



State of New Jersey
Commission of Investigation

UNION WORK

PUBLIC PAY

***THE TAXPAYER COST
OF COMPENSATION AND BENEFITS
FOR PUBLIC-EMPLOYEE UNION LEAVE***

May 2012

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May 2012

Governor Chris Christie
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A 52:9M, submits its final report of findings and recommendations stemming from an investigation into taxpayer-funded union leave.

Respectfully,

A stylized, handwritten signature of Patrick E. Hobbs in black ink.

Patrick E. Hobbs
Chair

A handwritten signature of Robert J. Martin in black ink.

Robert J. Martin
Commissioner

A handwritten signature of Todd R. Caliguire in black ink.

Todd R. Caliguire
Commissioner

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Executive Summary

The Commission examined the employment circumstances of public-sector labor union representatives and found a range of instances in which they receive full- or part-time paid leave from government jobs to conduct union business at taxpayer expense.¹ This was found to be the case even where the union personnel in question regularly engage in collective bargaining with their government employers – activity which can place them in conflict with the public interest.

Although it is not uncommon, nor is it necessarily improper, for government employers to grant some form of time-off for union work, the Commission found significant and questionable variations in how such leave is authorized, who qualifies for it, who keeps track of it, how it is constituted and who ultimately pays the bill. In many instances, costs associated with compensation and medical benefits for union officials on leave are borne by the labor organizations they represent.² On the other hand, the Commission found examples in which all or a portion of the salaries of such individuals – some in the six-figure range – and/or health benefits and pension contributions are covered by public funds with no reimbursement by union organizations. Some union officials have been on paid leave for years or even decades while occupying government job titles but doing no government work. In some cases, union officials receive additional payment in the form of overtime at taxpayer expense if, beyond their union obligations, they perform duties associated with their official government jobs. In other cases, taxpayers also pick up the tab for cars, office space, computers and other equipment used for union business. Despite the public's stake in these types of arrangements, they are often crafted in ways that defy public transparency.

¹ Employees on paid leaves of absence remain on the government payroll. Unless the union agrees to provide reimbursement, all salary and health benefit costs are borne by the public employer. The employee is entitled to advance up the pay scale and accrue sick and vacation time in the same manner as other employees not on leave.

² As used in this report, the terms “salary” and “compensation” may include pay for uniform allowances, attendance bonuses and longevity. The terms “medical benefits” and “health benefits” may include costs of health plans, dental plans, vision plans and prescription drug coverage.

The practice of providing government-paid leave for union work, while not universal, persists amid a thicket of confusing and inconsistent statutory language covering different classes of public employees. Public school teachers serving as officers of union affiliates of the New Jersey Education Association (NJEA) and the National Education Association (NEA) have been awarded full and/or part-time leave at taxpayer expense based upon an obscure statutory provision enacted nearly five decades ago that gives boards of education wide discretion to grant paid leaves of absence for just about any purpose.³ Meanwhile, union leave by other public employees – those serving as agents of the Communications Workers of America (CWA), the American Federation of State, County and Municipal Employees (AFSCME) and other bargaining units of the civilian public work force – is governed by a 2006 statute that authorizes such leave but is ambiguous and open to interpretation about who must pay for it. Finally, although laws covering uniformed police and fire personnel do not authorize any form of extended leave for union business, the Commission discovered examples where this not only occurs but where it is paid for by the taxpayers. Most contracts granting authority for this practice for police and fire personnel provide for “full release” from regular duty for union officials. These contractual full-release arrangements result in what can be construed as a *de facto* form of full-time union leave where individuals typically report daily to municipally owned offices only to perform union business.

The lack of uniformity in rules governing union leave is so pronounced that within individual communities, it is possible, as the Commission found, for some public employees to be on full- and/or part-time union leave at public expense while their counterparts in other collective bargaining units engage in similar activity on a full- or part-time basis at union expense.⁴ In still other instances, local union representatives receive no time off for union activity and attend to such matters outside of regular business hours.

³ The Commission found that while union officials of a single local affiliate of the American Federation of Teachers (AFT) also receive full-time union leave, this arrangement is provided without publicly funded pay, and the union reimburses the district for medical benefits.

⁴ Employees on unpaid leaves of absence remain on the government payroll but receive no government compensation. Further, with few exceptions, the public employer does not pay the cost of medical benefits for these employees while on leave. During the leave period, the employee’s position with the public employer is maintained without advancement on the salary scale and with no accrual of sick or vacation time.

The cost implications of paid union leave are not insubstantial. During the period from 2006 through 2011, the Commission found that government-paid union leave for public employees within the scope of this investigation cost taxpayers more than \$30 million in salaries and medical benefits.⁵ This finding was drawn from a detailed examination of contracts and other employment agreements involving public employees in a sample of more than 120 urban, suburban and rural school districts; 17 municipalities; all 21 counties; and 12 departments of state government. In a recent one-year period, a limited survey found 88 government employees on full-time union leave at a total cost to taxpayers of more than \$7 million in salaries and health benefits. Nearly one-third of the 88 were school district employees, primarily teachers, but the group also included state and county corrections officers, assorted other county employees, state human service employees, municipal police and fire personnel, and other municipal employees.

