

Collective Bargaining – Ms. Denise Heekin; Bryant, Miller, and Olive PA's (Presentation)

**FACULTY
ORGANIZING:
PRACTICAL &
LEGAL ISSUES**

**Bryant
Miller
Olive**

OUR NAME IS EASY TO REMEMBER. OUR WORK IS HARD TO FORGET.

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Denise Heekin: On August 22, 2016, the United Faculty of Florida (UFF) filed a Representation-Certification petition to represent a bargaining unit consisting of full-time faculty, counselors and librarians. The petition excludes College administration and admission counselors. The Public Employees Relations Commission (PERC) issued a notice of sufficiency on August 26, 2016.

WHERE WE ARE

- August 22, 2016 - United Faculty of Florida (UFF) filed a Representation-Certification Petition to represent a bargaining unit consisting of Full-time Faculty, Counselors, and Librarians.
- Excludes the president, assistants to the president, registrars, directors, deans, associate deans, and admission counselors.
- August 26, 2016 - Notice of Sufficiency issued by the Public Employees Relations Commission (PERC).

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The College's response must be filed by Sept 22, 2016. There is some disagreement that Librarians and Counselors should be included in the group. The PERC officer will issue a recommended order.

- Response to be filed by September 22, 2016.
- Response will state whether the College agrees or disagrees with the unit proposed by the union.
- Currently, we are assessing whether the Librarians and Counselors are appropriate for inclusion in the unit.

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If an agreement is not reached on a bargaining unit, there is a 70-day delay before voting. If they do agree, an election could be within a month. These are the steps that would lead to the determination of which employee classes would be included.

NEXT STEP

- Hearing to determine the appropriateness of a bargaining unit.
 - Evidentiary Hearing with a PERC Hearing Officer
 - Proposed Findings of Fact & Conclusions of Law may be filed by the parties thereafter – 15 days
 - Recommended Order by the Hearing Officer – within 30 days
 - Exceptions to Hearing Officer's Findings of Fact & Conclusions of Law – 15 days
 - Response to other party's Exceptions – 10 days
 - Final Order by PERC
 - Appeal within 30 days of Final Order
- Consent Election Agreement

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After a determination of the bargaining unit, PERC will schedule an election either by mail or onsite. It's a secret ballot process. Between now and the election, there will be some campaigning. We encourage you to put information from the college out there about what it means to have a union.

The union will also campaign. Other groups might put information out there. After the voting process, there may be challenges, which would extend the process.

ELECTION

- After there is a determination as to the appropriateness of a bargaining unit, an election will be scheduled.
 - Mail or On-site Election
 - Secret Ballot Process
 - Campaign
 - Challenges to Voter Eligibility
 - Objections and Unfair Labor Practices

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There are three basic rules: the College cannot discriminate, make promises or threats, nor interrogate or spy on employees.

THREE BASIC RULES

- 1. Cannot discriminate against employees because of their union sympathies or activities.
- 2. Cannot make threats or promises in order to discourage union activities/sympathies.
- 3. Cannot "interrogate" employees about union activities or sentiments. Examples:
 - Whether employees signed union cards;
 - Whether employees attended union meetings;
 - How employees feel about unions, or this union;
 - How employees will vote in the election.
 - Includes "spying" on employees

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The College can and should express your position on unions. You are entitled to share your experiences. You should communicate with employees.

- The College has the legal right to engage in free, non-coercive speech and conduct where a union is attempting to organize employees.
- You can and should legally and freely express your position on unions. You can and should attempt to enlist employee support for that position through direct contact and conversation with employees.

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A union cannot make a college do anything that the college does not agree to do. These are the permissible talking points.

PERMISSIBLE TALKING POINTS

- State that you and the College are opposed to the unionization of employees.
- State why you think it is unnecessary for employees to have a union here at the College.
- Point out that while the union may make lavish promises to employees in order to obtain their vote, no such promises can be fulfilled unless the College agrees. There is a difference between a promise and a guarantee.

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Emphasize the financial obligations. Answer and refute and false statements. If there are campaign materials that are not accurate, the college can and should address that and provide correct information.

You can and should express your opinion. You can listen. You can encourage questions. You can lend a sympathetic ear, and you can inquire as to how things are going on the job.

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You can emphasize the financial obligations to employees should they join the union. Answer and refute as fully and factually as possible any misleading statements issued by the union.

You can emphasize that wage rates and benefit programs have been provided by the college without a union and are very competitive.

- Emphasize the financial obligations (i.e., initiation fees, dues, assessments, fines) which employees have to assume if they join a union.
- Answer and refute as fully and factually as possible any false statements or misleading assertions made by the union.
- Emphasize the wage rates and benefit programs that the College has provided to employees without their having to pay union dues.

