



Recent Trends in Public Sector Labor Relations

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Introduction

- ◆ Today's presentation will generally address the following topics:
 - ◆ Refresher on PERA and PERC
 - ◆ Public employer and employees' rights
 - ◆ Collective bargaining obligations
 - ◆ Unfair labor practices
 - ◆ Recent noteworthy PERC cases
 - ◆ Highlights of 2022 Legislative Session
 - ◆ Recent trends in collective bargaining
 - ◆ Best practices/negotiation strategies

Florida Constitution – Right to Work

- ◆ Art. 1, Sec. 6, Fla. Const.
 - ◆ Right to work cannot be denied or abridged due to membership/non-membership in a labor union
 - ◆ Right to collectively bargain through their union representative
 - ◆ No right to strike



Strikes Prohibited

- ◆ Public employees and unions are prohibited from instigating or supporting a strike in any manner. F.S. 447.505.
- ◆ “Strikes,” include:
 - ◆ Concerted absences/failure to report for work
 - ◆ Work stoppages
 - ◆ Mass resignations
 - ◆ Intentional failure to perform assigned duties
 - ◆ Conduct which adversely affects the employer’s services
 - ◆ Picketing in support of work stoppage
 - ◆ Collecting “strike funds”





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Penalties for Strikes

- ◆ Public Employees
 - ◆ Termination of employment
 - ◆ Forfeiture of retirement benefits
 - ◆ If re-employed:
 - ◆ 18 months of probation
 - ◆ Compensation frozen at pre-strike amount for at least one year
- ◆ Unions
 - ◆ Revocation of certification
 - ◆ Revocation of right to collect dues
 - ◆ Fines:
 - ◆ Officers/employees - \$50 to \$100 per day of strike
 - ◆ Union - \$20,000 per day of strike or amount equal to cost of strike even if greater than \$20,000 per day

Public Employees Relations Commission



- ◆ Through the enactment of the Public Employees Relations Act (F.S. Part II, Ch. 447), the Florida Legislature exclusively empowered PERC to resolve labor disputes between public employers and their employees.
- ◆ Three-member Commission appointed by the Governor of Florida
- ◆ Exclusive and preemptive jurisdiction to adjudicate:
 - ◆ Unfair labor practice charges
 - ◆ Union elections
 - ◆ Unit clarification petitions
 - ◆ Representation certification petitions



Public Employees Relations Act – Employee Rights

- ◆ F.S. 447.301 – public employees have the right to:
 - ◆ Form, join, or assist a labor union
 - ◆ Engage in concerted activity for collective bargaining, mutual aid, or protection
 - ◆ Present grievances to the public employer
 - ◆ Refrain from union membership and/or activity

Public Employees Relations Act – Union Rights

- ◆ Unions have the right to:
 - ◆ Have union dues deducted and collected by the employer from the salaries of the bargaining unit employees who authorize such deductions. F.S. 447.303.
 - ◆ However, employees cannot be required to pay dues. *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).
 - ◆ Refuse to process grievances by non-union members. F.S. 447.401.
 - ◆ Negotiate a CBA following a majority vote by the bargaining unit members and certification. F.S. 447.307, 447.309.

Public Employees Relations Act – Employer Rights (Management Rights)

- ◆ F.S. 447.209 – public employers have the right to:
 - ◆ Determine purpose of its agencies
 - ◆ Set standards of services to be offered to the public
 - ◆ Exercise control and discretion over its organization and operations
 - ◆ Direct its employees
 - ◆ Take disciplinary action for proper cause
 - ◆ Relieve its employees from duty because of lack of work or for other legitimate reasons

Public Employees Relations Act – Collective Bargaining Agreements

- ◆ Maximum three-year duration. F.S. 447.309(5).
- ◆ Required provision - Grievance resolution process including a final and binding arbitration clause
 - ◆ No requirement that a negotiable topic be subject to the grievance process or included in the CBA.
 - ◆ Employers may insist to impasse that discipline not be included in a CBA.
Sarasota County v. Citrus, Cannery Food Processing, 738 So. 2d 953 (Fla. 2d DCA 1998).

Public Employees Relations Act – Duty to Bargain

- ◆ Obligated to bargain collectively regarding mandatory subjects of bargaining (i.e. wages, hours, and all terms and conditions of employment).
- ◆ Must meet at reasonable times and bargain in good faith.
 - ◆ No requirement to compromise.
 - ◆ No requirement to reach an agreement.
 - ◆ No requirement to agree on any specific language/provisions of a CBA.