Beyond the muddled statutory landscape and the financial cost to taxpayers, arrangements allowing for paid union leave often are handled in ways that tend to defeat public transparency, oversight and accountability. Some collective bargaining agreements make direct reference to paid leave for union officials, but others are silent on the issue, with leave nonetheless arranged under “sidebar” agreements negotiated separately and not easily discoverable by the public. While many teachers’ collective bargaining agreements can be found in the online public contracts database maintained by the New Jersey Public Employment Relations Commission (PERC), the SCI discovered that none of the union-leave sidebar agreements identified during the course of this investigation is posted there.

In other instances, the Commission found leave was granted as a matter of longstanding “custom and practice” with no written authorization. In one case, top school district officials themselves learned that the local teachers’ union president was on full-time leave at taxpayer expense only when information to that effect was brought to their attention by Commission investigators. Meanwhile, in contracts for police and fire personnel, it is not unusual for paid

⁵ Unless otherwise noted, cost figures presented in this report for employees who are teachers’ union officials are based on the period covering the school years 2006-07 through 2010-11. Cost figures for officials of other public employee unions are based on the calendar-year period of January 1, 2006 through June 30, 2011.

leave or release to be disguised in language such as “flex time,” “day tour of duty” or some similar artifice. Regardless of the employer of record – whether police or fire department, school district, county or state agency – a recurring theme is that union officials on paid leave are not required to account for their workday time and, in some instances, are not even required to report for work at any government facility. Aside from these systemic impediments to transparency and disclosure, the Commission encountered instances of sloppy, incomplete or nonexistent record-keeping and sometimes lengthy and inexplicable delays in the production of documents necessary for the completion of its investigation.

In defense of union-leave arrangements, it is argued that, by devoting time and attention to labor matters during regular work hours, union representatives provide an in-house vehicle for addressing contentious issues that could otherwise become protracted. And to the extent that these individuals work with management to resolve workplace complaints and other problematic personnel issues before a lengthy grievance process or litigation is triggered, those efficiencies can be demonstrable. Beneficial as that may be, however, it does not erase the fact that union representatives, first and foremost, are in the business of promoting the interests of private entities and their dues-paying members, not those of the taxpayers.

During the course of this inquiry, elected and appointed officials in charge of administering various government bodies on behalf of the public expressed frustration with paid union leave in that it requires taxpayers to carry select personnel on a diminishing public payroll without receiving work and/or service in return. In certain circumstances, such as those involving a teacher who takes full-time union leave, the cost can be compounded because a substitute may be hired to fill a now-vacant classroom position. In several instances, questions raised by Commission investigators prompted local officials to take steps aimed at modifying or altogether rescinding the terms of union leave arrangements.

The inquiry upon which this report is based was an outgrowth of the Commission’s ongoing work to examine the expenditure of tax dollars at all levels of government in New Jersey. The record of that work includes an investigation into questionable and hidden

compensation for public school administrators in 2006 and an examination three years later of excessive benefits for municipal employees. The Commission recognizes the rights of workers in both the public and private sectors to organize and to bargain collectively under the banner of labor unions. The fundamental issue at hand here, however, is not about labor rights but rather one of fairness: the propriety of burdening taxpayers with the cost of activity conducted on behalf of a private entity. This matter is particularly compelling given the current backdrop of severe economic and budgetary pressures that demand scrutiny of all public spending.

Thus, included in this report are recommendations for systemic reform to address the practice of government-paid union leave and to bring order, clarity, uniformity and transparency to the tangled statutory construct currently in place for regulating its use by public employees.

Key Findings

The ability of public employees to take leaves of absence or release time for the purpose of conducting private business on behalf of organized labor is governed by a mix of statutory provisions that enable thoroughly inconsistent practices. The consequences of this fractured statutory framework, including variable circumstances under which taxpayers are billed for union activity, are compounded by different operating procedures both among and within the various public-sector employers.

The widest statutory latitude for paid union leave under cover of law is embodied by N.J.S.A. 18A:30-7, affecting public school employees. Enacted in 1967, this provision, while not explicitly authorizing such leave, nonetheless establishes grounds for it by giving boards of education the power to grant virtually any type of paid time-off through contract negotiations or other means. The relevant section states, in part: “Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave”

In 1989, another section of Title 18 – N.J.S.A. 18A:66-14.2 – was amended to permit teachers on leave for union business to continue to earn credits toward their public retirement plan through the Teachers’ Pension and Annuity Fund (TPAF). The recipients of such leave, however, were made responsible for paying both the employee and the employer shares of the required annual contributions to the TPAF.

During its inquiry, the Commission discovered wild inconsistencies in how school districts in New Jersey handle matters involving leave for union business.

Some districts provide no such leave, and teachers’ union representatives conduct union business during non-school hours. Districts that do offer leave are split between those that provide teachers serving as union representatives with full- or part-time leave at no cost to the district or full- or part-time leave paid, to various extents, at taxpayer expense. In some instances, the union shares a percentage of the salary costs and/or covers all or a portion of the medical benefit costs. In others, the full cost is borne by district taxpayers.

