

Florida School Finance Officers Association November Conference

November 7, 2018

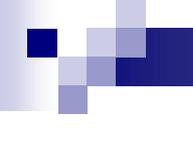
COMMUNICATION: Most Essential Element for Collective Bargaining Decision Making

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COMMUNICATION:

Essential for Collective Bargaining Decision Making

- I. Communication between the Finance Officer and Chief Negotiator / Superintendent
- II. Communication between the Superintendent, Chief Negotiator, and Finance Officer and the School Board at Executive Sessions

Legal Basis for Bargaining in Florida

- Constitutional Right
 - Article I, Section 6, Constitution of the State of Florida
- Public Employee Relations Act of 1974 – Chapter 447, Part II, Florida Statutes
 - Section 447.203, FS, defines the parties to a public collective bargaining agreement and what constitutes Bad Faith and Good Faith bargaining.
 - Section 447.309, FS, establishes the requirement for the bargaining agent and Superintendent to engage in collective bargaining; for the Superintendent to represent the views of the school board; for the parties to ratify the Agreement prior to implementation; and for the Superintendent to appropriate amounts sufficient to fund the provisions of the Agreement.

Funding Requirement in Florida

- Financial impact of a ratified collective bargaining agreement

- Section 447.309 (2)(a) requires the agreement to be funded:

Upon execution of the collective bargaining agreement, the chief executive [superintendent of schools] shall, in his or her annual budget request or by other appropriate means, request the legislative body [school board] to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.

- The Finance Officer must prepare for this eventuality

Role of Finance Officer: Member of the Team

Assist the Superintendent and Chief Negotiator by:

- Maintaining and communicating to the chief **Costs Of Each Proposal** prior to proposal offer
- Continuously monitoring current and predicted EOY **Fund Balance Data**: especially recurring costs
- Maintaining running data analysis for each **Factor** to be considered by the magistrate during impasse (do not wait until impasse)
- Not revealing or discussing any **Proposal Consideration** until it has been placed on the table.
Note: there is a fine line between public and protected information in collective bargaining.
- Quickly responding to **Data Requests** from the board chief.

More on Critical Role of Finance Officer

Specifically, the Finance Officer has a Critical Role in the Following:

- Salaries and Benefits:
 - Comparison of the salary schedule to those in surrounding and comparable sized districts; analysis of unit schedules W/R incremental costs and step impacts (non instructional); crosscheck elements and design of grandfather and performance schedules against performance pay requirements (s. 1012.22); analyze HE and E data for costs
 - Prepare salary / experience / allocation / performance grids
- Revisit Analysis and Ability to Fund Throughout Process

More on Critical Role of Finance Officer

(cont'd)

These are Crucial Areas of Support for the Chief:

- Understanding of Economic Issues by the Chief
 - Ensure budgetary support for Board-approved proposals on table.
 - Ensure chief understands discretionary revenue and unassigned fund balance issues.
 - Ensure data available – see impasse documentation (s. 447.405,FS – **see appendix**).
 - Maintain accurate salary / benefit data: cost analysis (cost of a percent, noninstructional increment, HE and E adjustments, and insurance premiums).
 - Support calculations needed at table – **avoid moving target**.
- Transparency and Proposal Support.

Financial Problems –

Concerns Pre-, Post, and During Bargaining

The Superintendent, School Board, and Chief Need Protection From Potential Financial Problems:

- **Pre Bargaining**: Ensure sound analysis of legislative appropriation AND of current district financials is communicated to these participants in the process.
- **Post Bargaining**: During the contract year, financial difficulty may arise. Ensure you understand and have the ability to implement s. 447.4095, FS, if needed.
- **During Bargaining Process**: Must head off potentially fatal financial problems before proposals are made. Must ensure chief is immediately made aware of change in finances.

