Jersey, and is an affiliate of the National Education Association (NEA).

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3. NJEA-PAC is a separate segregated fund established and administered by NJEA for the purpose of supporting candidates for state and federal offices.

4. In September 1976 NJEA instituted a system that required that each active member of NJEA remit a political contribution to NJEA Political Action Committee (NJEA-PAC) and NEA Political Action Committee (NEA-PAC) through the employee's payroll deduction. These monies were refundable if the employee requested in writing that the monies be returned. This system of collection is known as the reverse check-off procedure.

5. According to sworn statements by an official of NJEA:

(a) NJEA discontinued the reverse check-off procedures in January, 1977 after the New Jersey Attorney General's office issued an opinion rendering the method of collection of political contributions violative of state law.

(b) all monies collected through the reverse check-off procedure were held in a separate segregated fund and were not contributed to any federal candidates.

(c) all political funds collected through the dues check-off process were returned to the individuals by crediting a future payroll deduction.

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6. According to the public records filed with the FEC, no NJEA-PAC funds were sent to NEA-PAC from September, 1976 to the date of this agreement.

7. Those members who paid their dues in cash and paid the \$2.00 NJEA-PAC professional payment in cash as well were informed that the monies would be returned to them by filing out a form and submitting it to NJEA. According to sworn statements, all members requesting such refunds have received their money from NJEA-PAC.

8. NJEA will not reinstate the reverse check-off procedure with respect to candidates for federal office, whether the funds be contributed through NJEA-PAC or NEA-PAC, but reserves the right to do so in the event its legality is ultimately upheld.

The Federal Election Commission and NJEA and NJEA-PAC entered into this conciliation agreement under the following General Condition:

If a complaint is filed pursuant to 2 U.S.C. §437g(a)(1) or upon the motion of the Commission, alleging violations of this agreement, the Commission may review compliance with the terms of this agreement. If the Commission believes that any term has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia. This agreement shall become effective as of the moment that all parties hereto have executed same and the Commission has approved the entire agreement.

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Disposition of Pending Complaints:

Based upon the terms of this conciliation agreement, the
FEC hereby dismisses MUR numbers 283 and 350 (76).

FOR THE FEDERAL ELECTION
COMMISSION

ATTORNEYS FOR
NEW JERSEY EDUCATION
ASSOCIATION and NEW JERSEY
EDUCATION ASSOCIATION POLITICAL
ACTION COMMITTEE

William C. Oldaker
General Counsel

Date

Date

79040111435

MCC2328

STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

132 WEST STATE STREET

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703741

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JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W. S. GERALD SKEY
JOHN H. DUMONT
JOHN M. DONNELLY

OF COUNSEL
ERNEST S. GLICKMAN

December 19, 1977

Kenneth A. Gross, Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: MURs 283 and 350; Civil Action No. 76-1389

Dear Mr. Gross:

We received the proposed tentative conciliation agreements concerning the above matters today. Since we do not want to delay the return date on our pending motion to dismiss, in the event that a conciliation agreement cannot be reached, and since you advised me that the next possible opportunity for Commission consideration of such an agreement would be January 5, 1978, we immediately convened a meeting with our clients, and I am now enclosing a revised conciliation agreement for your consideration.

At the outset, as I indicated in my December 5 letter, there appears to be little, if any, to "conciliate". N.J.E.A.-P.A.C. has never used reverse checkoff money for federal candidates nor will they ever do so unless the legality of such funding is sanctioned either through litigation or through legislation. Accordingly, in view of both the time pressures and the absence of any apparent reason for the Commission to prosecute litigation against the N.J.E.A. or the N.J.E.A.-P.A.C., we will agree to all but four paragraphs in your proposed tentative conciliation agreement as follows:

- 1.) Paragraph 1 is modified to state that the Commission has jurisdiction "to investigate, conciliate and thereafter seek relief in the United States District Court concerning the allegations made against the Respondents, N.J.E.A. and N.J.E.A.-P.A.C.", rather than simply stating that the Commission has jurisdiction over our clients and over the subject matter of these proceedings. Your proposed language is overly broad

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STERNS, HERBERT & WEINROTH

Kennth A. Gross, Esq.
Page Two
December 19, 1977

and may well give the inference that we are waiving clear jurisdictional prerequisites of conciliation and investigation, prior to litigation, and further, might be deemed to be a concession that the Commission has jurisdiction over the activities of N.J.E.A. and N.J.E.A.-P.A.C. concerning purely state and local candidates. In any event, our proposed paragraph 1 appears to be consistent with our understanding on the issue.

2.) Paragraph 8 should be modified to refer only to not reinstating the reverse checkoff with respect to "candidates for federal offices". Obviously, we reserve the right to institute a reverse checkoff for state and local candidates, over which the Commission does not have jurisdiction, should it be consistent with New Jersey law.

3.) Your suggested paragraph 9, to the effect that N.J.E.A. or N.J.E.A.-P.A.C. will pay to the Treasurer of the United States a civil penalty of \$100 is totally unacceptable. We believe that the reverse checkoff system does not violate the law, but we have agreed to attempt to withdraw from the law suit, because we no longer maintain a reverse checkoff system nor do we have any intention of reinstating for the benefit of federal candidates, until and unless it is explicitly sanctioned by law. Nevertheless, even if that system were violative of law, N.J.E.A. or N.J.E.A.-P.A.C. have never spent reverse checkoff funds for federal candidates. Therefore, we have suggested a substitute paragraph 9 which reads as follows:

"9.) Based on the information and affidavits submitted by N.J.E.A. and N.J.E.A.-P.A.C., the F.E.C. has determined that MUR numbers 283 and 350 (76) do not merit any action by the Commission."

4.) Finally, we suggest that the paragraph concerning "disposition of pending complaints" be modified to delete references to "past violations of the Act", for the reasons stated above, and substitute in its place, an agreement by the Commission to immediately dismiss the pending litigation against N.J.E.A.-P.A.C.

I can assure you that these suggestions in your tentative conciliation agreement are intended to be a firm position on behalf of our clients. We do not want to enter into extended dis-

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STERNS, HERBERT & WEINROTH

Kenneth A. Gross, Esq.
Page Three
December 19, 1977

cussions which have little purpose and thereby further delay an adjudication of our motion to dismiss. Therefore, I would appreciate a response as quickly as possible. Certainly, the entire matter should be resolved by the Commission prior to January 5. If the Commission cannot agree to our basic position by then, I trust that I can expect you to file your answering papers to our motion by January 9, 1978.

I look forward to hearing from you.

Very truly yours,


Michael J. Herbert

Enc. 12/19/77 N.J.E.A. Revised Conciliation Agreement

cc: Mr. Walter O'Brien

7974011450

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
)
NEW JERSEY EDUCATION ASSOCIATION)
and) Mur Numbers: 283 & 350 (76)
NEW JERSEY EDUCATION ASSOCIATION)
POLITICAL ACTION COMMITTEE)

PROPOSED TENTATIVE
CONCILIATION AGREEMENT

This matter was initiated on the basis of two written complaints filed with the Federal Election Commission (FEC). An investigation was conducted, and the Commission has found reasonable cause to believe that the respondent, New Jersey Education Association (NJEA), and New Jersey Education Association Political Action Committee (NJEA-PAC), violated §§ 441b(b)(3)(A) and 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq., (FECA). Now, therefore, the NJEA and NJEA-PAC and the FEC, the respective parties herein, having entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5)(A), do hereby agree to the following:

1. The FEC has jurisdiction to investigate, conciliate and thereafter seek relief in the United States District Court concerning the allegations made against respondents NJEA and NJEA-PAC.
2. NJEA is a labor organization maintaining its offices at 180 West State Street, Trenton, New Jersey, and is an affiliate of the National Education Association (NEA).
3. NJEA-PAC is a separate segregated fund established and administered by NJEA for the purpose of supporting candidates for state and federal offices.
4. In September 1976 NJEA instituted a system that required that each active member of NJEA remit a

political contribution to NJEA Political Action Committee (NJEA-PAC) and NEA Political Action Committee (NEA-PAC) through the employee's payroll deduction. These monies were refundable if the employee requested in writing that the monies be returned. This system of collection is known as the reverse check-off procedure.

- 5. According to sworn statements by an official of NJEA:
 - (a) NJEA discontinued the reverse check-off procedures in January, 1977 after the New Jersey Attorney General's office issued an opinion rendering the method of collection of political contributions violative of state law.
 - (b) all monies collected through the reverse check-off procedure were held in a separate segregated fund and were not contributed to any federal candidates.
 - (c) all political funds collected through the dues check-off process were returned to the individuals by crediting a future payroll deduction.
- 6. According to the public records filed with the FEC, no NJEA-PAC funds were sent to NEA-PAC from September, 1976 to the date of this agreement.
- 7. Those members who paid their dues in cash and paid the \$2.00 NJEA-PAC professional payment in cash as well were informed that the monies would be returned to them by filling out a form and submitting it to NJEA. According to sworn statements, all members requesting such refunds have received their money for NJEA-PAC.
- 8. NJEA will not reinstate the reverse check-off procedure with respect to candidates for federal office but reserves the right to do so in the event its legality is ultimately upheld.
- 9. Based on the information and affidavits submitted by NJEA and NJEA-PAC, the FEC has determined that MUR numbers 283 and 350 (76) do not merit any action by the Commission.

STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608



DEC 23 11:03 AM '71

RECEIVED
FEDERAL ELECTION COMMISSION

Kenneth A. Gross, Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

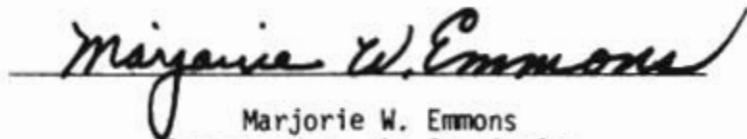
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New Jersey Education Association) MURS 283 and 350 (76)
and)
New Jersey Education Association)
Political Action Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on December 21, 1977, the Commission determined by a vote of 4-0 to approve the proposed conciliation agreement submitted by the General Counsel in the above-captioned matter.

Voting for this determination were Commissioners Aikens, Harris, Thomson, and Tiernan. Commissioners Springer and Staebler were not present at the time of the vote.



Marjorie W. Emmons
Secretary to the Commission

7074011441

December 16, 1977

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Carr
SUBJECT: MURs 283 and 350

Please have the attached Conciliation Agreement distributed to the Commission and placed on the Compliance agenda for the Commission meeting of December 21, 1977.

Thank you.

79040111445



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: The Commission
FROM: William C. Oldaker *WCO*
Charles N. Steele *CNS*
RE: MUR's 283 and 350 (76)
DATE: December 16, 1977

Attached is a proposed conciliation sent to opposing counsel in the above-referenced matter. We have not received a response from opposing counsel as of yet.

7004011445



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UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN THE MATTER OF)
)
NEW JERSEY EDUCATION ASSOCIATION) Mur Numbers: 283 & 350 (76)
and)
NEW JERSEY EDUCATION ASSOCIATION)
POLITICAL ACTION COMMITTEE)

PROPOSED TENTATIVE
CONCILIATION AGREEMENT

This matter was initiated on the basis of two written complaints filed with the Federal Election Commission (FEC). An investigation was conducted, and the Commission has found reasonable cause to believe that the respondent, New Jersey Education Association (NJEA), and New Jersey Education Association Political Action Committee (NJEA-PAC), violated §§ 441b(b)(3)(A) and 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et. seq., (FECA). Now, therefore, the NJEA and NJEA-PAC and the FEC, the respective parties herein, having entered into conciliation pursuant to 2 U.S.C § 437g(a)(5)(A), do hereby agree to the following.

1. The Federal Election Commission has jurisdiction over respondent NJEA and NJEA-PAC and over the subject matter of this proceeding.
2. NJEA is a labor organization maintaining its offices at 180 West State Street, Trenton, New Jersey and is an affiliate of the National Education Association (NEA).
3. NJEA-PAC is a separate segregated fund established and administered by NJEA for the purpose of supporting candidates for state and federal offices.
4. In September 1976 NJEA instituted a system that required that each active member of NJEA remit a political contribution to NJEA Political Action Committee (NJEA-PAC) and NEA Political Action Committee (NEA-PAC) through the employee's payroll deduction. These monies were refundable if the employee requested in writing that the monies be returned. This system of collection is known as the reverse check-off procedure.

5. According to sworn statements by an official of NJEA:

(a) NJEA discontinued the reverse check-off procedures in January, 1977 after the New Jersey Attorney General's office issued an opinion rendering the method of collection of political contributions violative of state law.

(b) all monies collected through the reverse check-off procedure were held in a separate segregated fund and were not contributed to any federal candidates.

(c) all political funds collected through the dues check-off process were returned to the individuals by crediting a future payroll deduction.

6. According to the public records filed with the FEC, no NJEA-PAC funds, were sent to NEA-PAC from September, 1976 to the date of this agreement.

7. Those members who paid their dues in cash and paid the \$2.00 NJEA-PAC professional payment in cash as well were informed that the monies would be returned to them by filling out a form and submitting it to NJEA. According to sworn statements, all members requesting such refunds have received their money for NJEA-PAC.

8. NJEA will not reinstate the reverse check-off procedure but reserves the right to do so in the event its legality is ultimately upheld.

9. NJEA or NJEA-PAC will pay to the Treasury of the United States a civil penalty in the amount of One Hundred Dollars (\$100) payable within 30 days of the date of this agreement.

The Federal Election Commission and NJEA and NJEA-PAC enter into this conciliation agreement under the following General Condition:

1. If a complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) or upon the motion of the Commission, alleging violations of this agreement, the Commission may review compliance--with the terms of this agreement.

If the Commission believes that any term has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia. This agreement shall become effective as of the moment that all parties hereto have executed same and the Commission has approved the entire agreement

Disposition of Pending Complaints

1. The FEC agrees that the terms of this Conciliation Agreement will correct past violations of the Act committed by NJEA and NJEA-PAC in regard to the matters dealt with herein, and accordingly, MUR 283 and MUR 350 are hereby dismissed.

FOR THE FEDERAL ELECTION COMMISSION

ATTORNEYS FOR NEW JERSEY EDUCATION ASSOCIATION

William C. Oldaker
General Counsel

Date

Date

NEW JERSEY EDUCATION ASSOCIATION
POLITICAL ACTION COMMITTEE

Date

Act 67

STERNS, HERBERT & WEINROTH
COUNSELLORS AT LAW
132 WEST STATE STREET
TRENTON, NEW JERSEY 08608
(609) 392-2100

FEDERAL ELECTION COMMISSION

MAR 28 1977

SUITE 600
1450 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
(202) 296-3432

JOEL H. STERNS
MEMBER OF NEW JERSEY AND
DISTRICT OF COLUMBIA BAR
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W. S. GERALD SKEY
MEMBERS OF NEW JERSEY BAR

ERNEST S. GLICKMAN
OF COUNSEL
MEMBER OF NEW JERSEY
& PENNSYLVANIA BAR

March 23, 1977
771005

William C. Oldaker, General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

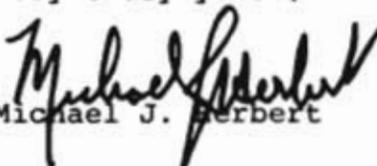
Re: New Jersey Education Association;
MUR 283 (76); MUR 350 (76)

Dear Mr. Oldaker:

On March 11, 1977, I wrote to you once again to urge that some action be taken by the Federal Election Commission concerning the false charge which had been issued against our client, the New Jersey Education Association. Despite our earlier request on December 2 and this most recent letter, we have not heard from the Commission.

Since there has been absolutely no communication from your agency, we are at a loss to understand why no action is now being taken. In case the Commission has been reticent because of the requirements of confidentiality, as contained in 2 USC 437G(a)3, we want to once again emphasize that we want a public vindication of these charges by your Commission. In that respect, obviously we do indeed want the investigation to be made public.

Very truly yours,


Michael J. Herbert

cc: Mr. Walter O'Brien, NJEA

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7901011411

STERNS, HERBERT & WEINROTH

COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608



William C. Oldaker, General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

**NEA
Governance
Instruments
1976-77**

FRONTIER COUNTY BOARD OF SUPERVISORS
COUNTY OFFICE
DEPT. 100
MOUNTAIN VIEW, CALIF. 92456

790401

7004011453



NJEA PAC Guidelines

NJEA-PAC Guidelines were adopted by the NJEA-PAC Operating Committee May 5, 1973 and amended by that committee on December 8, 1973, February 23, 1974, June 11, 1974, September 7, 1974, January 10, 1975, March 6, 1975 and June 11, 1976.

RECEIVED BY COMMITTEE
OFFICE FILE #
1975

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TRANS Urban

NATIONAL EDUCATION ASSOCIATION
OF THE UNITED STATES
1201 Sixteenth Street, N. W.
Washington, D. C. 20036



FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

OFFICE OF GENERAL COUNSEL NATIONAL EDUCATION ASSOCIATION	TO: John C. Murphy, Jr., Esquire General Counsel Federal Election Commission 1325 K Street, N.W. 4th Floor Washington, D.C. 20463
---	--

cc# 1365

STERNS, HERBERT & WEINROTH

COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608

(609) 392-2100

SUITE 800
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-3432

ERNEST S. GLICKMAN
OF COUNSEL
MEMBER OF NEW JERSEY
& PENNSYLVANIA BAR

JOEL H. STERNS
MEMBER OF NEW JERSEY AND
DISTRICT OF COLUMBIA BAR
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAN
W. S. GERALD SKEY
MEMBERS OF NEW JERSEY BAR

7708-13

March 11, 1977

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William C. Oldaker, General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: New Jersey Education Association;
MUR 283 (76); MUR 350 (76)

Dear Mr. Oldaker:

We represent the New Jersey Education Association, which received a notice from you on November 19, 1976, that a complaint had been made by Assemblywoman Marie A. Muhler, charging the Association with certain violations of the Federal Election Campaign Act of 1971, as amended (MUR (76)). As soon as we received this earlier notification, I contacted your office to immediately dispute this totally false charge. Since the complainant gave wide notoriety to her false statement, made under oath, which was the basis of the Commission initiating its investigation, we met with you in Washington on December 2nd to urge that the matter be resolved promptly.