Public Employees Relations Act – Mandatory Subjects of Bargaining

- ◆ What constitutes a mandatory subject of bargaining?
 - ◆ If a subject will have a material or significant impact upon the wages, hours and terms and conditions of employment of the bargaining unit employees, then likely mandatory.
 - ◆ If the impact is merely indirect, incidental, or remote, then likely not mandatory.
 - ◆ If subject is deemed a critical management decision that fundamentally impacts functioning of agency, then not mandatory.

Management Rights v. Mandatory Subjects of Bargaining

- ◆ What if a subject has characteristics of both a mandatory subject and management right?
- ◆ A balancing test must be applied to determine which characteristic predominates. *F.O.P., Miami Lodge 20 v. City of Miami*, 609 So. 2d 31 (Fla. 1992).
 - ◆ Requires a fact specific inquiry based on factors such as whether:
 - ◆ Impacts the average public employee v. specific category.
 - ◆ Potential consequences for delaying implementation.

Public Employees Relations Act – Mandatory Subjects of Bargaining

- ◆ Wages and all subjects of compensation
- ◆ Benefits including insurance, paid time off, retirement, etc.
- ◆ Work schedules
- ◆ Work rules, i.e. random drug tests, attendance, physical exams, take home vehicles, etc.
- ◆ Procedures/grounds for discipline/discharge
- ◆ Lay-off procedures
- ◆ Restrictive covenants
- ◆ Access to employer's premises for union activity
- ◆ Uniforms
- ◆ Holidays
- ◆ Union release time
- ◆ Cost of administering dues deductions
- ◆ Promotion procedures
- ◆ All other terms and conditions of employment

Public Employees Relations Act – Management Rights



- ◆ Staffing levels
- ◆ Hiring (decision to fill vacancy)
- ◆ Assignment/reassignment of duties
- ◆ Subcontracting
- ◆ Decision to implement layoffs
- ◆ Elimination of positions
- ◆ Time clocks
- ◆ Pre-employment qualifications
- ◆ Job titles
- ◆ Privatization
- ◆ Closure of facilities
- ◆ Discontinuation of services
- ◆ Security restrictions
- ◆ Transfers
- ◆ Promotion examinations
- ◆ Body Worn Cameras
- ◆ Decision to discipline

Public Employees Relations Act – Impact Bargaining

- ◆ Only applies to employer's exercise of a management right, not mandatory subjects of bargaining.
- ◆ Only impact of the decision, not the decision itself, is mandatorily negotiable.
- ◆ Union must identify specific impacts on employees' wages, hours, and terms of employment over which it requests to bargain,
- ◆ Impact bargaining requires two things of the employer:
 - ◆ (1) explicit notice to union; and
 - ◆ (2) opportunity to negotiate consequences of the decision before implementation.

Public Employees Relations Act – Impasse Process



Public Employees Relations Act – Ratification Post-Impasse Hearing



- ◆ Parties must reduce to writing an agreement which includes any articles that have been tentatively agreed upon and the disputed impasse issues resolved by the legislative body. (The rest remains status quo).
- ◆ Union must submit the proposed contract to its membership for ratification vote.

Public Employees Relations Act – Imposition of Waiver via Impasse

- ◆ Employers cannot impose through impasse a waiver of the right to bargain over changes in wages, hours, and terms and conditions of employment.
- ◆ Right to impose through impasse process is limited to mandatory subjects of bargaining.
- ◆ Imposition of a waiver through impasse is considered a ULP.

Public Employees Relations Act – Unlawful Union Conduct

- ◆ F.S. 447.501(2) - Unions are prohibited from:
 - ◆ Interfering with managerial employees' performance of their job duties;
 - ◆ Attempting or causing an employer to discriminate against an employee with regard to non-membership in a union;
 - ◆ Employees have the right to refrain from joining a union. F.S. 447.301.
 - ◆ Refusing to bargain in good faith; and
 - ◆ Discriminating against any employee for participating in a PERC proceeding.

Public Employees Relations Act – Unlawful Union Conduct

- ◆ F.S. 447.509 - Unions are prohibited from:
 - ◆ Soliciting employees during working hours; and
 - ◆ Distributing literature during working hours in areas where the actual work of public employees is performed.
 - ◆ Exception: Not prohibited during employees' lunch hour or in areas not specifically devoted to performance of employees' official duties.
- ◆ May be enforced through an injunction by a circuit court.
- ◆ Any employee who violates these prohibitions may be discharged or disciplined.

Public Employees Relations Act – Unlawful Employer Conduct

- ◆ F.S. 447.501(1) – public employers are prohibited from:
 - ◆ Interference, restraint, or coercion of employees - TRIPS
 - ◆ Threats
 - ◆ Retaliation
 - ◆ Interrogation
 - ◆ Promises
 - ◆ Surveillance
 - ◆ Providing financial support to a union.