Financial Problems – If During Bargaining

- Chapter 447 requires progress be made in an effort to reach agreement
- No means NO
- Oops! Financial downfall after economic proposal on the table.
 - Citrus County Education Association v Citrus County School Board, CA-2004-162, December 7, 2004, PERC
 - **Thresholds:**
 - Totality of conduct during negotiations
 - Lower offer in genuine belief of worsening financial condition (*provide documentation*)
 - Hold out hope of return to table should the economic situation improve (*be sincere*)
 - Willingness to continue negotiations and agree to future bargaining dates
- After Ratification? See s 447.4095, FS (See appendix)

Executive Session (See s. 447.309(1); 605, FS)

- What are they?
- What do the statutes say?
- When do you need them?
- Do Public Records and Sunshine Laws apply? Are they noticed for the public? (See AGO 93-86 and 07-28)
- Who may attend?
- Specifically, who normally participates?
 - Board Members
 - Superintendent
 - Chief Negotiator
 - Finance Officer
 - School Board Attorney

The Process – *CRITICAL REMINDER*

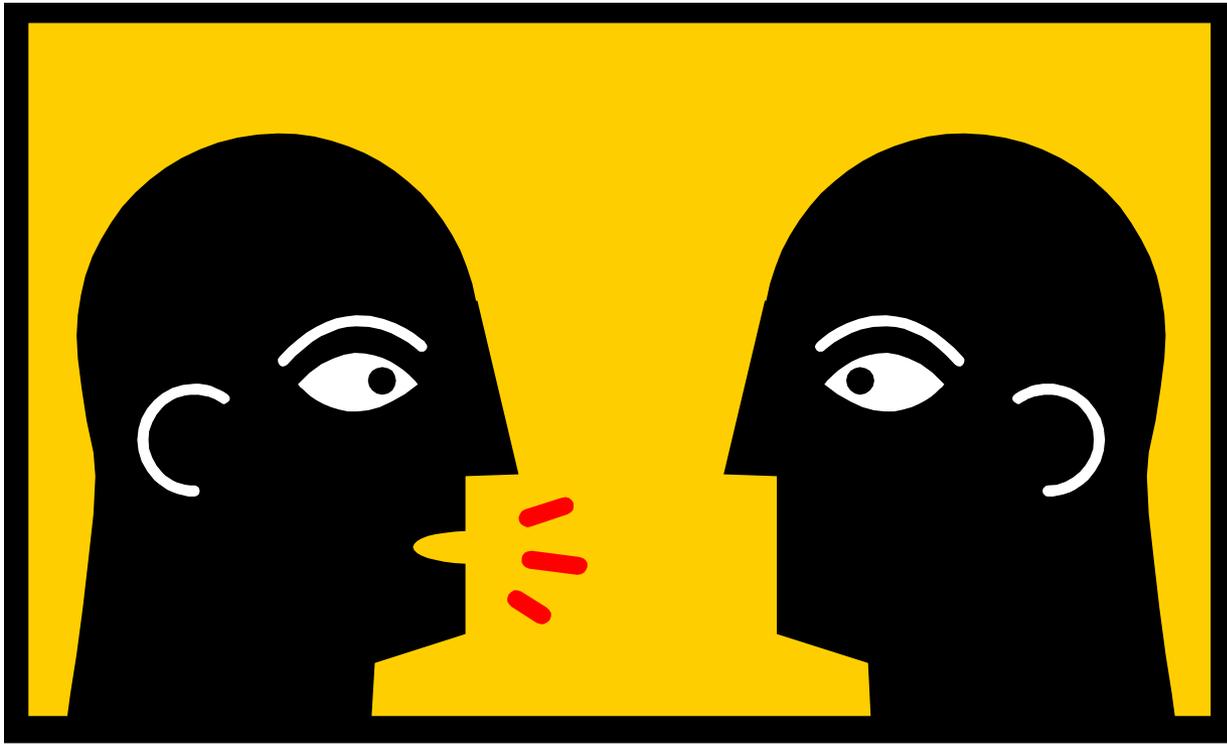
Must Comply: Records and Public Meetings

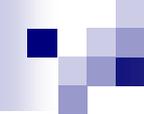
§119.07(1), 286.011 (1) & (2), FS – *(Summarized)*