At this meeting, Walter O'Brien, the Director of Government Services for the Association, and myself, argued that any delay by the Commission in publicly responding might greatly injure the Association, in view of the continuous, unwarranted, attacks by the complainant upon the Association in the media. On that day, we also provided you with the affidavit of Mr. O'Brien setting forth in great detail the entire manner in which the NJEA-PAC fund operated.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

STERNS, HERBERT & WEINROTH

Mr. William C. Oldaker
Page Two
March 11, 1977

We have now received a second complaint from you today, based upon a letter from Michael Peacos, (MUR 350 (76)), which was apparently generated by Mrs. Muhler's untrue charge, which your Commission has not addressed to date.

As you may or may not know, on January 19, 1977, the New Jersey Attorney General issued Formal opinion No. 1-1977, a copy of which I am enclosing with this letter. That opinion held that the \$2.00 contribution for the N. J. E. A. Political Action Committee does not fall within the purview of N. J. S. A. 52:14-15. 9 (3), which statute compells public employers to make payroll deductions for dues, upon the request of an individual employee. Ironically, that decision was predicated upon the very elements of this program, which totally remove it from the Federal Election Campaign Act of 1971, which your Commission administers. At page 4 of the opinion, the Attorney General concluded as follows:

However, the second component is voluntary in nature, not exacted as a condition of membership, is segregated from the general funds received from payment of "dues" and is expended for political purposes. This component is essentially a voluntary political contribution distinct from the mandatory dues payment of union members, and is expressly characterized in Bylaw 2 as a "contribution." It is, therefore, our opinion that the controlling statute dealing with the checkoff of union dues set forth in N. J. S. A. 52:14-15. 9(e) does not authorize school districts to deduct the "political contribution" component of the N. J. E. A. Professional Payment from the wages of its employees.

We have now waited for over three months for some positive action to be taken by the Commission with respect to the totally unwarranted, false statements made under oath to the Commission by Assemblywoman Muhler concerning the Association. We must respectfully demand that this matter be

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STERNS, HERBERT & WEINROTH

Mr. William C. Oldaker
Page Three
March 11, 1977

cleared up immediately. In closing, we must emphasize to you, as we did at our meeting on December 2, that any negotiations which are now taking place between the National Education Association (NEA) and the Commission should not delay action on this entirely separate issue affecting the New Jersey Education Association, as an independent entity.

We ask that a written response be sent to us within the next five days.

Very truly yours,

Michael J. Herbert

Michael J. Herbert

Enc.

cc: Warren Cruise, Esq.
Mr. Walter O'Brien
Mr. Robert Polakowski

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State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
EDUCATION AND PUBLIC EMPLOYMENT SECTION
STATE HOUSE ANNEX
TRENTON 08625

WILLIAM F. HYLAND
ATTORNEY GENERAL

STEPHEN SKILLMAN
ASSISTANT ATTORNEY GENERAL
DIRECTOR

January 19, 1977

ROBERT J. DEL TUFO
FIRST ASSISTANT ATTORNEY GENERAL

MARY ANN BURGESS
DEPUTY ATTORNEY GENERAL
CHIEF

Honorable Raymond H. Bateman
21 East High Street
Somerville, New Jersey 08876

FORMAL OPINION NO. 1 - 1977

Dear Senator Bateman:

You have asked whether the procedures initiated by the New Jersey Education Association with various local boards of education for political action contributions are authorized under New Jersey law. This question has been generated by Bylaw 2 approved by the N.J.E.A. Delegate Assembly, effective September 1, 1976 in the following form:

"Professional Payment - Each Active Professional Member shall remit to the Association, through the same procedures by which the dues of such member are paid and under standards established by the Executive Committee, an annual total professional payment which shall include, in addition to the established dues for such member, a contribution, in the amount of two (\$2) dollars, for the NJEA Political Action Committee. Each fall when the Automatic Payroll Deduction members receive their membership cards, a letter explaining the Political Action Committee deduction, a form to request the return of the two (\$2) dollars, and a self-addressed envelope to NJEA will be included. Upon receipt of a request in writing from any member, the Association shall return the member's two (\$2) dollar contribution for the fiscal year during which the request was received. The Association shall transmit to the NJEA Political Action Committee those two (\$2) dollar contributions for which no refund request is received."

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Pursuant to Bylaw 2, material provided the N.J.E.A. membership indicates that:

"Professional payment for 1976-77 in N.J.E.A. is \$75. N.J.E.A. dues are \$73. Two dollars is for a voluntary contribution to N.J.E.A. PAC. Contributions to N.J.E.A. PAC will be used to support candidates and issues on the state and federal level. Contributions are voluntary and are not required as a condition of membership in any organization. This agreement may be revoked and a request for a N.J.E.A. PAC refund may be submitted in writing to N.J.E.A. headquarters before June 30, 1977."

This explanatory note accompanies the form used by N.J.E.A. members to direct local boards of education to make certain deductions from their earnings under checkoff procedures.

The question presented is whether the Professional Payment and specifically the \$2 contribution for N.J.E.A. Political Action Committee falls within N.J.S.A. 52:14-15.9e which states in 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."
(Emphasis added.)

A fair reading of this statute leads to the conclusion that public employers are only authorized to make deductions from the wages of their employees "for the purpose of paying the employee's dues to a bona fide employee organization."
(Emphasis added.)

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Dues have been defined as certain mandatory monetary sums paid by a member of an organization as a condition of his membership therein and for its direct support and maintenance. The term covers only fixed and definite charges applicable to all club members. Black's Law Dictionary (4th ed. 1968); Greenwald v. Chiarello, 57 N.Y.S. 2d 765 (1945). In National Labor Relations Board v. Injection Molding Co., 211 F.2d 59 (8th Cir. 1954), the court construed a contract between union and employer which authorized deductions of "union membership dues (including assessments if they are regularly part of membership dues) and initiation fees." The court determined that this agreement did not authorize an employer at the request of a union to deduct from the wages of its employee a fine levied by the union against its member for non-attendance at meetings.

It was held in International Longshoreman's Ass'n. v. Seatrain Lines Inc., 326 F. 2d 916 (2d Cir. 1964), that a form of alternative payment by an employer "in lieu of dues checkoff" could not be characterized as "dues" within the exclusive meaning of membership dues in the Labor Management Relations Act. Also, in Culotta v. Pickett, 448 F. 2d 255 (9th Cir. 1971), deductions for union dues were held not to include a sum which constitutes either a levy of back dues or an improper penalty assessed against a union member. The United States Supreme Court determined in Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 92 S.Ct. 2247, 33 L.Ed. 2d 11 (1972), that in order to comply with federal law, political contributions must be strictly segregated from union dues and assessments and that the solicitation for such funds must be conducted under circumstances which plainly indicate that these donations are exclusively for the political purposes of the labor organization. Pipefitters, supra, at 435. See also generally United States v. Auto Workers, 352 U.S. 567, 77 S. Ct. 529, 1 L.Ed. 2d 563 (1957); and United States v. C.I.O., 335 U.S. 106, 68 S. Ct. 1349, 92 L.Ed. 1849 (1948).

Therefore, it is clear from these decisions that dues have been interpreted to mean those mandatory, monetary contributions which are exacted from all members of a labor organization as a condition of membership and which are used for the direct support and maintenance of that organization. It is reasonable to conclude that "dues" should have a similar meaning under New Jersey law and would not include within the probable legislative meaning of that term in N.J.S.A. 52:14-15.9e those voluntary contributions paid to support the political purposes of the labor organization.

Bylaw 2, approved by the N.J.E.A. Delegate Assembly, describes two components of "Professional Payment." The first represents a sum certain, required of all members, to be paid to the general purpose funds of the union for the union's support and maintenance and is a condition of membership in the union. This component possesses the traditional indicia of "dues," is expressly characterized as such and may properly be deducted from

the wages of public employees pursuant to N.J.S.A. 52:14-15.9e. However, the second component is voluntary in nature, not exacted as a condition of membership, is segregated from the general funds received from payment of "dues" and is expended for political purposes. This component is essentially a voluntary political contribution distinct from the mandatory dues payment of union members, and is expressly characterized in Bylaw 2 as a "contribution." It is, therefore, our opinion that the controlling statute dealing with the checkoff of union dues set forth in N.J.S.A. 52:14-15.9e does not authorize school districts to deduct the "political contribution" component of the N.J.E.A. Professional Payment from the wages of its employees.