Public Employees Relations Act - Common ULPs

- ◆ Employer's unilateral change of a mandatory subject of bargaining absent a clear and unmistakable waiver, legislative body action taken via impasse process, or exigent circumstances.
- ◆ Failure to bargain in good faith (aka bargaining in bad faith).
- ◆ Retaliation for engaging in protected, concerted activity.
- ◆ Premature declaration of impasse.
- ◆ Failure to process a grievance to arbitration.

Public Employees Relations Act – Bad Faith Bargaining



- ◆ Refusing to meet for negotiations at reasonable times and places
- ◆ Failure to discuss bargainable issues
- ◆ Refusing, upon reasonable written request, to provide public information
- ◆ Negotiating directly with employees rather than with their certified bargaining agent
- ◆ Refusing to negotiate because of an unwanted person on the opposing negotiating team

Public Employees Relations Act - Retaliation Claims

- ◆ To receive protection, bargaining unit employee's conduct must be:
 - ◆ Concerted in nature
 - ◆ Undertaken for the well-being of at least one other bargaining unit employee
 - ◆ Not prohibited by law
 - ◆ Pursued for the purpose of collective bargaining
- ◆ Must affect also working conditions of other bargaining unit members.
- ◆ Conduct taken for employee's benefit alone is insufficient.

Public Employees Relations Act - Retaliation Claims

- ◆ Examples of unprotected conduct:
 - ◆ Personal conflict with co-worker. *Cuozzo v. City of Hollywood*, 4 FPER ¶ 4131 (PERC 1978).
 - ◆ Personal conflict with supervisor. *Mittelman v. City of Palm Coast*, 31 FPER ¶ 237 (PERC G.C. Sum. Dismissal 2005).
 - ◆ Complaint about employee's annual performance evaluation. *Gable v. Fla. Gulf Coast Univ.*, 45 FPER ¶ 272 (PERC 2019).
 - ◆ Disciplinary issues specific to employee. *Escobedo v. Miami-Dade Cty. Bd. of Cty. Com'rs.*, 39 FPER ¶ 100 (PERC 2012).

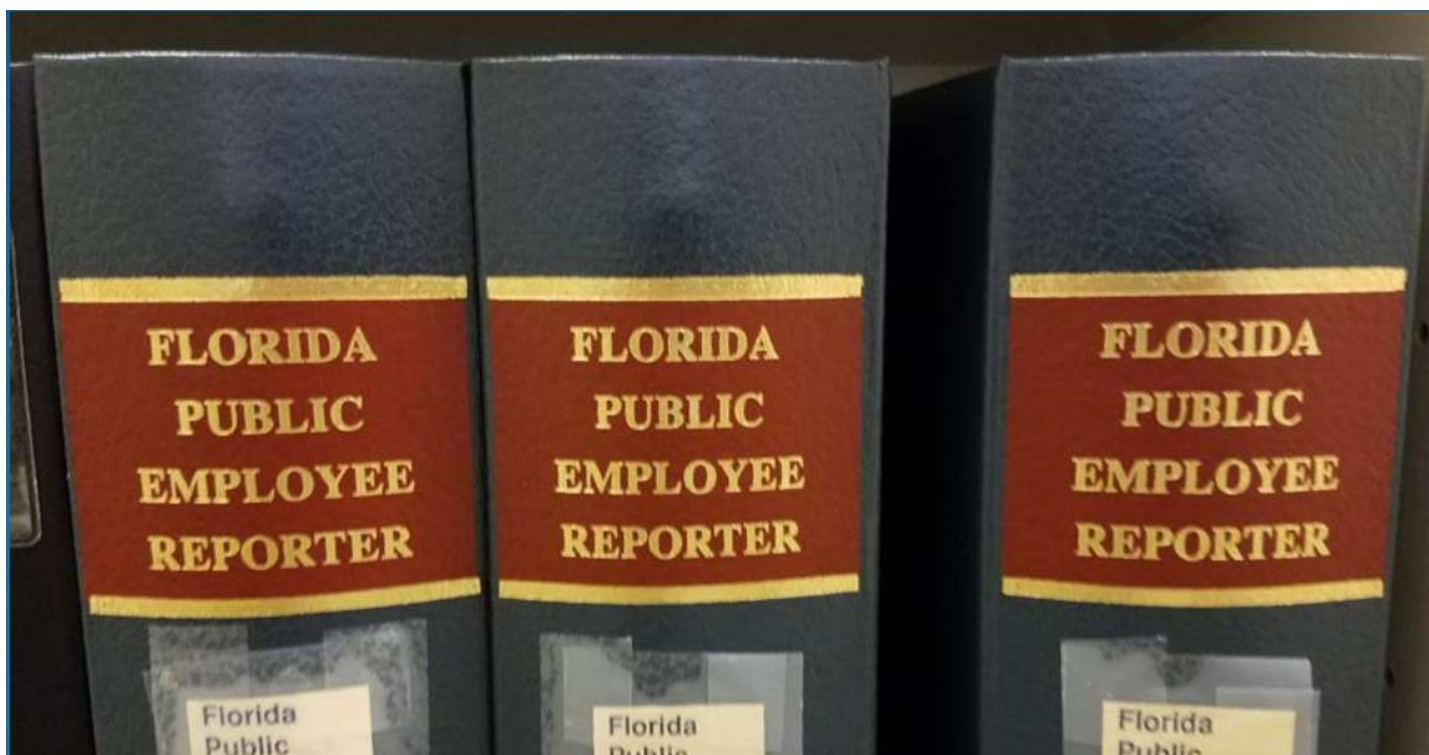
Public Employees Relations Act – Premature Declaration of Impasse