The Commission also found instances in which school union leave is administered under unusual or questionable circumstances. Some school districts grant paid union leave even though their contracts with local teachers' bargaining units do not require it. In other cases, union leave is negotiated and memorialized in separate "sidebar" contract agreements. Also notable were instances in which local union officials, at district expense, were placed at higher pay scales than they would have been eligible for had they remained among the regular classroom teaching ranks. In one case, the president of a teachers' union local was advanced to the teachers' pay scale even though she was not a certificated teacher. In another, a local teachers' union president with no doctoral degree was placed on a premium pay scale reserved for teachers with PhDs. In this case, there were no written contract provisions stipulating such an arrangement. Instead, the Commission was told that the arrangement was based upon a longstanding local custom and practice in the district.

The ability of teachers' union representatives to gain leave at district expense was left undisturbed in 1986 when legislation was enacted authorizing leaves of absence – but only unpaid leaves – for union officials representing civilian employees in other sectors of state, county and local government.⁶ Two decades later, in 2006, this statute was amended to allow paid union leave for this class of employees but only under a narrow set of circumstances. According to a fiscal analysis prepared at the time by the Office of Legislative Services (OLS) the primary qualified circumstance was that "[p]aid leave may only be granted provided that **the employer is reimbursed in advance** for compensation and benefit costs, including retirement system contributions. . . ." [Emphasis added].⁷ Indeed, the Commission reviewed statements and other materials attached to the measure as it worked its way through the legislative process, and those materials make plain that lawmakers expected the amended statute would result in no cost to taxpayers. Notwithstanding such fiscal caveats, the Commission discovered examples in which non-teacher public employees have been granted outright leave or *de facto* leave for union business at taxpayer expense, without any reimbursement.

⁶ L. 1986, c. 112.

⁷ L. 2005, c. 368 (eff. Jan. 12, 2006) (OLS Fiscal Notes to A-2095 and S-1336).

The statute as amended in 2006 is peculiarly worded and structured in such a way as to qualify the reimbursement provision with an apparent loophole that seems to allow for government-paid union leave as part of contract negotiations, as follows:

An appointing authority may grant a paid leave of absence to any such employee,

(1) provided the employer is reimbursed in advance for compensation and benefit costs including retirement system contributions and health benefit premiums or periodic charges paid during the period of absence, or

(2) in accordance with the terms of a collective bargaining agreement.
[Emphasis added]

Uniformed police and fire personnel, meanwhile, are subject to more restrictive laws under provisions of Title 40A and N.J.S.A. 11A:6-10. The latter authorizes no extended leave of any kind for those who are union representatives and permits only limited leave, at government expense, in the very narrow circumstance of attendance at union conventions. The only provision under Title 40A that permits extended leaves of absence for union business is N.J.S.A. 40A:9-7.3. However, by its own terms, this provision is limited in its applicability to “[a]ny employee, **except a policeman or firefighter . . .**” [Emphasis added]. The Commission nonetheless found instances in which police officers and firefighters have negotiated contract provisions calling for full-time paid leave or *de facto* paid leave in the form of full-time release at taxpayer expense for the purpose of conducting union business. Under these arrangements, individuals typically report daily to a municipal office, but only to perform union business. The Commission found that some police and fire union contracts that authorize these arrangements disguise them using terms such as “flex time” or “day tour of duty.” In one instance, the firefighters’ contract in Newark permits three union officers to be assigned to a “ ‘Labor Relations Unit’ so as to “enable them to perform the duties of their respective offices and other Union activities.” The Commission found that they report daily to a union office where they work exclusively on union business.

Additionally, while leave permitted under N.J.S.A. 40A:9-7.3 is not applicable to police officers and firefighters, the law simultaneously creates an apparent inconsistency with another group of uniformed employees – state and county corrections officers. Even though they are

not police officers or firefighters as referenced by N.J.S.A. 40A:9-7.3, corrections officers are recognized as law enforcement personnel with powers similar to those of police under other state laws.⁸ They also are eligible to receive retirement benefits under the same pension fund as police officers and firefighters.⁹ Nevertheless, since corrections officers do not occupy official job titles of “police officer” and/or “firefighter,” the exclusion from union leave eligibility technically does not apply to them.

* * *

The following examples involving union activity by government personnel at the state, county, municipal and school district levels are emblematic of the Commission’s findings across the spectrum of issues and employee classifications referenced above:

N.J. Department of Human Services

The Commission found inconsistencies in the granting and administration of union leave among various facilities operated by the New Jersey Department of Human Services (DHS). The Department provides full-time, unpaid leaves of absence for union business to certain employees, granted through collective bargaining agreements negotiated between the State and various unions. During the period covered by this investigation, approximately 13 individuals were granted such leave. Currently, nine remain active. These individuals do not report to their various facilities but rather to union offices.

DHS also employs a number of individuals who are granted paid leave for union business. This leave is not referenced within the terms and conditions of the collective bargaining agreements. Rather, it is based upon longstanding past practice and informal arrangements worked out between AFSCME and individual DHS facilities. During this investigation, 11 DHS employees were identified as being granted paid leave in this category. Seven were on a full-time leave five days per week, and four received part-time leave. The cost

⁸ N.J.S.A. 2A:154-3 and -4.

⁹ N.J.S.A. 43:16A-3.8(a)(4) and (a)(5).

for the seven full-time employees' salaries and medical benefits for the period of January 2006 through June 2011 totaled more than \$1.9 million. Two of these individuals recently retired, and their replacements were not granted similar full-time leaves. The paid-leave employees generally report to the State facility each day and then proceed to offices provided to AFSCME on-site.