- s. 119.07(1) – All school board records are public. Collective Bargaining work products are exempt unless placed on table. See s. 447.605 (3). *
- s. 286.011(1) – Public notice of time and place of collective bargaining meeting must be provided. Does not apply to Executive Sessions. See s. 447.605 (2). *
- s. 286.011(2) – Minutes must be maintained for collective bargaining meetings. Does not apply to Executive Sessions. See s. 447.605(2). *

*See AGO's: 93-86, 98-06, 99-27, 03-09, 07-28

Discussion





RELATED ACRONYMS and STATUTORY REFERENCES

Chapter 447 Acronyms and Terms

Terms

CEO: Chief Executive Officer (Superintendent)
Legislative Body (School Board)

Acronyms

PERA: Public Employees Relations Act
PERC: Public Employees Relations Commission
ULP: Unfair Labor Practice

Legal Basis

§447.203, FS – Definitions (paraphrased)

- **Bargaining Unit:** That unit to be appropriate for the purposes of collective bargaining.
- **Managerial Employees:** Excluded from Bargaining Unit. Employees whose jobs are not routine, clerical or ministerial, who must exercise independent judgement, and perform one of the following:
 - Role in bargaining unit employee policy formulation; administration in areas of employee relations / bargaining, personnel, or budget preparation; or administrators under s. 1012.01(3), FS.
- **Confidential Employees:** Excluded from Bargaining Unit. Employees who act in a confidential capacity to assist or aid managerial employees.

Legal Basis

§447.203, FS – Definitions (paraphrased)

Bargaining Agent: The employee organization which has been certified by PERC as representing the employees in the bargaining unit, or its representative

Chief Executive Officer: The person responsible to the legislative body of the public employer responsible for the administration of the governmental affairs of the public employer

Legislative Body: The school board

Legal Basis

§447.203, FS - Definitions (cont'd)(paraphrased)

■ Definition of Collective Bargaining Including Good Faith Bargaining:

- Mutual obligation to meet at reasonable times
- Negotiate in good faith proper subjects of bargaining with intent to reach a common accord
- Must actively participate with an open mind and sincere desire and effort to come to agreement
- Execute a written contract with respect to agreement reached concerning the terms and conditions of employment
- **Neither party shall be required to make a concession unless otherwise provided**

Legal Basis

§447.203, FS – Definitions (cont'd) (paraphrased)

Bad Faith Bargaining (found within 203(17)):

Failure to meet at reasonable times and places

Unreasonable restrictions ... as a prerequisite to meeting

Failure to discuss bargainable issues

Refusing, upon reasonable written request, **to provide public information**, excluding work products prepared for collective bargaining

Refusing to negotiate because of an unwanted person on the opposing team

Negotiating directly with employees rather than with their certified bargaining agent

Refusing to reduce a total agreement to writing

Legal Basis

§447.309, FS - Collective bargaining (excerpts - paraphrased)

- The bargaining agent ... and the CEO / representative ..., **shall bargain collectively** in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.
- The chief executive officer or his or her representative shall consult with, and attempt to **represent the views of, the school board**.
- Any signed agreement ... shall not be binding on the public employer **until** ... **ratified** by the public employer and by public employees who are members of the bargaining unit.

Legal Basis

§447.309, FS - Collective bargaining (cont'd) (excerpts)

- Upon execution of the [agreement], the chief executive shall, in his or her annual budget request or by other appropriate means, request the legislative body to **appropriate such amounts** as shall be sufficient to fund the provisions of the collective bargaining agreement.
- If any provision ... is in **conflict with any law, ordinance, rule, or regulation** over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation.

Contract Modification

§447.4095, FS - Financial urgency

- In the event of a financial urgency requiring modification of an agreement, the teams may be required to meet to negotiate the impact of the financial urgency.
- After a reasonable period of negotiation (not exceed 14 days), if a dispute exists, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission.
- The parties shall then proceed through impasse proceedings (s. 447.403).
- An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

Unlawful Acts / ULP's

§447.501, FS - Unfair labor practices (paraphrased)