- ◆ A charging party must establish that a “reasonable period of negotiation” has not transpired before declaring impasse.
 - ◆ Five bargaining sessions over 6-month period deemed reasonable. *Sch. Dist. of Levy Cty.*, 38 FPER 336 (PERC G.C. Sum. Dism. 2012).
- ◆ Must show opposing party refused to meaningfully negotiate a mandatory subject of bargaining before declaring impasse.
- ◆ However, parties need not be deadlocked in negotiations before an impasse can exist.
- ◆ Duty to bargain continues after an impasse has been declared.

Public Employees Relations Act – Grievance Processing

- ◆ Employers may not refuse to discuss grievances in good faith with union or employee involved. See F.S. 447.501(1)(f).
- ◆ Charging party must demonstrate that:
 - ◆ Grievance arguably involves the interpretation or application of the CBA; and
 - ◆ Employer prevented employee from fully utilizing the contractual grievance procedure, usually at the arbitration step. *Westfall v. Orange Cty. Bd. of Cty. Com'rs*, 8 FPER ¶ 13367 (PERC 1982).

Recent Noteworthy PERC Cases



COVID-19 Vaccine Mandates

- ◆ *Orange Cty. Fire Fighters Ass'n, I.A.F.F. Local 2057 vs. Orange Cty. Bd. of Cty. Com'rs*, 48 FPER ¶ 370 (PERC 2022); *I.A.F.F., Local 2157, Gainesville Prof'l Firefighters, Inc. v. City of Gainesville*, 49 FPER ¶ 33 (PERC 2022).
- ◆ Unions filed ULPs against employers alleging they unilaterally imposed requirements that employees obtain COVID-19 vaccinations.
- ◆ After ULPs filed, Fla. Legislature passed HB 1B/SB 2B which prohibited public employers from imposing COVID-19 vaccine mandates for employees and declared any policy imposing such a mandate void. See § 112.0441(2)(a).
- ◆ Based on this new legislation, PERC dismissed the ULPs as moot.
- ◆ One of these decisions is currently on appeal before the First DCA.

PERC Addresses Union Demonstrations



- ◆ *District Bd. of Trs. of Valencia Coll. v. S.E.I.U., F.P.S.U., C.T.W.*, 48 FPER ¶ 332 (2022).
- ◆ College filed ULP against SEIU alleging that it had interfered with managerial employees in performance of their job duties.
- ◆ SEIU had successfully conducted a campaign to unionize adjuncts and believed the College was intentionally delaying the election.
- ◆ On two-separate occasions, SEIU conducted a “March on the Boss” by traveling in a car caravan to the homes of the College’s President and V.P. of H.R.

The SEIU Caravan



PERC Addresses Union Demonstrations



- ◆ PERC found no evidence of interference or coercion with regard to the College President because he was not home at the time.
- ◆ Conversely, it did find that the SEIU had interfered with the V.P. of H.R.'s performance of her job duties since she was not able to attend previously scheduled meetings due to the SEIU's demonstration.
- ◆ Takeaways:
 - ◆ Interference or coercion need not be accompanied by threats of violence to be unlawful
 - ◆ Employer need only show that the union prevented the performance some of the manager's assigned job duties in general, not limited to specific job duties including those relating to labor relations.
 - ◆ Right to free speech does not extend to instances where a specific managerial employee is targeted and manager's right to residential privacy is infringed upon.