Corrections Personnel

Since 2006, a total of 11 officers employed by the New Jersey Department of Corrections have received full-time paid release at state expense to conduct union business. Seven of these officers are currently on this form of release. They do not report for duty at any prison or correctional facility but can be called into action in an emergency. Because their union work is considered a full-time job and they are covered by the same contract provisions that apply to other unionized corrections personnel, these individuals qualify for time-and-a-half overtime pay for any regular duty shifts they do work. Between January 2006 and June 2011, their salaries and health benefits have cost taxpayers more than \$2.7 million, not including overtime.

Additionally, five New Jersey counties – Essex, Hudson, Mercer, Passaic and Union – currently permit a combined total of six county corrections officers to receive full-time paid release from regular work responsibilities to engage in union business. Unlike their counterparts at the state level, these local corrections union officials report daily to county-provided offices at their respective correctional facilities. In all of the counties except Union and Passaic, these officials are required to report their attendance to facility administrators. In all of the counties except Union, these officials are required to report to their offices in uniform and can be called into action in emergencies. Between January 2006 and June 2011, salaries and medical benefits for these individuals cost taxpayers nearly \$3 million.

Atlantic City

The city's school district and its municipal government employ a mix of different policies on union leave.

An officer of the Atlantic City Education Association (ACEA), the local teachers' union, is on full-time release to conduct ACEA business, and the school district is fully reimbursed by the union for the full cost of this individual's compensation and medical benefits.

A representative of the city's unionized firefighters, meanwhile, is provided with part-time release at taxpayer expense. This individual is authorized to conduct union business for up to 15 hours per week and may take paid days off to attend union conventions.

When Commission investigators first interviewed a high-level city administrator, the investigators were told initially that no city employees received full-time paid leave or release for union business. Further inquiry, however, revealed that an officer of the city's police union is on full-time release at taxpayer expense. This officer reports daily to an office provided at city expense to conduct union business.¹⁰ A provision in the city's police contract describes his responsibilities and hours as follows: "[He] will be detailed to work Monday through Friday from 9:00 a.m. to 5:00 p.m. shift (sic). He will help establish and maintain a good employer/employee relationship in the Department. . . . He shall keep the Office of the Chief of Police informed of his whereabouts during the shift and shall be available to the Chief for urgent public safety needs." From January 2006 to June 2011, the salary costs alone for this individual totaled more than \$500,000.

Bayonne

An officer of the Bayonne Teachers' Association (BTA) is on full-time leave to conduct union business at the expense of the city's school district based upon a verbal agreement, executed in 2005, which contradicted the express terms of a written collective bargaining contract in effect at that time for district personnel. The written contract required this

¹⁰ The Commission recently was informed that the city has directed the union to vacate its publicly owned office and that the union currently is looking acquire office space at its own cost.

individual to teach three classroom periods each school day with union leave to commence at the conclusion of the third period. As to the source of this individual's compensation, the BTA currently reimburses the district for half of the salary while the district covers the full cost of health insurance coverage. This arrangement cost taxpayers more than \$284,000 during school years 2006-07 through 2010-11.

Brick

Taxpayers in this Ocean County community have paid more than \$275,000 for the period covering the school years 2006-07 through 2010-11 to cover salary and medical benefit costs for an officer of the Brick Township Education Association (BTEA) on full-time release from all teaching and related duties for purposes of conducting union business. The collective bargaining agreement between the district and the BTEA requires the union to reimburse the district for half of the individual's salary but none of the benefit costs. Additionally, this union official has received "perfect attendance" bonus payments totaling \$1,375 for school years 2009-10, 2010-11 and the first three quarters of the current school year. The bonus program is authorized by the Brick teachers' union contract. The union official receives it even though he devotes all of his work time to union business and has refused to utilize the district's electronic time-keeping system for the purpose of tracking attendance.

During the Commission's investigation, the Brick Board of Education, pursuant to an official opinion rendered by the district's attorney, took action to return this individual to classroom teaching duties effective November 1, 2010. In response, the union filed a grievance with PERC, citing unfair labor practices and requesting temporary relief from the board's action. After an initial hearing, PERC issued an interim order requiring the district to restore the full-time paid release. Subsequently, the most recently elected school board issued a directive to the district's attorney to pursue the matter no further. Thus, the union official remains out on full-time release.

Camden

Taxpayers in the City of Camden over the past five years have paid a combined total of more than \$2.3 million in salaries and medical benefits for three police officers and three firefighters on release from their official duties to conduct union business full-time. The firefighters' union representatives are considered to be working a regular 8 a.m. to 4 p.m. shift Monday-Friday, reporting directly to union offices in civilian attire. Pursuant to terms set forth in the city's contract with fire personnel, they continue to accrue vacation, sick and administrative time-off and are individually responsible for keeping track of their own personal leave. Further, they are also authorized to take on additional shifts to perform regular firefighting duties but are paid overtime for such work. From January 2006 to June 2011, their salaries and medical benefits cost the city \$1.2 million under the union-release arrangement. As to the three police department personnel on full-time release representing two police unions, the arrangement separately has cost taxpayers more than \$1 million in salaries and medical benefits for the same period.