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Employee questions: Many employees are not aware of their rights. Answer truthfully and correctly.

EMPLOYEE QUESTIONS

- Employees are typically not aware of their rights or the employer's rights and obligations when it comes to unions.
- All employee questions should be answered truthfully and correctly.

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What employees should know: They cannot be required to join a union to keep their jobs. They do not have to speak to union organizers. Since Florida is a "right-to-work" state, they cannot be forced to join the union if it is voted in. Current union dues are 1% of their salary. That's a lot.

WHAT EMPLOYEES SHOULD KNOW

- They do not have to sign a union card.
- They do not have to speak to union organizers.
- They do not have to belong to the union to keep their job. Florida is a "right-to-work" state which means, by law, they cannot be forced to be in a union.
- If they choose to belong to the union, they will have to pay union dues. Dues for UFF is 1% of regular salary.

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They can vote against the union even if they have signed a union card. Many people are UFF members even though they are not in a bargaining unit.

- Employees can vote against the union even if they signed a union card. The election will be their opportunity to vote in freedom and they can vote against the union if they choose.
- Employees can vote against the union even if they pay membership dues. Many people are UFF members even though they are not part of a bargaining unit.

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It is essential that employees understand the importance of voting. We want them to be educated and fully informed. The union does not have to get a majority of the bargaining unit – it's the majority of people who vote. When employees don't vote, it's like casting a vote for the union.

THE IMPORTANCE OF VOTING

- Employees need to understand that it is important that they vote. It is very important that they be educated and fully informed voters.
- The union does not have to get a majority of all employees eligible to vote, but only a majority of those who actually vote in the election.
- Therefore, when employees do not vote, it is like they are casting a ballot for the union.

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They can't just "try it out." It's hard to get rid of a union. They are here for at least for a year before a decertification can be filed.

THEY CAN'T JUST TRY IT ON FOR SIZE

- Once a union is certified as the bargaining representative, it is difficult to get rid of the union.
- Accordingly, employees should understand that they just can't "try out" the union. It is a lot harder to get rid of a union than it is to get one. If a union is voted in, we – the faculty and the College -- will be stuck with it for at least one year.

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Bargaining – true or false: A union cannot guarantee certain benefits or wages nor can they guarantee job security or that the College will sign a contract.

BARGAINING – TRUE OR FALSE

- Once a union gets in, the faculty will automatically get what the union has promised. **FALSE**
- Once a union gets in, it can guarantee certain benefits and wages. **FALSE**
- Once a union gets in, the College must sign a contract. **FALSE**
- The union can guarantee job security. **FALSE**

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It is the College's responsibility to engage in good faith bargaining. The College doesn't have to agree to anything that the College thinks is not in its best interest.

Negotiations could result in changes to benefits, good, bad or the same. The union cannot tell the College how to operate.

- Negotiations could result in some benefits staying the same, some benefits increasing, and even some benefits decreasing.
- The important point is the union has no power to legally or otherwise tell the College how to operate.

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The College can only deal with the certified agent. The college can no longer deal with the faculty senate. It cannot deal directly with individuals or other employee representatives.

- If a union is elected, the College hands are tied as to who it must deal with in negotiations. The College may only negotiate with that certified agent. It can not negotiate or deal directly with individuals or other employee representatives.

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Subjects of bargaining. The College only has to bargain about items that are mandatory subjects of bargaining. These include wages, hours and terms and conditions employment. You have managerial prerogative for certain subjects.

SUBJECTS OF BARGAINING

- An employer only has to bargain about those items that are mandatory subjects of bargaining. Such subjects include wages, hours and terms and conditions of employment.
- There are subjects for which the College will have a managerial prerogative. That is, there are certain subjects for which the College does not have to bargain.

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This is a list of mandatory subjects of bargaining, but it is not all-inclusive.

MANDATORY SUBJECTS OF BARGAINING

- Wages
- Benefits
- Teaching Loads/Office Hours
- Office Hours
- Attendance at Graduation
- Sabbatical
- Faculty Senate
- Evaluations
- Grievance Procedure

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Permissive subjects of bargaining. The College has absolute right to make decisions on these issues.

PERMISSIVE SUBJECTS OF BARGAINING

- Some of these subjects include:
 - Layoffs
 - Subcontracting
 - Academic Term (semester, quarter, etc.)
 - Type of Academic Programs Offered
 - Class Size
- The College may make unilateral decisions regarding these matters without consulting the union. There might be a need to impact bargain, but the union cannot dictate the College's decision on these issues.

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Florida Statutes contains a section on managerial rights.