Prohibition on Use of Medical Marijuana by Public Employees

- ◆ *Velez Ortiz v. Dep't of Corrections*, 48 FPER ¶ 274 (PERC 2022).
- ◆ Correctional officer filed a complaint with PERC challenging his termination after he tested positive for medical marijuana during a random drug test.
- ◆ Officer was diagnosed with PTSD and obtained his med. marijuana card.
- ◆ DOC had a zero-tolerance policy for use of marijuana regardless of whether it was recreational or medicinal.

Prohibition on Use of Medical Marijuana by Public Employees

- ◆ PERC held that while use of medical marijuana is legal in Florida, the law does not limit employers' ability to enforce a drug-free workplace policy or require employers to allow use of medical marijuana as an accommodation. F.S. 381.986(15)(a) and (b).
- ◆ Distinguished its prior decision in *Smith v. Dep't of Corrections*, 40 FPER ¶ 77 (PERC 2003), where it reversed an employee's dismissal for off-duty use of barbiturates which were prescribed by the employee's medical provider and the employer did not have a zero-tolerance policy for that drug, unlike this case.

Retaliation Against Union President for Criticizing Employer During Pandemic

- ◆ *I.U.P.A., AFL-CIO v. Sheriff of Broward Cty.*, 48 FPER ¶ 12 (PERC 2021)
- ◆ Union filed a ULP alleging that BSO retaliated against the union president for engaging in protected, concerted activity by complaining about a lack of PPE available for deputies working during the pandemic .
- ◆ The union president's protected activities included:
 - ◆ Sending memos to Sheriff
 - ◆ Speaking on radio expressing concerns
 - ◆ Writing an article about the issue
 - ◆ Issuing a press release complaining about lack of leadership by Sheriff after a deputy died from COVID-19
 - ◆ Submitting a written complaint accusing the Sheriff of gross mismanagement/neglect of duty in failing to provide adequate PPE and misrepresenting the concerns of union members to the general public

Retaliation Against Union President for Criticizing Employer During Pandemic

- ◆ BSO threatened union president with disciplinary action if he continued to make statements it viewed as being inaccurate.
- ◆ One day after the union president submitted his written complaint, he was suspended with pay pending an IA investigation and was deemed to no longer be in good standing.
- ◆ PERC ruled that the confidentiality requirements of the LEO BOR did not relieve the BSO of the obligation to present evidence in its defense that demonstrated it took these disciplinary actions for reasons other than his protected activity.

Retaliation Against Union President for Criticizing Employer During Pandemic

- ◆ Also held that an LEO employer will not be permitted to rely on the LEO BOR when the alleged retaliation involves the initiation of an IA investigation.
- ◆ BSO was ordered to rescind the suspension and cease opening IA investigations against employees in retaliation for engaging in protected concerted activity.
- ◆ Case is currently on appeal to First DCA.

PERC Confirms Scope of *Weingarten* Rights



- ◆ *Canovas v. Miami-Dade Cty. Bd. of Cty. Com'rs.*, 48 FPER ¶ 354 (PERC 2022)
- ◆ PERC confirmed that an employee's right to representation during an investigative or disciplinary interview under *Weingarten* only arises under the following circumstances:
 - ◆ (1) the employee reasonably believes that the interview could result in disciplinary action;
 - ◆ (2) the employee requests representation; and
 - ◆ (3) the exercise of the right will not interfere with legitimate employer prerogatives.

PERC Confirms Scope of *Weingarten* Rights

- ◆ A meeting is only considered to be investigatory if it is used to elicit information pertaining to alleged employee misconduct. *I.U.P.A. #78, Local 1010, AFL-CIO v. Marion Cty. Sch. Bd.*, 32 FPER ¶ 80 (PERC 2006).
- ◆ Right to have union rep. present does not apply to meetings that do not involve an investigation or questioning by the employer. *Hill v. Midway Fire Dist.*, 40 FPER ¶ 382 (PERC 2014).
- ◆ PERC dismissed the ULP because:
 - ◆ (1) Employee failed to request a union rep. during the investigatory interview; and
 - ◆ (2) Employee was as not entitled to representation during a second meeting because the meeting was neither investigative nor disciplinary in nature.

Weingarten Rights During Investigatory Interviews

- ◆ *Guevara v. Sch. Bd. of Miami-Dade Cty.*, 48 FPER ¶ 343 (PERC 2022).
- ◆ Employee alleged that School Board's refusal to allow her union rep. to question her during an investigatory interview as part of an on-going IA investigation and constituted a violation of her *Weingarten* rights.
- ◆ Employee brought union rep. to interview during which IA investigators informed the rep. that he was not permitted to ask questions of the employee on the record.
- ◆ Investigators offered the employee the opportunity to leave the room to speak in private with her rep. and then make a statement on the record.
- ◆ The rep. later attempted to ask the employee questions but was stopped by the investigators.
- ◆ Investigators again gave her the opportunity to make a statement on the record, but employee declined to do so.