The city's police and fire contracts each describe the respective top union officers' responsibilities and hours with the following ambiguous language: "[He/she] shall be assigned in a position which is conducive to his/her duties as [a] Union [official]. . . . [He/she] may devote full time to administering and enforcing the provisions of this [collective bargaining] Agreement. [He/she] shall be excused from all duties and assignments when required to allow him/her to properly perform his/her duties as Union representative."

The Camden School District also provides full-time leave for union business but has taken the contrasting step of recovering at least a portion of the compensation costs. The way in which this reimbursement effort unfolded, however, raises questions about whether the matter was handled properly.

The terms of every Camden teachers' union collective bargaining agreement from the 2000-01 school year to the present specifically required that the union provide full reimbursement to the district for all costs associated with the salary and health benefits of a local union officer on full-time leave. Other than a single union payment in March 2002, however, no additional reimbursement was forthcoming through May 2006, a four-year period

during which more than \$350,000 in unreimbursed costs accrued. In July 2007, the district and union entered into a settlement agreement calling for the union to pay \$180,000 in unreimbursed salary costs. In addition to this reduction in the union's exposure on the matter of compensation, the deal also forgave the reimbursement payments previously missed by the union for medical benefits. As a result, the district was never reimbursed for the union officer's health benefit costs totaling more than \$123,000. The Commission found that the district did not begin receiving full union reimbursement for both salary and benefits until 2010.

Elizabeth

The city's school system covers all salary and medical benefit costs for an officer of the Elizabeth Education Association (EEA) who, for more than ten years, has been on full-time release to conduct EEA business. Records examined by the Commission show that the taxpayer bill for this purpose came to more than \$540,000 during the five-year period ending in June 2011. In addition to base salary, this individual also received an annual stipend of \$1,000 in each of four years from 2008 and 2011. This stipend is governed by a provision in the contract between the EEA and the Elizabeth Board of Education and is designed to serve as "attendance incentive compensation" for regular school personnel in the course of their official duties. The provision states simply, "Employees who are absent zero (0) days in a school year will receive compensation in the amount of one thousand dollars (\$1,000.00)."

Jersey City

A longstanding contractual arrangement has resulted in the grant of full-time leave for union business for certain officers of the Jersey City Education Association (JCEA). Under this arrangement, two individuals had been on such leaves of absence for approximately 20 years as of the end of the 2010-11 school year, when one of them retired and was replaced. Although these individuals report to union-owned offices on a daily basis, the contract requires the district to provide one of them with regular district parking and office space. The full cost of

salaries and medical benefits for both union leave positions is borne solely by the district, an arrangement that cost taxpayers nearly \$1.2 million during school years 2006-07 through 2010-11.

Similarly, contractual arrangements authorize full-time release from official duty for five individuals who serve as officials of two unions representing Jersey City police officers and for two officials of unions representing the city's firefighters. While one of the fire union officials recently retired from his city firefighting post, he remains an officer of the union but no longer receives a city salary or medical benefits. Contract language applicable to all of these individuals refers to their union assignments as "special duty" and/or "flexible time arrangements," descriptive provisions that could give the erroneous impression that the leave in question is something less than full time. The total cost to taxpayers of their salaries and medical benefits totaled more than \$4.6 million during the period from January 2006 through June 2011.

Lakewood

The way in which union leave has been granted and administered in this Ocean County school district illustrates how the process can be obscured by lax transparency. District officials initially told the Commission that no one affiliated with the Lakewood Education Association (LEA), the local collective bargaining unit, was authorized for full-time leave from regular duties to conduct union business. Indeed, language contained in the local teachers' contract seemed to support this contention, stating that an LEA officer is "relieved from all supervisory duties, and shall be assigned no more than three (3) class periods per day."

Closer scrutiny by Commission investigators of the district's records, however, turned up a provision authorizing full-time leave in a sidebar agreement that had been negotiated separately between the board of education and the LEA in July 2001. This agreement explicitly authorized a full-time leave of absence for an LEA officer for purposes of conducting union business, with the district and the union each picking up half the cost of the salary. In response to further Commission inquiries, the district later produced a superseding sidebar agreement.

This agreement extended the union leave arrangement, which remained in effect until the 2010-11 school year, when the LEA union officer returned to classroom duties.

Taking into account the union's 50 percent share of the salary, the cost to taxpayers for the individual who held this union position during school years 2006-07 through 2009-10 totaled more than \$182,000.

Newark

New Jersey's largest city is a study in contrasts when it comes to who picks up the tab for union activity by public employees.

Two Newark School District employees receive full-time leaves of absence for the purpose of conducting business on behalf of the local union affiliate of the American Federation of Teachers (AFT). These individuals receive no compensation at taxpayer expense, and the union reimburses the school district for the cost of their health benefits. Further, their full pension contributions, including the employer share, are paid by the individuals themselves.

Union officials employed by the city's police and fire departments, meanwhile, are fully compensated at taxpayer expense while on full-time release for union business. Their ranks include four police officers who, as representatives of the local police union executive board, report full-time to the union's offices. Per explicit provisions set forth in the police collective bargaining agreement, Newark also provides these union officials with a single city vehicle and a paid fuel card for use pursuant to union-related business. Similarly, the city's fire department currently employs five individuals on full-time release from firefighting duties to conduct business on behalf of two collective bargaining entities, the Newark Firefighters' Union and the Newark Fire Officers' union.