Very truly yours,

WILLIAM F. HYLAND
Attorney General

By Mary Ann Burgess
Mary Ann Burgess
Deputy Attorney General

MAB:mwl

FEDERAL COMMISSION
OFFICE OF THE
DEPUTY ATTORNEY GENERAL
COPY

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STERNS, HERBERT & WEINROTH

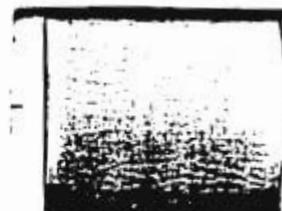
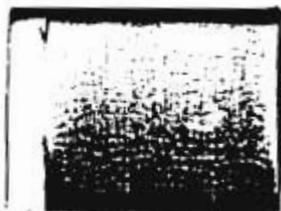
COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608

77

William C. Oldaker, General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463



NOV 1971

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7904011463

Ms. Judith Owens
President
New Jersey Education Association
180 West State Street
Trenton, New Jersey 08608

Re: MUR 350 (76)

Dear Ms. Owens:

This letter is to notify you that the Federal Election Commission has received a complaint against the New Jersey Education Association which alleges certain violations of the Federal Election Campaign Act of 1971, as amended (the Act). We have numbered this matter MUR 350. A copy of the complaint is enclosed. The Commission has reason to believe that the matters alleged therein state a violation of 2 U.S.C. §461b(b)(3)(A).

Under the Act, you have an opportunity to demonstrate that no action should be taken against the New Jersey Association. The Commission is under a duty to investigate this matter expeditiously; therefore, should you deem a response necessary herein, please file it within ten days of your receipt of this letter. However, as you will note the underlying issue involved herein is similar to that in MUR 283, about which you were notified under separate cover. We are in receipt of your response to MUR 283, and should you desire our consideration of that response to this matter, please advise us.

You will be sent copies of summaries of all correspondence received by the Commission from the complainant concerning this matter. If you have any questions, please contact Carol Darr (telephone no. 202/382-4042), the attorney assigned to this case.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure [complaint]
CDarr/scc 1/18/77

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7904011464

file copy 350

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Peacos
R.D. #1, Coppermine Road
Princeton, New Jersey 08540

Re: MUR 350 (76)

Dear Mr. Peacos:

We have completed a preliminary review of your complaint and have numbered it as MUR 350. Please refer to this number in any further correspondence.

A copy of your complaint has been forwarded to respondent. If you have any further evidence you wish to make available to us, please submit it within five days of your receipt of this letter.

Please note that 2 U.S.C. §437g(a)(3) enjoins any person from making public the fact of "any notification or investigation" by the Commission until the respondent agrees in writing to make public the investigation. The attorney assigned to this matter is Carol Darr (telephone no. 202/392-4041). Please do not hesitate to write or call if you have any further questions.

Sincerely yours,

William C. Oldaker
General Counsel

CDarr/scc 1/18/77

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

79040111465

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
New Jersey Education Association)

MUR 350 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on February 3, 1977, the Commission adopted the recommendation of the General Counsel to find Reason to Believe that a violation of 2 U.S.C. §441(b) (3)(A) had been committed in the above-captioned matter.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

February 3, 1977

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE EMMONS *ME*

RE: MUR 350 (76)

The above-mentioned MUR was transmitted to the Commissioners on February 1, 1977 at 4:30 p.m.

As of 2:00 p.m., February 3, 1977, no objections had been received, but Commissioner Harris has a question regarding the proposed letter. A copy of his comments are enclosed.



700111457

Harper

FEB 1 1977

NO. MUR 350

DATE AND TIME OF TRANSMITTAL: _____

4:30

REC'D: _____

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Michael Peacos

Respondent's Name: New Jersey Education Association

Relevant Statute: 441b(b) (3) (A)

External Reports Checked: none

Federal Agencies Checked: none

SUMMARY OF ALLEGATION:

Respondent is requiring complainant's wife to pay monies into the organization separate segregated fund, under a reverse check-off system of collection.

PRELIMINARY LEGAL ANALYSIS

In §114.5(a)(1) of its proposed regulations the Commission construed the prohibitions of 2 U.S.C. 441b(b)(3)(A) as applying to "fees and monies paid as a condition of acquiring or retaining membership or employment . . . even though they are refundable upon the request of the payor." The present situation clearly falls within the ambit of this proscription, and there is, therefore, reason to believe that §441b(b)(3)(A) has been violated

Continuation

RECOMMENDATION

Reason to believe a violation of §441b(b)(3)(A) has been committed, said attached letters.

PRELIMINARY LEGAL ANALYSIS
CONTINUATION

There is currently a compliance action pending against the New Jersey Education Association, which also involves the "reverse check-off" procedure (MUR 283).

70043111469



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Peacos
R.D. #1, Coppermine Road
Princeton, New Jersey 08540

Re: MUR 350 (76)

Dear Mr. Peacos:

We have completed a preliminary review of your complaint and have numbered it as MUR 350. Please refer to this number in any further correspondence.

A copy of your complaint has been forwarded to respondent. If you have any further evidence you wish to make available to us, please submit it within five days of your receipt of this letter.

Please note that 2 U.S.C. §437g(a)(3) enjoins any person from making public the fact of "any notification or investigation" by the Commission until the respondent agrees in writing to make public the investigation. The attorney assigned to this matter is Carol Darr (telephone no. 202/382-4041). Please do not hesitate to write or call if you have any further questions.

Sincerely yours,

William C. Oldaker
General Counsel



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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Judith Owens
President
New Jersey Education Association
180 West State Street
Trenton, New Jersey 08608

Re: MUR 350 (76)

Dear Ms. Owens:

This letter is to notify you that the Federal Election Commission has received a complaint against the New Jersey Education Association which alleges certain violations of the Federal Election Campaign Act of 1971, as amended (the Act). We have numbered this matter MUR 350. A copy of the complaint is enclosed. The Commission has reason to believe that the matters alleged therein state a violation of 2 U.S.C. §441b(b) (3) (A).

Under the Act, you have an opportunity to demonstrate that no action should be taken against the New Jersey Association. The Commission is under a duty to investigate this matter expeditiously; therefore, should you deem a response necessary herein, please file it within ten days of your receipt of this letter. However, as you will note, the underlying issue involved herein is similar to that in MUR 283, about which you were notified under separate cover. We are in receipt of your response to MUR 283, and should you desire our consideration of that response to this matter, please advise us.

You will be sent copies of summaries of all correspondence received by the Commission from the complainant concerning this matter. If you have any questions, please contact Carol Darr (telephone no. 202/382-4041), the attorney assigned to this case.



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This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

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R.D. # 1 Copper Mine Rd
Princeton, New Jersey 08540
November 23, 1976

Carol Darr
Federal Election Commission 76 DEC 3 AIO: 18
13 25 K St. NW
Washington, D.C. 20463

763994

Dear Ms. Darr:

Re: CC #865

In response to a letter dated November 1, 1976 my complaint is based on two things: (1) The enclosed newspaper clippings and (2) My wife's experience concerning the deductions for political candidates supported by the New Jersey Education Association.

When my wife received her first pay check on September 15 a sum of money was withheld from her paycheck. Some time later she received an explanatory note along with her membership card. A card was enclosed which she filled out requesting a re-imbursment. However, she has not been sent the money to date; also the deductions are continuing. My contention is that even though she received an explanatory note, no one ever asked her if she agreed to it in the first place. Neither has anyone ever consulted with her on her political choices. She has written to New Jersey Educational Association voicing her objections but met with evasive answers.

In America we do not need any pressure groups to use our money to support candidates which may not be of our choosing. The irony of this whole matter is the fact that the Federal Election Commission forces a private citizen to file a complaint rather than pursuing the matter of its own initiative.

Yours sincerely,

Michael Jaccos

Michael Jaccos

11/27/76
Wanda M. Cahill
SECRETARY PUBLIC OF NEW JERSEY
BY COMMISSION ORDER MAR. 22, 1977

Mentioned 9/28/76
BUNNY STAR LEADER

NJEA builds political fund by 'check-off'

By ROBERT J. BRAUN

The New Jersey Education Association (NJEA) has begun funneling part of what it calls "membership dues" into a special fund used for political contributions to favored politicians.

The fund, dubbed the NJEA-Political Action Committee (PAC), makes direct political contributions to candidates and provides in-kind and other services to those selected for help.

The Federal Elections Campaign Act of 1977 forbids labor organizations from making political contributions out of "dues, fees, or other monies required as a condition of membership in a labor organization."

A spokesman for the State Election Law Enforcement Commission said he believed the federal ban extends to state elections.

Marvin Reed, an NJEA press spokesman, said the \$2-per-member assessment is "listed" as membership dues. But he said the political fund effort did not violate election laws because NJEA members have the opportunity to ask the teachers' organization to return the money.

"We have checked this out thoroughly," said Reed, "and we are sure that the voluntary nature of the contribution takes it out of the laws forbidding the use of dues for political purposes."

In the past, contributions to the NJEA-PAC have been completely voluntary. The "check-off" procedure now in use is expected to double, at least, the political campaign war chest.

State law requires community school boards to deduct from each teacher's salary the amount certified by the NJEA as "membership dues." The law, however, does not require the boards to deduct contributions to NJEA-PAC.

Last week, the NJEA certified to all districts employing NJEA members that the

(Please turn to page 20)

(Continued from Page One)

amount to be deducted was \$75. Of that \$75, however, \$2 is slated for NJEA-PAC. The form used by the NJEA to certify the amount contains no reference to anything but dues.