Weingarten Rights During Investigatory Interviews

- ◆ PERC concluded that School Board did not commit a ULP
- ◆ Rejected her arguments that under *Weingarten*, her rep. should have been permitted to ask her questions on the record during the interview.
- ◆ Held that because the employee did not avail herself of opportunities offered by investigators, it was not possible to conclude that the investigator's refusal to permit her rep. to question her on the record prevented the rep. from providing the employee with effective representation.

Weingarten Rights During Investigatory Interviews

- ◆ PERC also declined the School Board's request to set forth a bright line rule that established:
 - ◆ (1) A rep. is not permitted to engage in cross examination during an investigatory interview; and
 - ◆ (2) An employer does not commit a ULP if it forbids a rep. from questioning an employee on the record as long as the employer offers other adequate opportunities to assist the employee in question.
- ◆ PERC's reasoning was that a fact-intensive analysis of investigatory interviews is necessary which focuses on the conduct of both the employer and union reps.

PERC Finds List of Dues-Paying Union Members is a Public Record

- ◆ *United Faculty of Fla. v. Univ. of South Fla. Bd. of Trs.*, Order No. 22U-264 (PERC 2022).
- ◆ In response to a public records request from a professor (who was also a former union member), USF released a list of employees who had union dues deducted from their paychecks during a 3-month period.
- ◆ UFF subsequently found out that the professor obtained this info from USF resulting in the filing of the ULP.
- ◆ PERC held that the list was a public record because it was created by USF in connection with transacting official business when performing payroll functions and no exemption from Ch. 119 applied.

PERC Finds List of Dues-Paying Union Members is a Public Record

- ◆ PERC does not have the authority to create an exemption from Ch. 119.
- ◆ PERC dismissed UFF's charge and held that an employer's statutory obligation to produce such information in response to a public records request does not constitute a ULP.
- ◆ Also awarded USF its attorney's fees and costs.

Legislative Updates and Trends



General Legislative Topics

- ◆ “Defund Police” - Qualified Immunity
- ◆ Sovereign Immunity Legislation
- ◆ Individual Freedom Act (Stop WOKE act) (HB7) and HB233 Status
- ◆ Continued Labor Union Legislative Initiatives

Protests at Homes of Administrators

- ◆ CS/HB 1571 (Ch. 2022-118, Laws of Fla.)
- ◆ Enacted in response to recent incidents of protests which targeted the homes of political figures following politically-charged events, i.e. police brutality, etc.,
- ◆ Law prohibits a person from picketing or protesting at another person's home with the intent to harass or disturb that person. F.S. 810.15.
 - ◆ Criminalizes such conduct as a second-degree misdemeanor.



Increased Compensation/Benefits for Recruitment/Retention of LEOs

- ◆ CS/HB 3 (Ch. 2022-23, Laws of Fla.)
- ◆ Law enforcement agencies across the U.S. have reported difficulty in attracting and retaining qualified law enforcement officers.
- ◆ A 2019 survey found that:
 - ◆ 78% of LEO agencies experienced difficulty in recruiting qualified candidates
 - ◆ 50% percent of agencies reported having to change employment policies in order to expand the pool of eligible recruits; and
 - ◆ 25% reported having to reduce or eliminate certain law enforcement services or units due to staffing difficulties.

Increased Compensation/Benefits for Recruitment/Retention of LEOs

- ◆ Emergence of COVID-19 exacerbated the difficulty in recruiting LEOs.
- ◆ 2020 Survey - Number of LEO-employers reporting difficulty in recruiting qualified officers increased to 86%.
- ◆ Agencies reported difficulty in maintaining full staffing levels attributable to:
 - ◆ Negative public perception of LEOs;
 - ◆ Increase in retirements;
 - ◆ Decreased interest in LEO careers;
 - ◆ The economy and availability of open positions in other occupations; and
 - ◆ Lengthy background check and hiring process.

Increased Compensation/Benefits for Recruitment/Retention of LEOs

- ◆ LEO agencies have attempted to address the problem in a variety of ways, including by:
 - ◆ Offering hiring incentives, such as signing bonuses;
 - ◆ Relaxing automatic candidate disqualifiers;
 - ◆ Providing more flexible work schedules;
 - ◆ Increasing fringe benefits; and
 - ◆ Expanding recruitment campaigns.
- ◆ However, many LEOs agencies are still unable to recruit enough qualified officers.