The cost to Newark taxpayers for police and fire union officials' salaries and medical benefits from January 2006 to June 2011 was more than \$7.8 million.

Paterson

This city's municipal government and school system maintain thoroughly inconsistent contractual relationships with union representatives on the issue of leave.

The school district grants union leave or release to three officials of two bargaining units, the Paterson Education Association (PEA) and the Passaic County Education Association (PCEA). In one instance, the PEA fully reimburses the city for the salary and benefits of one of its officers on full-time leave while the school system receives no union reimbursement for another PEA officer's salary and benefits. Meanwhile, the PCEA covers the cost of its union officer's salary, but the school system picks up the tab for costs associated with this officer's medical benefits. The cost to taxpayers for the two instances in which the school system has paid the bill totaled more than \$600,000 over five years ending in June 2011. Additionally, both PEA officers on full-time leave for union business during the period of school years 2006-07 through 2010-11 were paid a combined sum of more than \$9,000 pursuant to a program established under the district's collective bargaining agreement to reward teachers for unused sick days. The PEA officers received this additional compensation even though they do not utilize the district's automated swipe-card system to record daily attendance.

As for city employees, Commission investigators initially were told that none received full-time leave or release to conduct union business. Upon requesting written confirmation of this assertion, the same city official stated that, upon further review, he became aware that an officer of the union that represents Paterson police officers is on such full-time paid release. The controlling provision in the police contract states that this individual "shall be assigned to the day tour of duty in a non-uniform division appropriate to his fulfilling the obligations of his [union] office [He] shall be placed into detective status with regard to his terms and conditions of employment" When elected in June 2011, the current union representative was serving as a motorcycle patrolman. Pursuant to this provision, his job title was elevated to detective, entitling him to an annual stipend of \$2,000. He is also provided with an office, telephone service and a vehicle, with fuel, at the city's expense. His predecessor, who served as union representative for approximately 10 years, was already a detective when he assumed

the post. The cost to taxpayers as a result of these arrangements totaled more than \$600,000 between January 2006 and June 2011.

By contrast, an official of a separate union that represents the city's supervisory police officers is not granted full-time release for union work and continues to perform regular police duties, even though the contract applicable to him also states that he be assigned to the "day tour of duty." Similarly, no Paterson Fire Department employees receive paid release to conduct union business.

Pemberton

The contract between the school district in this Burlington County community and the Pemberton Township Education Association (PTEA), the local teachers union, provides for a full-time leave of absence for a union officer to conduct union business. The contract also requires that this individual be compensated according to the regular salary schedule established for teachers throughout the district. However, because this PTEA officer was a classroom aide and not a certificated teacher, district administrators initially balked at applying that pay scale. The union threatened to challenge that stance, and the board relented. As a result, this individual received an immediate salary boost of more than \$14,000 and has continued to qualify for the teachers' salary scale and related pay hikes, including longevity raises. Additionally, when district officials sought to assign this individual to the classroom as a one-day-per-week substitute teacher, the union threatened a grievance action citing "selective enforcement" of the local teachers' contract. Again, the district relented.

According to the district's collective bargaining agreement, the PTEA is required to reimburse the district for half of the officer's compensation package, which includes a salary of \$59,010 and health benefits. Over the five-year period commencing with the 2006-07 school year, the district's share of this arrangement cost local taxpayers a combined sum of more than \$192,000.

Trenton

For many years based upon unwritten custom and practice, the chief officer of the Trenton Education Association (TEA), the union representing the city's public school teachers, received top pay at a rate reserved for personnel with doctoral degrees – regardless of whether that individual actually held such an advanced degree. Although the union reimbursed the district annually for the cost of compensating this individual while on full-time leave, the doctoral pay rate could have resulted in a base salary improperly inflated for purposes of calculating a public pension. Based upon the Commission's inquiry, this matter was referred to the state Division of Pensions and Benefits for further review.

Additionally, the Commission examined the employment status of two other TEA officers and found they are on full-time paid release from classroom duties to conduct union business at district expense with no union reimbursement. During the five-year period beginning with the 2006-07 school year, this contractual arrangement cost taxpayers more than \$1.1 million in salary and medical benefits.

During the course of this inquiry, district officials took steps to address some of these practices. The automatic doctoral pay hike was discontinued and replaced by a formal policy under which any additional compensation for the top union officer above the applicable pay grade is now treated as a stipend ineligible for pension credit. The district also notified the state Division of Pensions and Benefits that base salary certifications provided for now-retired TEA officers may have been inflated. If that is found to be the case, the current pensions received by those individuals may be subject to revision.

As for municipal personnel, when Commission investigators initially interviewed two city officials about the possibility of employees receiving union leave or release, they were informed that only one city worker, a civilian, was employed under such an arrangement. This individual was identified as an officer of AFSCME representing civilian city workers. This individual, who has been on full-time union release for at least 20 years, is also provided by the city with an office from which he conducts union business plus a computer and phone service at taxpayer expense. Between January 2006 and June 2011, this individual's salary and benefits cost taxpayers a total of nearly \$505,000.

The city's final response to the Commission's request for records disclosed that an official of the union representing Trenton police officers also receives full-time release from regular police work to conduct union business at the city's expense. The total cost to taxpayers of his salary and medical benefits during the period January 2006 through June 2011 was more than \$524,000. The city does not grant full release to any other representatives of uniformed employee unions.