The form signed by teachers authorizing the board to make the deduction from their paychecks also makes no reference to the political fund. A number of teachers already have complained to state officials that school boards have no right under the law to deduct anything but actual membership dues.

"If it's dues," complained one high school teacher who asked not to be identified, "then the NJEA has no legal right to use it for political contributions. If it's not dues, then my school board has no legal right to deduct it from my salary."

Dr. Mark Hurwitz, executive director of the New Jersey School Boards Association, said he was convinced school boards throughout the state were unaware that part of the dues they must by law deduct are used for political purposes. He said he would investigate ways of stopping the practice.

"I don't believe local boards of education should cooperate at all in the NJEA's efforts to elect politicians favorable to its positions," said Hurwitz.

A number of school board secretaries expressed surprise that the certified amount also included a political contribution.

"I don't think our school board will be pleased when they learn of this," said Walter Fiddy, Summit's school secretary. Another board business manager denounced the procedure as a "clever cover-up."

Despite the unhappiness expressed by school board representatives about the practice, it is not clear whether they can do anything about it.

"The law says we must deduct that amount the NJEA certifies as dues," explained Hugh Scherer, Union Township's school board secretary. "If the NJEA calls the figure dues, I don't know what we can do about it."

Reed said that, while the school districts themselves might not be aware of the uses of the assessment, that practice has been explained to teachers in a recent mailing that included check-off cards.

Reed said that the failure of the NJEA to demand a marked-for-political contributions as a way of protecting teacher

did not feel that who contributes to should be known to local school boards. This way, the interests of those who wish to contribute and those who do not to contribute are pro-

W O O I O N I F 4 7 1

Arrogant disregard

Even though there appears to be an obvious conflict with the federal election law, the New Jersey Education Association has been using local school boards to collect political contributions from the pockets of its teacher-members.

The practice has been condoned by state educational officials, including Commissioner Fred Burke. The latter has taken the rather casual position of finding anything wrong with using tax-supported agencies as collection conduits for political activity.

A far more responsible posture has been taken by the New Jersey School Boards Association; it has advised local school boards not to withhold political contributions from teacher paychecks. It is a more responsible position that local boards should adopt in an unequivocal manner.

There should be a firm, unwavering distinction between a dues checkoff, which is a legitimate aspect of collective bargaining, and political contributions. There should be no commingling of these two. Federal law prohibits the use of union dues for political contributions, a sanction that has been scrupulously observed by other organized labor groups.

The NJEA apparently feels it can circumvent federal restraint by sending cards to each of its members explaining that a refund will be made if the cards are returned to the organization with the member's name and school district. However, the NJEA also has a message from the NJEA president urging teachers not to request a refund.

State law requires local school boards to collect membership dues for the teacher organization. This year the group certified \$75 as the amount, although dues are actually \$73. The balance collected by school boards goes to the NJEA Political Action Committee, which allocates campaign funds to politicians it favors.

Political activity, when it is financed by legally obtainable means, is an integral phase of the election process that should be fully encouraged. But the funds should be collected on a private, voluntary basis and through a law supported mechanism.

The NJEA has already contributed with its members' dues to educational obligations. It should limit itself to collect teacher dues only, and let the state build up its political war chest on a separate basis — and with its own facilities.

UNDER THE TABLE



MUR 283
RESPONSE

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

AFFIDAVIT

WALTER J. O'BRIEN, of High Acres Road, Trenton,
New Jersey, of full age, being duly sworn according to law,
upon his oath deposes and says:

1. I am the Director of Government Relations for the
New Jersey Education Association (N.J.E.A.) located at 180
West State Street, Trenton, New Jersey. I have been employed
by N.J.E.A. for 18 years and currently serve as chief lobbyist
for N.J.E.A., as well as the staff contact to the New Jersey
Education Association Political Action Committee (P.A.C.).

2. The N.J.E.A. has served as the chief representative for
teachers in New Jersey, first as the New Jersey State Teachers'
Association, which was founded in 1853 and incorporated as a
non profit organization under the laws of New Jersey. On
September 15, 1950 that Association's certificate of in-
corporation was amended to change the name to the New Jersey
Education Association .

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
SERIES OF GENERAL COUNCIL

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3. Article II of the attached N.J.E.A. Constitution states that the objectives of the Association are to promote the education interests of the state; to secure and maintain for the office of teaching its true position among the professions; to promote and guard the interests of public and State school teachers by means of instruction, conference and united action.

4. The N.J.E.A. currently represents the interests of some 108,000 dues paying members, including 83,000 active professional members employed as teachers and administrators in New Jersey public schools.

5. By virtue of Article III, Section 1 of the N.J.E.A. Constitution, active professional membership is open to:

. . . Any person (1) who is regularly employed in a professional education capacity in a public school, college, university, institution, or agency operating under the laws of the State of New Jersey and (2) who if in a position which requires a certificate issued by the State Board of Examiners holds such a certificate or if not in a position which requires such certificate holds an earned bachelor's degree, or any person employed in a professional capacity by this Association and (3) where eligible, is a member of the appropriate affiliated local and county associations and of the National Education Association, may become an active professional member of this Association, by payment of the annual dues. Active Professional Members shall have the right to vote, hold office, and receive services of the Association.

6. Article IV of the N.J.E.A. Constitution establishes the Association's Delegate Assembly, as its state-wide governing body.

7. The N.J.E.A. is an affiliate of the National Education Association (N.E.A.), which was organized in 1857, and incor-

porated under the laws of the District of Columbia, February 24, 1886. The N.E.A. presently represents 1.8 million active members.

8. On January 23, 1971, N.J.E.A.'s Delegate Assembly agreed that, beginning September 1, 1971, any active professional member of the N.J.E.A. should also be a member in his or her affiliated local and county association, as well as the N.E.A.

9. The N.J.E.A. acts as the transmittal agent for N.E.A. dues collected by our local representatives from each dues paying member. N.E.A. dues are established by the N.E.A. Representative Assembly, independent of the N.J.E.A. dues assessment.

10. A Political Action Study Committee was established by the N.J.E.A. Delegate Assembly in November, 1971, to explore the feasibility of political action by N.J.E.A. members to the extent of endorsing candidates and participating in political campaigns for their election to office. Reaching the conclusion that the N.J.E.A. should establish a political action committee closely allied to the N.J.E.A. structure, the Study Committee recommended an information program for the membership which was adopted by the N.J.E.A. Delegate Assembly in May, 1972. N.J.E.A. Delegate Assembly approval at its November, 1972, meeting signaled the beginning of organized political action for the teachers of New Jersey. In February, 1973, the N.J.E.A. Executive Committee adopted general guiding principles and established the N.J.E.A. P.A.C. Fund.

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11. The attached N.J.E.A.-P.A.C. Guidelines were adopted by the N.J.E.A.-P.A.C. Operating Committee on May 5, 1973. Since the formation of the N.J.E.A.-P.A.C. Fund, we have raised funds for N.J.E.A.-P.A.C. from the voluntary contributions of our members. No dues money has been expended to support state or federal N.J.E.A.-P.A.C. endorsed candidates.

12. Since 1973, the N.J.E.A.-P.A.C. Operating Committee has reported to the N.J.E.A. Delegate Assembly each January. Each annual report contained an auditor's report prepared by Groendyhe and Co., Certified Public Accountants. These reports, which are available upon request, indicate that \$122,665.96 was raised for the N.J.E.A.-P.A.C. (through voluntary non-dues contributions and the proceeds from N.J.E.A.-P.A.C. Balls).

13. On January 10, 1975, the N.J.E.A.-P.A.C. Operating Committee asked that a study group be formed to consider fund raising alternatives for 1976 and the future.

14. On November 13, 1975, the N.J.E.A. Delegate Assembly approved the recommendations of these special study groups and adopted an amendment to the N.J.E.A. Bylaws, providing for the establishment of a new fund raising system to take effect on September 1, 1976. This system, designated the Optional Rebate Plan, added \$2 to the regular annual dues to be used for P.A.C., unless individual members advised the N.J.E.A. that they wished to have the \$2 returned to them.

The new Association bylaw, provided as follows:

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*2. Professional Payment - Each Active Professional Member shall remit to the Association, through the same procedures by which the dues of such member are paid and under standards established by the Executive Committee, an annual total professional payment which shall include, in addition to the established dues for such member, a contribution, in the amount of two (\$2) dollars, for the N.J.E.A. Political Action Committee. Each fall when the Automatic Payroll Deduction members receive their membership cards, a letter explaining the Political Action Committee deduction, a form to request the return of the two (\$2) dollars, and a self-addressed envelope to N.J.E.A. will be included. Upon receipt of a request in writing from any member, the Association shall return the member's two (\$2) dollar contribution for the fiscal year during which the request was received. The Association shall transmit to the N.J.E.A. Political Action Committee those two (\$2) dollar contributions for which no refund request is received.