Increased Compensation/Benefits for Recruitment/Retention of LEOs



- ◆ Legislation created Fla. LEO Recruitment Bonus Program to provide one-time bonus payments of up to \$5,000 to each newly-employed LEO.
- ◆ Created Fla. LEO Academy Scholarship Program to cover tuitions, fees, and up to \$1,000 of eligible education expenses for trainees enrolled in a basic recruit training program.
- ◆ Created reimbursement program to pay for up to \$1,000 of equivalency training costs for certified LEOs who relocate to Fla. or members of special operations forces who become full-time LEOs.

Increased Compensation/Benefits for Recruitment/Retention of LEOs



- ◆ Provides LEOs who adopt a child from state welfare system a \$10,000 benefit for children without special needs and \$25,000 benefit for children with special needs.
- ◆ Makes dependent children of LEOs eligible to receive a Family Empowerment Scholarship to cover tuition/fees to attend private school.
- ◆ Increases base salary for each county sheriff by \$5,000.

2022-2023 General Appropriations Act – Compensation Increases

- ◆ HB 5001 (Ch. 2022-156, Laws of Fla.)
- ◆ Increased minimum wage to \$15/hr. for State employees.
- ◆ Provided for 5.38% across-the-board increase for State employees to address inflation.
- ◆ State LEOs - Increased minimum salary to \$50,000 or additional 5% pay increase, whichever is greater.
- ◆ State Correctional Officers - Increased minimum salary to \$41,600 (\$20 per hour).
- ◆ State Firefighters - Increased minimum salary to \$41,600 (\$20 per hour).

2022-2023 General Appropriations Act – Compensation Increases



- ◆ Provides one-time payment of up to \$1,000 for first responders in recognition of value of their services.
- ◆ Increased funding by \$250 million, for a total of \$800 million, for salary increases of full-time public teachers.
- ◆ Goal to eventually increase minimum teacher salary level to \$47,000.

2022-2023 General Appropriations Act – Compensation Increases



- ◆ Required certain Medicaid Fee-for-Services providers to increase minimum wage of “direct care” employees to at least \$15/hr. by Oct. 1, 2022.
- ◆ Provides covered employees with the right to file a lawsuit against employer who fails to comply with min. wage requirement.
 - ◆ May recover back wages, liquidated damages, and attorney’s fees and costs.

2022-2023 General Appropriations Act – Compensation Increases



- ◆ Three healthcare groups filed a lawsuit against AHCA in Leon County seeking a temporary injunction to prevent the employee-enforcement provision from taking effect on the grounds that it was unconstitutional. *Garcia v. State of Fla.*, Case No. 2022-CA-001709 (Fla. 2d Cir. Ct. Dec. 13, 2022).
 - ◆ On Dec. 13, 2022, the Court denied their request for a temporary injunction.
- ◆ Same healthcare groups filed a rule challenge at DOAH arguing that ACHA's definition of direct care employees constituted an unadopted rule in violation of the APA's rulemaking procedure. *Home Care Ass'n v. Agency for Health Care Admin.*, Case No. 22-003371RU (DOAH Oct. 31, 2022)
 - ◆ DOAH has yet to issue a Final Order on the rule challenge.

HB 5007 – Changes to Fla. Retirement System

- ◆ Ch. 2022-159, Laws of Fla.
- ◆ Increases employer-paid contributions to employees' retirement accounts
- ◆ Extends period that LEOs can participate in DROP from 60 months to 96 months.
 - ◆ Impact on approach from Fire-Rescue

HB 31 – Amendment to Firefighters’ Bill of Rights



- ◆ Ch. 2022-110, Laws of Fla.
- ◆ Extends some of the rights afforded to firefighters via the FBOR to questioning conducted as an “informal inquiry.”
- ◆ Clarifies the definition of the term “informal inquiry” to indicate that it “does not include routine work-related discussions, such as safety sessions or normal operational fire briefings.”
- ◆ Also defines the term “formal investigation” as “the process of investigation ordered by supervisory or management personnel to determine if a firefighter should be disciplined as opposed to occurring after the supervisory personnel have determined that discipline is appropriate.”

HB 31 – Amendment to Firefighters’ Bill of Rights

- ◆ Bill specifically requires an informal inquiry of a firefighter to:
 - ◆ Be of a reasonable duration with permitted periods for rest and personal necessities; and
 - ◆ Not subject the firefighter to offense language or offer any incentive as an inducement to answer any questions.
- ◆ Clarifies that during an informal inquiry or interrogation, a firefighter may not be threatened with a transfer, suspension, dismissal, or other disciplinary action.
- ◆ Authorizes a union rep to be present during an informal inquiry.