West New York

The current contract between this Hudson County school district and the West New York Education Association (WNYEA) allows for the full-time release of an Association officer from all teaching and ancillary duties, with the district responsible for covering the full cost of the base salary and benefits. In a separately negotiated sidebar agreement, the officer's annual employment status was changed from that of a 10-month employee to a 12-month employee, resulting in a pay increase of approximately 30 percent. The agreement called for the cost of this increase to be reimbursed annually to the district by the Association. Additionally, this officer receives payments under terms of the district's bonus program for not using sick days during the school year. The officer receives this benefit even though she no longer attends to teaching and her daily whereabouts are not tracked by the school district. As a result, the officer received sick leave bonus payments of \$700 in July of each year from 2007 to 2011 totaling \$3,500.

Taking into account the union's reimbursement of the salary boost, the cost to taxpayers for the compensation and medical benefits of this employee while on union leave between school years 2006-07 and 2010-11 totaled more than \$595,000.

ADDITIONAL COSTS

While the Commission focused its investigation on the cost to taxpayers for salaries and health benefits of public employees on full-time release or leaves of absence for union business, additional costs associated with this practice were noted. These costs include the employer share of federal payroll taxes.¹¹ The Commission found few instances in which taxpayers are being reimbursed by labor organizations for costs associated with federal payroll taxes for employees on full-time union leave.

Another ancillary cost stems from the manner in which contributions to various public pension plans are made for individuals on union leave. Current law requires that any public-sector employee on “an approved leave of absence” as a union official pay both the employer and employee contributions toward their respective pensions.¹² Pursuant to that requirement, such employees must file two forms with the state Division of Pensions and Benefits in order to continue accruing pension credit. The Employer Verification of Leave of Absence for Union Representation form is to be filed annually, providing notice that the individual is, in fact, on leave and a statement of the annual salary for which pensionable credit may be earned. A separate Application to Purchase Service Credit-Union Representation must also be filed quarterly along with a lump-sum payment covering both the employee and employer contribution. The Commission found no evidence that individuals currently on approved full-time paid leaves of absence for union business are filing the required forms or paying the employer contributions toward their pensions, as required by law. By contrast, the Commission found that those on unpaid leaves of absence, including those on such leaves for union business, are generally reporting their leave status to the appropriate state agencies.

This situation is symptomatic of a larger underlying problem identified by the Commission during this investigation: the inadequacy of current methods of tracking union-related leaves of absence. Aside from the Division of Pensions and Benefits being in the dark on the above-referenced pension contribution issue, the Commission found instances in which

¹¹ The Federal Insurance Contributions Act (FICA) imposes a federal payroll (or employment) tax on both employees and employers to fund Social Security and Medicare.

¹² N.J.S.A. 18A:66-14.2(a); N.J.S.A. 43:15A-39.1.

government employers themselves were not aware that they had employees on union leaves of absence. Furthermore, even where public-sector employers were aware of personnel on union leave, many could not identify when such individuals began their leave and/or the specific period of time they had been on leave.

The Commission also found that public employees on union leave can qualify for substantial pensions even though they spend much of their careers conducting union business on a full-time basis. The following examples illustrate this practice:

- A Jersey City School District teacher currently on full-time union leave has been a member of the Teachers' Pension and Annuity fund (TPAF) for more than 54 years. This individual has been on union leave as a local union official since 1990. As of March 1, 2012, he was entitled to an annual pension of approximately \$112,000, even though he spent nearly half of his public employment service on full-time union leave.
- Another Jersey City teacher received an extended leave of absence while serving as an officer of the local teachers' union. Employed by the district for approximately 40 years, this individual spent nearly half that time on a full-time leave of absence for union business. He recently retired with an annual state pension of approximately \$67,000.
- In the Paterson School District, an individual on full-time union release has been a member of the TPAF system for more than 43 years. This individual has been on leave as a local teachers' union president for more than 20 years. As of March 1, 2012, he was entitled to an annual pension of approximately \$79,000, even though he spent nearly 50 percent of his public-employment service on full-time union release.
- A recently retired Newark firefighter, employed by the city for approximately 25 years, was granted full release from official duty in 1992 when he assumed a position with the local firefighters' union. This individual held his union office until 2006, when he was appointed to a management position with the fire

department. He currently receives an annual pension of more than \$117,000 from the Police and Firemen's Retirement System (PFRS).

- In Trenton, a civilian municipal employee has spent at least 20 years on full-time paid leave from his city government position, serving as an officer of a local AFSCME union affiliate. Scheduled to retire in April 2012, he is entitled to collect an annual pension of more than \$48,000 under Public Employees Retirement System (PERS).

Referrals and Recommendations

The Commission refers the findings of this investigation to the following agencies of government for whatever specific action is deemed appropriate:

- New Jersey Department of the Treasury, Division of Pensions and Benefits
- New Jersey Public Employment Relations Commission

Based upon the investigative record, the Commission makes the following recommendations for systemic reform:

- **Eliminate or Substantially Curtail Taxpayer Funded Union Leave**

This investigation revealed a range of circumstances in which New Jersey taxpayers collectively are required to pay for millions of dollars worth of compensation and fringe benefits for employees who are on the public payroll but who work for private labor organizations. In some instances, this occurs under cover of ill-defined and vaguely worded statutory authority; in others, it occurs in the absence of any explicit authority at all.