15. To date, all monies raised, whether through state-wide member solicitation efforts; N.J.E.A. P.A.C. Ball proceeds; or the new Optional Rebate Plan, have been strictly on a voluntary basis. All funds have been placed in a segregated account and are subject to periodic audit. N.J.E.A.-P.A.C. has complied fully with all reporting requirements of the F.E.C. and New Jersey State Election Law Enforcement Commission.

16. In September, 1976, allegations were made concerning non-adherence with the Federal Election Commission regulations. Since these funds were collected on a strict voluntary basis and maintained in a separate fund, there has been complete compliance. Nevertheless, in order to avoid any unnecessary problems, no funds received from the Optional Rebate Plan have been spent on any federal or state election campaigns to date.

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17. Accordingly, the answers to the questions asked of the N.J.E.A. by John G. Murphy, General Counsel of F.E.C. are as follows:

First, while it is an affiliate of the N.E.A., the N.J.E.A. is autonomous and operates in accordance with the requirements of its own Constitution and By-laws. Similarly, N.J.E.A.-P.A.C. operates independent of N.E.A.-P.A.C. and in accordance with guidelines established by the N.J.E.A.-P.A.C. Operating Committee.

Second, the N.J.E.A. has total control over decisions dealing with the procedure used to collect funds, amounts to be collected, and disbursements to endorsed candidates. The Optional Rebate Plan was enacted by the N.J.E.A. Delegate Assembly. That Assembly also established the N.J.E.A.-P.A.C. Committee, which oversees the solicitation of P.A.C. funds, the endorsements of candidates, and the disbursal of any P.A.C. funds.

Last, to date, no optional rebate funds have been sent to the N.E.A.) Prior to September, 1976, N.J.E.A.-P.A.C. sent approximately \$20,000 to N.E.A.-P.A.C. from non dues funds received from N.J.E.A. members. No set formula exists between N.J.E.A. or N.E.A. with respect to the forwarding of funds from one organization to another. Further, N.J.E.A. has the sole power to determine how much, if any funds, are sent to N.E.A.-P.A.C.

Sworn and subscribed to before me this day of December 2, 1976

Walter J. O'Brien
Walter J. O'Brien
Notary Public, New Jersey

file

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 15 1970

Ms. Marie Muhler
Assemblywoman, District II
(Monmouth)
2 East Main Street
P. O. Box 838
Freehold, New Jersey 07728

Re: MUR 283 (76)

Dear Ms. Muhler:

We have completed a preliminary review of your complaint and have numbered it as MUR 283. Please refer to this number in any further correspondence.

A copy of your complaint has been forwarded to respondent. If you have any further evidence you wish to make available to us, please submit it within five days of your receipt of this letter.

Please note that 2 U.S.C. 437g(a)(3) enjoins any person from making public the fact of "any notification or investigation" by the Commission until the respondent agrees in writing to make public the investigation. The attorney assigned to this matter is Carol Darr (telephone no. 202/382-4041). Please do not hesitate to write or call if you have any further questions.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered..... 15¢
- Show to whom, date, & address of delivery.. 35¢
- RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢
- RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Ms. Marie Mubler

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>438328</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

Irvin R. Cedrigan

4. DATE OF DELIVERY *11-19-76*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

Freehold Post Office

FRESH FLD. NOV 19 1976

CLEARLY PRINT NAME

★ GPO: 1975 O-282-028

15 NOV 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Warren M. Cruise, Esquire
Counsel
Stephen M. Nassau, Esquire
Associate General Counsel
National Education Association
1201 16th Street N. W.
Washington, D. C. 20036

Re: MUR 283 (76)

Dear Messrs. Cruise & Nassau:

This letter is to notify you that the Federal Election Commission has received a complaint against you which alleges certain violations of the Federal Election Campaign Act of 1971, as amended (the Act). We have numbered this matter MUR 283. A copy of the complaint is enclosed. The Commission has reason to believe that the matters alleged therein state a violation of 2 U.S.C. §441b(2)(3)(A).

Under the Act, you have an opportunity to demonstrate that no action should be taken against the National Education Association. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In particular, I would appreciate a response to the following questions:

1. Describe NEA's relationship to the New Jersey Education Association and its political committee.
2. Does NEA have control over the decisions to implement the form of solicitation at issue herein?
3. Are any of the dues or political contributions collected by the New Jersey Education Association sent to the NEA? If so, what percentage?

FEDERAL ELECTION COMMISSION
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The Commission is under a duty to investigate this matter expeditiously; therefore, your response should be submitted within ten days after receipt of this notification. You will be sent copies or summaries of all correspondence received by the Commission from the complainant concerning this matter. If you have any questions, please contact Carol Darr (telephone no. 202/382-4041), the attorney assigned to this case.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosure

CDarr:pjg:10/28/76
cc: Chron file
MUR file
CD

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

- Show to whom and date delivered..... 15¢
- Show to whom, date, & address of delivery... 35¢
- RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢
- RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
*Stepley Nassag
Warren Cruise*

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>438337</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

[Signature]

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)
MA

6. UNABLE TO DELIVER BECAUSE

CLERK'S INITIALS

POST OFFICE
NOV 1976
ST. JAMES, MISSOURI

* GP-100-0-200-00

WE OBTAINED OUR CERTIFIED MAIL RECEIPT, REGISTERED MAIL RECEIPT, AND CERTIFIED MAIL RECEIPT FROM THE MAIL ROOM

15 NOV 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Judith Owens
President
New Jersey Education Association
180 West State Street
Trenton, New Jersey 08622

Re: MUR 283 (76)

Dear Ms. Owens:

This letter is to notify you that the Federal Election Commission has received a complaint against the New Jersey Education Association which alleges certain violations of the Federal Election Campaign Act of 1971, as amended (the Act). We have numbered this matter MUR 283. A copy of the complaint is enclosed. The Commission has reason to believe that the matters alleged therein state a violation of 2 U.S.C. §441b(b) (3) (A).

Under the Act, you have an opportunity to demonstrate that no action should be taken against the New Jersey Education Association. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. In particular, I would appreciate a response to the following questions.

1. Describe the New Jersey Education Association's relationship to the NEA, in particular with respect to your political action committee.
2. Does the New Jersey Education Association have control over the decision to implement the form of solicitation at issue herein?
3. Are any of the dues or political contributions collected by the New Jersey Education Association sent to the NEA? If so, what percentages?

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

79040111487

The Commission is under a duty to investigate this matter expeditiously; therefore, your response should be submitted within ten days after receipt of this notification. You will be sent copies or summaries of all correspondence received by the Commission from the complainant concerning this matter. If you have any questions, please contact Carol Darr (telephone no. 202/382-4041), the attorney assigned to this case.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosure

CDarr:pjg:10/28/76
cc: Chron file
MUR file
CD

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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... 1, 2, and 3.
Put address in the "RETURN TO" space on reverse

1. The following service is requested (check one).

Show to whom and date delivered..... 15¢

Show to whom, date, & address of delivery.. 35¢

RESTRICTED DELIVERY
Show to whom and date delivered..... 65¢

RESTRICTED DELIVERY
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Ms Judith L. ...

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>135711</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

J. D. ...

4. DATE OF DELIVERY	POSTMARK
<i>NOV 19 1970</i>	

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE	CLERK'S INITIALS

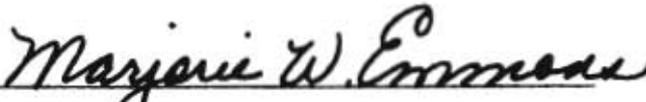
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New Jersey Education Association)
and NEA)

MUR 283 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 10, 1976, the Commission adopted the recommendation of the General Counsel to find Reason to Believe that a violation of 2 U.S.C. 441b(b)(3)(A) had been committed in the above-captioned matter.


Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7901011497

November 10, 1976

MEMORANDUM FOR: BILL OLDAKER

FROM:

MARJORIE EMMONS

MJE by mee

RE:

MUR 283 (76), MUR 301 (76), MUR 309 (76),
MUR 324 (76), and MUR 325 (76)

The above mentioned MURs were transmitted to the Commission on November 9, 1976 at 1:00 p.m.

As of 2:45 p.m. on November 10, 1976, no objections had been received on these MURs.

Attached is a copy of Commissioner Springer's comments on MUR 301 (76).

7001011491

DATE AND TIME OF TRANSMITTAL: 11-9-76
1:00

NO. MUR 283 (76)
REC'D: 10/13/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Marie A. Hubler (notarized)

Respondent's Name: New Jersey Education Association, and NEA

Relevant Statute: 441b(b)(3)(A)

Related Reports Checked: _____

Related Agencies Checked: None

SUMMARY OF ALLEGATION

Complaints are requiring New Jersey teachers to pay monies into the sep. in
segregated funds of both the NEA and the New Jersey Education Association
under a "reverse check-off" system of collection.