MANAGERIAL RIGHTS - §447.209, Fla. Stat.

- It is the right of the public employer to determine unilaterally the **purpose of each of its constituent agencies, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations.** It is also the right of the public employer to **direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons.**

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Impasse: When, despite good faith efforts, the College and union cannot reach an agreement. This really shows you how the College ultimately has control over working conditions. When one or both parties disagree, one of the parties can declare an impasse. It goes to PERC and both parties present their sides and PERC will provide a list of Special Magistrates. The two parties select an individual from the list and they present their side at a hearing. The Special Magistrate will then make a recommendation to the Board of Trustees.

IMPASSE

- Despite the parties good faith attempts to negotiate a collective bargaining agreement, there are many times when the union and employer cannot agree.
- In such a case, one party or both will declare impasse. PERC will be asked to provide a list of Special Magistrates. The parties will choose an individual from the list. After a hearing at which each side presents its position, the Special Magistrate will make a recommendation to the Board of Trustees.

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The Board of Trustees is the legislative body for the College. After you consider the recommendations from the Special Magistrate, you, the Board of Trustees, decides to either follow the recommendations, modify them or reject them. The Board of Trustees will impose the working conditions.

THE LEGISLATIVE BODY HAS THE FINAL SAY

- For the College, the legislative body is the Board of Trustees. The Board will review the recommendations provided by the Special Magistrate. Ultimately, the Board of Trustees will make the final decision as to what will be in the collective bargaining agreement. The Board is free to follow, modify or reject any recommendation made by the Special Magistrate.
- After considering the recommendations, the Board of Trustees will impose the working conditions.

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Why oppose a union: Here are some talking points for you to express why the College would oppose a union. Also, collective bargaining takes time.

WHY OPPOSE THE UNION

- We do not think that a union is necessary or beneficial to the best interests of the College's operations, the faculty, or the rest of the College community.
- We do not think that a union will represent the best interests of all the faculty, counselors or librarians.
- We do not think that the College will operate as productively or efficiently with a union. A union will effect the College's ability to work with bargaining unit members on an individual basis to resolve issues.

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Chairman Oliver: I work with IBW a lot and the whole system of seniority, hiring, termination - how does that enter into the college system?

Ms. Heekin: Florida statutes provide some law in terms of what's allowed. Continuing contract is something to stress there. That doesn't mean you couldn't negotiate that away. It's all on the table.

Mr. Foster: The strategy going forward – what is it? I've had a lot of interactions with unions. I think this is a push by a minority of employees to address some random labor practices. I support their right to exist, but I would not vote for it, if I had a vote. Status quo is not guaranteed. I don't think salary and benefits is what is driving this – it can't be. Do we oppose it? We have a right to free speech. We can argue in front of PERC who is a member of the bargaining unit.

Dr. Law: Mr. Foster, we've been in contact with our attorneys. The first thing to consider is who is in the unit. We've done a lot of work with faculty and advisors. We've asked our attorneys to protest. We don't think librarians and counselors should be in the bargaining unit. It's a complicated issue. That is being worked on as we speak. We are waiting to get the response from PERC on that.

After today, the next step is for me to make appointments on campuses to meet with faculty as a group and make sure they get all the information. We need to understand what is driving this and be available to answer questions. There a good number of our faculty working to say they don't want it and it's beginning to create a rift. The union fires pretty hard at the individuals who say they don't want it. We will certainly act within the guidelines. My goal is that everybody who is eligible to vote has the full range of information.

Ms. Westine: I'm doing the math. For a \$50K per year employee, that's \$500 a year in dues. For the person who doesn't want to get involved, I would like us to actively encourage them to vote. I would like to support that person who is going to lose \$500 per year. Be the voice of the person who just wants to go work.

Ms. Heekin: An employee doesn't have to join, but the way they are treated by the Union may be different.

Dr. Law: Who can be on the bargaining team, the executive committee, etc.? All of that is up for grabs.

Ms. Heekin: The dues are a lot of money.

Ms. Westine: How do you want us to proceed?

Dr. Law: I need to indicate to you that I will schedule campus meetings. I think by next month, some of those will have taken place. We will schedule monthly updates with you and be available to you in any way.

The College believes very strongly that we have treated everyone fairly. If people have a grievance, they need to evidence that. We meet every month with the FGO. I will take the guidance to proceed apace and make sure everyone has a chance to be heard.

Mr. Stonecipher: Do you think it would be helpful for members of the Board of Trustees to attend with you?

Dr. Law: I'd be happy to have you attend. It would be helpful. Let's schedule this as a regular item for the next few months.

Closed workshop: 11:15a.m.