The Commission reiterates that it recognizes the rights of workers in the private and public sectors to join and bargain collectively under the banner of organized labor. It also recognizes that the presence of union officials in the workplace often serves to expedite the handling of personnel disputes and related matters before they become protracted or wind up in costly litigation. The issue here is one of fairness. Labor unions are comprised of members who pay dues to sustain organizations that exist to represent their interests. Should the cost of that representation be financed by union budgets, or by the public treasury, or both? Six years ago, when the Legislature last revisited the matter of union leave, it considered legislation drafted with the intent that such arrangements result in no cost to state or local government.¹³ As ultimately enacted,

¹³ L. 2005, c.368, eff. Jan. 12, 2006.

however, the legislation enabled this intent to be defeated through contract negotiations.

These findings involve a significant area of public policy that remains in deep conflict with itself. As such, the Governor and the Legislature should undertake a thorough examination of all issues that impinge upon this matter and determine whether there are any limited circumstances under which it may be appropriate for government to cover any portion of the costs associated with public employees on leave or release from their regular duties to conduct union business, or whether this practice should be entirely prohibited.

- **Establish Uniform Statutory Rules for Granting Union Leave**

Statutes authorizing leaves of absence or release time for public-employee union representatives in New Jersey are rife with inconsistency. During this investigation, the Commission found that, depending upon the class of employees in question – teachers, state workers, corrections officers, municipal police and fire personnel – there are significant variations in how and under what circumstances such leave is granted, who qualifies for it, who keeps track of it, how it is constituted and who ultimately pays the bill. The incongruity of these ground rules is compounded by different operating procedures both among and within the various public-sector employers. Indeed, the level of discordance is so pronounced that the Commission found numerous instances in which some representatives of unions in the same community simultaneously are on full- and/or part-time leave at public expense while others are on full- or part-time leave at union expense, with many variations in between.

The Commission therefore recommends that, if upon reviewing the general practice of union leave the Legislature and Governor determine that it serves a meaningful public-policy purpose and merits continued use, the appropriate authority and circumstances for granting such leave be consolidated and set forth within statutes that are uniformly applicable to all categories of public employees.

- **Enhance Public Disclosure and Transparency**

Beyond the disordered state of the current statutory landscape and the financial cost to taxpayers, the Commission found that arrangements permitting union leave often are handled in ways that diminish transparency, oversight and accountability. Some collective bargaining agreements plainly specify leave for union officials. Others are silent on the issue, with leave nonetheless granted as a matter of unwritten custom and practice. In still other instances, leave is provided under the terms of separately negotiated sidebar agreements not easily discoverable by taxpayers. Public access is frustrated further by sometimes sloppy and incomplete record-keeping and by confusion and inordinate delay in the production of what clearly constitute public records. That, and any other systemic impediment to full public transparency and disclosure, is unacceptable.

In order to address such deficiencies, the Commission recommends that all government entities in New Jersey be required by law to establish and maintain consolidated files containing records detailing the terms of all negotiated personnel contracts and agreements and that such materials be readily available for public inspection. The Commission further recommends that public employers submit any and all sidebar agreements negotiated with labor unions to the Public Employment Relations Commissions (PERC) for inclusion in and posting on its online public contracts database.¹⁴

- **Require Individuals Currently Receiving Full-Time Paid Union Leave to Provide Immediate Proper Notice**

In addition to enhancing public disclosure and transparency of the overall practice of granting leaves of absence for union work, individuals currently receiving these arrangements at taxpayer expense should immediately be required to provide

¹⁴ N.J.S.A. 34:13A-8.2 requires that “Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.” N.J.S.A. 34:13A-16.8(d)(2) requires that PERC post public employment contracts on its website.

written notice of such status to the appropriate state agencies. The Commission found that agencies such as the Division of Pensions and Benefits and/or the state Civil Service Commission do not consistently receive notice of individuals receiving paid full-time union leave. By contrast, the Commission found that those on unpaid leaves of absence, including those on such leaves for union business, are generally reporting their leave status to the appropriate state agencies. Lack of proper notice by individuals receiving paid union leave hampers the ability of those agencies to properly administer the consequences that result from the grant of such leave. For example, current state law requires those receiving an approved leave of absence for union business to pay both their regular employee contribution and the employer's contribution toward their public pensions.¹⁵ Without proper notice, the Division of Pensions and Benefits cannot ensure that individuals receiving paid union leave are actually paying both contributions. Additionally, without this notice, public records of the relevant state agencies would not reflect that individuals receiving paid union leave are not currently performing their job duties with their public employers. This has the effect of further hampering transparency to the public, since records contained in publicly accessible data portals would reflect that these individuals are currently working in their public positions, with no notation that they are, in fact, on a full-time leave of absence. For these reasons, the Commission recommends that individuals receiving paid union leaves of absence be required to provide written notice to the appropriate state agencies, such as the Division of Pensions and Benefits and/or to the Civil Service Commission.

¹⁵ N.J.S.A. 18A:66-14.2(a) (teachers); N.J.S.A. 43:15A-39.1 (other state, county and municipal employees).



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