PRELIMINARY LEGAL ANALYSIS

Under 114.5(a)(1) of its proposed regulations, the Commission construed the
provisions of 2 U.S.C. 441b(b)(3)(A) as applying to "fees or monies paid
as a condition of acquiring or retaining membership or employment . . . or
which are refundable upon the request of the payer." The proposed
regulation clearly falls within the ambit of this prohibition, and
it is a reason to believe that 441b(b)(3)(A) has been violated.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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CONTINUATION SHEET

PRELIMINARY LEGAL ANALYSIS

The NEA clearly has had notice of the Commission's interpretation since it testified in opposition to §114.5(a)(1) of the proposed regulations on June 10, 1976.

In addition, on October 5, 1976, the Commission sent notice to all candidates and committees that it "intends to administer the Act in a fashion which implements the interpretations set forth in the proposed regulations.

7904011493

FEDERAL ELECTION COMMISSION
REGIONAL FILE COPY

NOV 10 1976

CC 1023
MUR 2803
Darr
FEDERAL ELECTION COMMISSION
National Right to Work Legal Defense Foundation, Inc.

8316 ARLINGTON BOULEVARD (U.S. 50)

SUITE 600 • FAIRFAX, VIRGINIA 22038

TELEPHONE
November 16, 1976

(703) 573-7010

NOV 18 AM 11:29

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

763738

Re: Paul E. & Lore M. Chamberlain v. Garden City Education Association, et al., FEC Complaint filed Oct. 19, 1976

Dear Sir:

The above-described complaint was filed with the Commission on behalf of the complainants by my office on October 19, 1976. It included a designation of myself by the complainants as their attorney as agent for service of documents and my appearance as the same. To date, however, I have received no word from the Commission regarding the complaint, not even an acknowledgement of its receipt.

It is my understanding, based on the Commission's response to another complaint, MUR 291 (76), dealing with similar issues but filed two days later than Mr. & Mrs. Chamberlain's complaint, that the Commission's practice upon receipt of a complaint is to assign to it a "MUR" number, refer it to a staff member for analysis and acknowledge its receipt. I would appreciate knowing why this procedure has not been followed as to the Chamberlain's complaint. If it has, I would appreciate notification of the status of the complaint.

Sincerely yours,

Raymond J. LaJeunesse, Jr.

Raymond J. LaJeunesse, Jr.
Attorney for Complainants

cc: Paul E. & Lore M. Chamberlain

OCT 27 1976

Honorable Marie A. Muhler
Assembly Women, District II
(Monmouth)
2 East Main Street
P.O. Box 838
Freehold, NJ 07728

Dear Ms. Muhler:

This is to acknowledge receipt of your complaint of October 13, 1976, alleging violations of the Federal Election Campaign Laws, with regard to the "reverse check-off" system of soliciting political contributions used by the New Jersey Education Association and the National Education Association. A staff member has been assigned to analyze your allegations and a recommendation to the Federal Election Commission as to how this matter should be handled will be made shortly. You will be notified as soon as the Commission determines what action should be taken. For your information, we have attached a brief description of the Commission's preliminary procedures for the handling of complaints.

Sincerely yours,

William C. Oldaker
Assistant General Counsel

cc: Jonathan L. Goldstein,
U.S. Attorney

CDarr:pjg:10/27/76
cc: file
CD

7904011495

OCT 27 1976

Mr. Jonathan L. Goldstein
United States Attorney
for the District of New Jersey
Newark, New Jersey 07101

Dear Mr. Goldstein:

Thank you for forwarding Ms. Marie A. Mukler's complaint to the Federal Election Commission. Enclosed is a copy of our reply to her regarding her complaint of the "reverse check-off" system of soliciting political contributions used by the New Jersey Education Association and the National Education Association.

Sincerely yours,

William Oldaker
Assistant General Counsel

Enclosure

CDarr:amh:10/26/76

280

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GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

RECEIVED
FEDERAL ELECTION
COMMISSION

CC # 749
MUR 283

76 OCT 18

All

40

MARIE A. MUHLER
ASSEMBLYWOMAN, DISTRICT II (MONMOUTH)
2 EAST MAIN STREET
P.O. Box 838
FREEHOLD, N. J. 07728
BUS. 201-462-9009

October 14, 1976

76294

Mr. Benjamin Van Der Griff
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Van Der Griff:

I am in receipt of the attached letter from U.S. Attorney Jonathan L. Goldstein and in accordance with recommendation contained in the letter, I would like to file a complaint in regard to a violation of the Federal Election Campaign Act of 1976.

The New Jersey Education Association is at present using contributing monies in Federal elections which come from union dues.

I respectfully request a thorough investigation of this allegation.

Thank you for your consideration.

Sincerely,

Marie A. Muhler

Marie A. Muhler
Assemblywoman

MAM/tre
enclosure.

*Sworn and subscribed
to before me this 14th day
of October, 1976.*

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Karen S. Lloyd

KAREN S. LLOYD
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 20, 1978

7001011407

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
NEWARK, N. J. 07101
AND REFER TO
EJP:es

United States Department of Justice

UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101
(201) 645-2322

October 13, 1976

Hon. Marie A. Muhler
Assemblywoman, District 11(Monmouth)
2 East Main Street
P.O. Box 838
Freehold, New Jersey 07728

Dear Assemblywoman Muhler:

Receipt is acknowledged of your letter
of October 4, 1976.

We have carefully reviewed your complaint
and the facts surrounding the New Jersey Education
Association's assessment and collection of dues, a
portion of which is designated for federal political
purposes.

On May 11, 1976 the President of the United
States signed the Federal Election Campaign Act
amendments of 1976 which established a Federal Election
Commission as an independent executive agency and vests
sole jurisdiction for the civil enforcement of the Act's
provisions with the Commission.

One of the specific provisions included in the
Act makes it unlawful for a labor union to make a
contribution to a federal political campaign from union
dues "or other monies required as a condition of
membership." On August 25, 1976 the Commission published
regulations implementing the Federal Election Campaign
Act. These regulations were adopted after public hearings
at which labor unions, corporations and other interested
parties had an opportunity to express their views.
Part 114.5 of the Federal Election Commission regulations
prohibits a labor union from contributing monies to be
used in federal elections which come from union dues "even

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL



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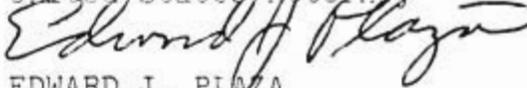
though they are refundable upon request of the payor." This regulation did not become effective because Congress adjourned prior to the passing of the statutory thirty-day period. It does, however, express the Commission's views on this subject.

I have forwarded a copy of your letter along with a brief description of the facts to the General Counsel of the Commission. The Act provides that the Commission may investigate an alleged violation upon receipt of a sworn and notarized complaint. If you desire to follow such a course of action, you may mail the complaint to the Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. I have discussed your complaint with Mr. Benjamin Van Der Griff of the General Counsel's Office and he has assured me that the Commission will thoroughly investigate your allegations and take appropriate action, if necessary.

Please let me know if we can be of further assistance. Thank you for your letter and the confidence you have shown in this office.

Very truly yours,

JONATHAN L. GOLDSTEIN
United States Attorney



By: EDWARD J. PLAZA
Chief, Criminal Division

cc: Mr. Benjamin Van Der Griff
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
1325 K STREET, N.W.
WASHINGTON, D.C. 20463

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A. No. LHR, N.J. Assembly
District (Monmouth)
1st Main Street, P.O. Box 838
Hold, New Jersey 07728

0.06



Mr. Benjamin Van Der Griff
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
NEWARK, N. J. 07101
AND REFER TO
EJP:es

United States Department of Justice

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CC # 749
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UNITED STATES ATTORNEY

FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101

OCT 15 9:29

(201) 645-2322

October 13, 1976

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Mr. Benjamin Van Der Griff
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

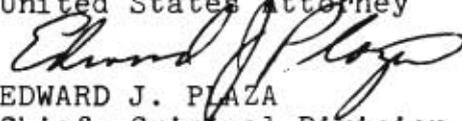
Dear Mr. Van Der Griff:

Enclosed you will find a copy of the letter received by this office from Ms. Buhler along with a copy of my response. As I have told you by phone, the practice she complains of calls for the collection of New Jersey Education Association union "dues" by local schoolboards. N.J.E.A. has advised its membership that a portion of those dues will be used locally and an equal portion will be forwarded to their parent organization, National Education Association, for use in federal elections. Members may obtain a refund by filling out a card and mailing it to N.J.E.A. Headquarters.

If you need any further information, please do not hesitate to contact me. Thank you for your cooperation in this matter.

Very truly yours,

JONATHAN L. GOLDSTEIN
United States Attorney



By: EDWARD J. PLAZA
Chief, Criminal Division

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United States Department of Justice
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COMMISSION
UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101
(201) 645-2322
OCT 15 9:29

October 13, 1976

Hon. Marie A. Muhler
Assemblywoman, District 11(Monmouth)
2 East Main Street
P.O. Box 838
Freehold, New Jersey 07728

Dear Assemblywoman Muhler:

Receipt is acknowledged of your letter
of October 4, 1976.

