



March 15, 2022

Burrillville School Department
Attn: Dr. Michael Sollitto, Superintendent
2300 Bronco Highway
Harrisville, RI 02830
sollittom@bsd.ri.net

Central Falls School District
Attn: Dr. Stephanie Downey Toledo, Superintendent
949 Dexter Street, Lower Level
Central Falls, RI 02863

Foster-Glocester Regional School District
Attn: Michael S. Barnes, Superintendent
91 Anan Wade Rd
North Scituate, RI 02857

Johnston Public Schools
Attn: Brenda-Lee Troia, Coordinator of Human Resources
10 Memorial Avenue
Johnston, RI 02919

Lincoln Public School District
Attn: Lisa Peck, Director of Human Resources
135 Old River Road
Lincoln, RI 02865
peckl@lincolnps.org

New Shoreham School Department
Attn: Dr. Robert J. Gerardi, Jr., PhD, Superintendent
15 High Street
Block Island, RI 02807

Westerly Public Schools
Attn: Marisa C. Iannella-Rodriguez, Human Resources Coordinator
23 Highland Avenue
Westerly, RI 02891

West Warwick Public Schools
Attn: Melissa J. LeBlanc, Director of Human Resources and District Title IX Coordinator
10 Harris Avenue
West Warwick, RI 02893



Stephen Delie
Mackinac Center Legal Foundation
140 West Main Street
Midland, MI 48640
delie@mackinac.org

Re: Demand for Compliance with the Requirements of Janus v AFSCME.

To Whom it May Concern,

My name is Stephen Delie, and I am writing you on behalf of the Mackinac Center Legal Foundation. Recently the Rhode Island Center for Freedom and Prosperity published a report that at least one of your school districts' recent collective bargaining agreement contain language that violates your employees' First Amendment rights as described by *Janus v AFSCME*, 138 S. Ct. 2448 (2018). As such, please treat this letter as a formal demand that you amend these contracts to protect your employees' constitutional rights.

The *Janus* opinion was a landmark United States Supreme Court case addressing public employee's First Amendment rights. In writing for the majority, Justice Alito noted that every activity of a public sector union, even collective bargaining, was inherently political. *Id.* at 2480. Thus, anyone who financially supported a public sector union was, by definition, financing political speech. *Id.* at 2465. Since forced support of political speech violated the First Amendment, the Court recognized that any support of a public-sector union must be entirely voluntary. *Id.* at 2486. The Court concluded that “[s]tates and public-sector unions may no longer extract agency fees from nonconsenting employees.”

Other Supreme Court precedent illustrates what must be done to demonstrate employee consent. The Court has ruled that, to demonstrate consent to a waiver of constitutional rights, there must be evidence that the waiver is a “knowing, intelligent act ... done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady v United States*, 397 U.S. 742, 748 (1970). “It must also be done with “a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 421,421 (1986). Therefore, before employees can consent to financially supporting a public sector union, they must know both what their rights are and the consequences of waiving those rights.

Each of your collective bargaining agreements, contains language directly contrary to *Janus*, and therefore your employees' constitutional rights. Pursuant to *Janus*, it is no longer lawful for you to require any employee to pay agency fees as a term or condition of employment. Further, your agreements mislead your employees into believing they are required to financially support a union in order to keep their jobs. As written, these terms are indefensible.

MACKINAC CENTER LEGAL FOUNDATION

The logo features three vertical red bars of varying heights. The tallest bar on the left has a small blue square with two white stars at its top.

In light of the above, we hereby demand that your districts immediately renegotiate the terms of your collective bargaining agreements to not only remove the language requiring the payment of agency fees, but to also acknowledge that an employee's financial support of a union cannot be compelled. Your districts' ongoing failures to satisfy the constitution directly harms your employees at a period in which the pandemic and other economic concerns have stressed many of their finances. To continue force them to pay fees as a condition of employment not only violates your employees' First Amendment rights, but is also inappropriate as a matter of public policy.

Please note that, should your district fail to remedy the legal errors identified in this letter, we are prepared to represent your employees in litigation to defend their constitutional rights. Thank you for your consideration.

Sincerely,

Steve Delie

Mackinac Center Legal Foundation