- **Public employers/their agents/representatives are prohibited from:**
 - Interfering with, restraining, or coercing employees in their 447 rights
 - Encouraging or discouraging membership in unions by discrimination in regard to hiring, tenure, or other conditions of employment.
 - Refusing to bargain collectively, or in good faith; refusing to sign a final agreement agreed upon with the certified bargaining agent
 - Discharging or discriminating against a public employee because he or she has filed charges or given testimony under this part
 - Dominating, interfering with, or assisting in the formation, existence, administration of, or financial support of any employee organization
 - Refusing to discuss grievances in good faith

Unlawful Acts / ULP's

§447.501, FS - Unfair labor practices (cont'd) (paraphrased)

- **Public employee organization/those acting on behalf of/its officers/their agents/representatives or employees are prohibited from:**
 - Interfering with, restraining, or coercing public employees in the exercise of their 447 rights; interfering with, restraining, or coercing managerial employees by reason of their performance of job duties or other activities undertaken in the interests of the public employer.
 - Causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or nonmembership in an employee organization or attempting to cause the public employer to violate any of the provisions of this part.
 - Refusing to bargain collectively or failing to bargain collectively in good faith with a public employer.

Unlawful Acts / ULP's

§447.501, FS - Unfair labor practices (cont'd)

(paraphrased)

- **Public employee organization/those acting on behalf of/its officers/their agents/representatives or employees are prohibited from (contd):**
 - Discriminating against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceedings provided for in this part.
 - Participating in a strike against the public employer by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the penalties provided in this part.
 - Instigating or advocating support, in any positive manner, for an employee organization's activities from students

Rights of free speech shall not be infringed as long as the speech contains no promise of benefits or threat of reprisal

Unlawful Acts / ULP's

§447.509, FS - Other unlawful acts (paraphrased)

- **Employee organizations, their members, agents, or representatives, or any persons acting on their behalf are hereby prohibited from:**
 - Soliciting public employees during working hours of any employee who is involved in the solicitation.
 - Distributing literature during working hours where actual work of public employees is performed, such as offices, warehouses, schools, police stations, ..., and any similar public installations. This does not prohibit the distribution of literature during the employee's lunch hour or in areas not specifically devoted to the performance of the employee's official duties.
 - Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.

Unlawful Acts / ULP's

§447.509, FS - Other unlawful acts (cont'd)
(paraphrased)

- **No employee organization shall directly or indirectly pay any fines or penalties assessed against individuals pursuant to the provisions of this part.**
- **The circuit courts shall have jurisdiction and enforce these provisions by injunction and contempt proceedings. A public employee convicted of a violation may be discharged or otherwise disciplined by his or her public employer notwithstanding further provisions of law or provisions of the collective bargaining agreement.**

Executive Sessions / Bargaining

§447.605, FS - Public meetings and records law; exemptions and compliance.

- (1) All discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s. 286.011.
- (2) The collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s. 286.011.
- (3) All **work products** developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1).

Past Practice

Definition (Based on PERC rulings)

A consistent action or behavior with respect to an issue over time such that employees, the union and the employer come to recognize the practice as standard.

Impasse Factors

§447.405, FS –Impasse Factors (paraphrased)

The special magistrate shall consider the following factors:

- **Comparison of the annual income** of the public employees in question with the annual income of employment for the same or similar work of employees with like or similar skills under the same or similar working conditions in the **local operating area** involved **AND** similar public employee governmental bodies of **comparable size** within the state.
- The interest and welfare of the public.

Impasse Factors (cont'd)

§447.405, FS -Impasse Factors (cont'd) (paraphrased)

■ Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

- (a) Hazards of employment.
- (b) Physical qualifications.
- (c) Educational qualifications.
- (d) Intellectual qualifications.
- (e) Job training and skills.
- (f) Retirement plans.
- (g) Sick leave.
- (h) Job security.

■ **Availability of funds.**

Impasse §447.509

If the magistrate's decision is rejected in whole or part by either party, then the Board takes action on disputed items after the Board's public hearing

- Parties then reduce to writing an agreement including TA's and Board-resolved disputed issues.
- This Agreement is submitted for ratification.

If ratified, the agreement goes into effect.

If NOT ratified, ONLY the Board-resolved disputed issues and the status quo take effect for the remainder of the fiscal year. TA's are lost.

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