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Very truly yours,

JONATHAN L. GOLDSTEIN
United States Attorney

By: EDWARD J. PLAZA
Chief, Criminal Division

cc: Mr. Benjamin Van Der Griff
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

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GENERAL COUNSEL



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

MARIE A. MUHLER
ASSEMBLYWOMAN, DISTRICT II (MONMOUTH)
2 EAST MAIN STREET
P. O. Box 838
FREEHOLD, N. J. 07728
BUS. 201-462-9009

October 4, 1970

U.S. Attorney Jonathan L. Goldstein
Federal Building
377 Broad Street
Room 502
Newark, New Jersey 07102

Dear Mr. Goldstein:

I would like to file a complaint with your office requesting investigation of violation of federal law involving union dues collected by the New Jersey Education Association. It is my understanding that only bona fide dues may be deducted from teachers' paychecks under federal as well as state law. Since the annual dues are \$73.00, school boards throughout the state are being falsely misled into deducting an additional two dollars which is in reality earmarked for political candidates.

I believe this is a ruse designed to mislead school boards and deprive teachers of their right to refuse to contribute to the political fund. I am sure most teachers are unaware of this illegal practice and that they would resent having their salaries forcibly forwarded to politicians when they may not support at all.

Thank you for your consideration of this complaint.

Sincerely,

Marie A. Muller

Marie A. Muller
Assemblywoman

cc: Lewis E. Thurston, III
N.J. Election Law Enforcement Commission

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Boards fight NJEA on fund

By **ROBERT J. BRAUN**

The New Jersey School Boards Association has advised local school boards throughout the state to stop withholding political contributions from the paychecks of their teachers.

The action is expected to set off a major battle between the school boards group and the New Jersey

Education Association (NJEA), which has been using local boards to collect the political contributions from teachers since Sept. 1.

The NJEA, which serves as union and political lobby for some 80,000 teachers, collects the money by including it in what it calls "membership dues." State law requires local school districts to pay

over to the NJEA the amount the teacher organization certifies as dues.

This year, the NJEA certified \$75 as dues to the local boards. However, annual organization dues are only \$73 — with the balance collected by the local boards going to NJEA's Political Action Committee (PAC). PAC distributes the money to favored politicians.

Federal law prohibits the use of union dues for political contributions. But the NJEA sends cards to each of its members explaining that a refund will be granted if the cards — with the teacher's name and school district — are returned to the teachers' organization.

The card also contains a message from NJEA President Judith Owens, urging the teachers not to ask for a refund.

Carrino wins appeal on Gibson assault

By **DONALD WARSHAW**

An Essex County District Court judge yesterday overturned Newark Councilman Anthony Carrino's conviction on assaulting Mayor Kenneth A. Gibson, but upheld a municipal court finding that Carrino was guilty of willfully damaging city property.

The decision by Judge Howard Hayes — ruling on an appeal from the North Ward councilman — wipes out the penalties that had been carried by the assault charge: A \$500 fine, six-month suspended jail term and six months probation.

In upholding the malicious damage conviction, however, Judge Hayes allowed to stand a \$350 fine and the requirement that Carrino make restitution for the property destroyed March 23

when the councilman and more than 50 of his constituents forced their way into Gibson's locked City Hall office.

Conviction on both disorderly persons charges was handed down June 16 by Judge Charles H. Smith, an East Orange judge sitting in Newark Municipal Court.

But Judge Smith did not set an amount due from Carrino as restitution for a smashed desk pen and clock set and a damaged door jam with lock and electrical wiring.

A figure to be paid by Carrino was assigned yesterday by Judge Hayes — \$28 to Gibson for the desk set and \$150 to the City of Newark for the door.

Carrino — an on-leave patrolman who may have faced interdepartmental

...
In a memorandum sent to all local school boards, the state school boards association said the \$2 was not membership dues and, therefore, the local school officials were under no obligation to collect the money from teachers.

"Unless the board has agreed by contract to deduct such contributions, it is not required to do so by law," the memorandum reads.

"To stop this \$2 deduction, boards should recompute NJEA member dues deductions, using \$73, not \$75, as the 1976-1977 membership dues amount. They should notify NJEA that it has made the recomputation and demand from NJEA an accurate certification of NJEA dues for

(Please turn to Page 5)

(Please turn to Page 9)

School board to fight NJEA on dues fund

(Continued from Page One)
1976-1977 in the amount of \$73."

The memorandum conceded that the efforts to halt the political deduction "will entail additional work for the business administrators and board secretaries who already have a multitude of tasks to complete, dozens of forms to fill out and impossible timelines."

"It may seem to be an unconscionable amount of work for just two dollars, but when that two dollars is multiplied by 80,000 members of the NJEA, the amount involved is no longer inconsiderable."

A number of local board secretaries have indicated they wish to stop collecting political contributions for the NJEA, but felt they were required by law to

continue — as long as the NJEA called the deduction "dues."

But the state school boards association pointed out that, if the teachers' union persisted in calling the deduction dues, the "NJEA would be in violation" of the Federal Campaign Act.

The memorandum indicates it was issued in response to questions "raised by many local boards of education." The association's opinion is expected to set the stage for many local boards to discontinue deducting the political contributions.

The memorandum indicates that, through a previously voluntary procedure, NJEA-PAC was able to collect only \$85,000 in two years, with much of that money going to the cost of

collecting it. With the new procedure, the school boards group contends, the NJEA will be able to raise as much as \$160,000 — with most of the costs of collection borne by the local school boards.

The school boards association memorandum also offers the assistance of its legal staff to any school board seeking to discontinue the collection of the political contributions.

The memorandum represents the first formal effort by any state group or agency to put an end to the practice of using local school boards to collect political contributions for the NJEA. Last week, State Education Commissioner Fred G. Burke said he thought the collection procedure "made sense" and would not intervene to stop it.

FUNDS PUT ASIDE FOR POLITICAL CONTRIBUTION

NJEA dues practice violates FEC rules

By ROBERT J. BRAUN

Regulations adopted by the Federal Election Commission (FEC) explicitly forbid the kind of "reverse check-off" procedure now used by the New Jersey Education Association (NJEA) to collect money for political contributions.

Although the regulations are not expected to take full effect until early next year, an FEC spokesman said they would be used as "guidelines" for the enforcement of the federal laws banning the use of union dues for political contributions.

"The parties who engage in such practices are on notice that this is the direction in which the FEC intends to go and their attorneys should advise them accordingly," said the FEC spokesman.

The NJEA, the group that acts as union and lobby for most New Jersey teachers, has the school boards deduct \$2 from every member's salary for use by its Political Action Committee (PAC). PAC makes political contributions and performs other services for favored federal and state politicians.

State law requires school boards to deduct a union's membership dues from members' salaries. The NJEA has certified to local boards that annual dues this

year are \$75. Of that amount, however, \$2 is earmarked for political contributions.

NJEA members can apply to the group for a refund by sending a card to the organization with their names and places of employment. The card carries a message from an NJEA leader urging them not to request the refund.

Section 114.5 of the new FEC regulations prohibits the use of a fund for making political contributions if the money for that fund is drawn from union dues "even though they are refundable upon the request of the payor."

Section 401b of the Federal Elections Campaign Act — which the FEC regulations implement — makes it unlawful for any labor organization to set up a fund for political contributions if that fund uses money derived from "dues, fees or other monies required as a condition of membership in a labor organization."

The law, unlike the regulations, does not explicitly mention "reverse check-off" procedures.

The regulations would have gone into full legal effect if Congress had remained in session one more day instead of adjourning late last week. The laws governing the FEC permit its regula-

tions to go into full effect 30 congressional working days after their adoption by the commission. Last Monday would have been the 30th day.

The 30-day period will begin running again after the new Congress convenes in January.

In addition to questions of federal law, the NJEA's use of public school boards to raise money for its political uses has raised issues of state law. The New Jersey School Boards Association has advised boards against helping the NJEA raise the political money.

In a memorandum to all boards, the school boards association said the money was not dues and, therefore, the local administrations were not required by law to deduct it from their teachers' salaries.

A spokesman for the association has said that a number of boards have begun the process of recomputing the dues check-off procedure to eliminate the \$2 deduction.

Some boards, however, fearful of violating the state check-off law or unwilling to exert the effort to recompute the dues, are expected to continue to assist the NJEA in raising political contributions until ordered to stop by state authorities.

State Education Commissioner Fred G. Burke, saying he believed NJEA use of school boards to raise political contributions "made sense," has said he would not intervene to stop the practice.

Meanwhile Assemblywoman Marie A. Muhler (R-Moosmuth) said yesterday she has asked the U.S. Attorney to investigate what she termed "widespread fraud and evasion of federal law" in connection with union dues collected by the NJEA.

Mrs. Muhler described as improper the fact that a portion of the organization's annual dues are funneled into a political action committee, which disperses the funds to candidates who support union positions.

In addition to asking for a federal probe of the practice, the assemblywoman also forwarded a copy of her complaint to the New Jersey Election Law Enforcement Commission.

According to Mrs. Muhler, only bona fide dues may be deducted from teachers' paychecks under state law, and contended that the systematic deduction of the additional \$2 "is a ruse designed to mislead school boards, cheat the taxpayers and deprive teachers themselves of their right to refuse to contribute to the political funds."

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General Counsel
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