HB 31 – Amendment to Firefighters' Bill of Rights



- ◆ Prohibits employers from threatening or taking adverse employment actions against a firefighter solely for exercising his or her rights under FBOR.
- ◆ Prohibition applies to:
 - ◆ Discipline
 - ◆ Discharge
 - ◆ Demotions
 - ◆ Promotions
 - ◆ Seniority
 - ◆ Transfers
 - ◆ Reassignments

Legislation Cont.



- ◆ HB689 – PTSD coverage for corrections officers
- ◆ SB838 – expansion of firefighter for presumption of causation for certain cancers as work related to include fire investigators

2022 Legislative Session - Relevant Failed Legislation – Union Related

- ◆ HB 1197/SB 1458:
- ◆ Required a public employee who desires to join a union to sign a membership authorization form which acknowledged that Florida is a right-to-work state.
- ◆ Required unions to revoke an employee's membership upon receipt of employee's written request.
 - ◆ Prohibited unions from requiring employees to provide a reason for requesting revocation of union membership.
- ◆ **Prohibited unions from having its dues and uniform assessments deducted from salaries of bargaining unit members and collected by the employer.**

2022 Legislative Session - Relevant Failed Legislation

- ◆ Required unions to include in their annual registration renewal applications that are submitted to PERC certain membership information and employed-verified documentation, including number of bargaining unit employees who were:
 - ◆ Eligible for union representation as of Dec. 31; and
 - ◆ Paying or not paying union dues.
- ◆ If application is incomplete, union would have had 10 days to include the missing info. or its application would be dismissed.
- ◆ Authorized employer and bargaining unit employees to challenge unions' registration renewal application.
- ◆ If number of dues paying bargaining unit members fell under 50%, union would have been required to petition PERC for recertification.

Recent Union Initiatives During Negotiations - Discipline

- ◆ Unions want discipline to be grievable to arbitration under just cause standard and have recently taken issue to impasse on several occasions.
- ◆ However, employers have option to remove discipline from a CBA altogether.
- ◆ “Although parties must negotiate wages, hours and terms and conditions of employment upon a proper demand, they cannot be compelled to agree to any particular proposal covering discharge and discipline.”
Sarasota Cty. Bd. of Cty. Com'rs v. Citrus Cannery Food Processing Allied Workers, 738 So. 2d 953 (Fla. 2d DCA 1998).
- ◆ Parties have the right to voluntarily exclude topics from a CBA. *City of Casselberry v. Orange Cty. P.B.A.*, 482 So.2d 336 (Fla. 1986).

Recent Union Initiatives During Negotiations - Discipline



- ◆ Unions also want discipline to be removed (or not considered) from a bargaining unit member's personnel file after a certain period of time with the intended effect of precluding the employer from relying upon the discipline as part of the progressive discipline process.
- ◆ Would make it more difficult for an employer to terminate the employee in cases where disciplinary action/termination is appropriate.
- ◆ Removal of discipline arguably increases the employer's exposure to liability to not only third-party lawsuits, but also civil actions brought by other employees.
- ◆ More than \$1.5 billion has been spent by LEO employers to settle claims of police misconduct which involved officers who had been repeatedly accused of misconduct.

Recent Union Initiatives During Negotiations - Wages

- ◆ Unions want wage increases for employees with multiple years of service to address “wage compression.”
 - ◆ Take issue with new employees receiving similar rates of pay and benefits.
- ◆ Compression created due to factors, such as:
 - ◆ Employer’s efforts to raise minimum starting rate of pay to address labor shortages;
 - ◆ Impact of minimum wage increases (and demand for earlier implementation)
 - ◆ Legislative Initiatives (teacher starting pay, LEO funding)

Recent Union Initiatives During Negotiations - Wages



- ◆ In Nov. 2020, Florida voters approved changes to the state's minimum wage, which will gradually increase to \$15/hour by Sept. 2026:

<u>Effective Date</u>	<u>Florida Minimum Wage</u>
January 1, 2021	\$8.65
September 30, 2021	\$10.00
September 30, 2022	\$11.00
September 30, 2023	\$12.00
September 30, 2024	\$13.00
September 30, 2025	\$14.00
September 30, 2026	\$15.00

Recent Union Initiatives During Negotiations - Wages

◆ Inflation

- ◆ Example: employer provides 8% wage increase, but unions want more arguing that wage increase only keeps them at what they were making before.

◆ Cost of Housing

- ◆ Cost of housing increased in Florida has increased 48.96% since June of 2020.
- ◆ Difficult to find, impacts ability to hire qualified candidates without increasing starting salaries.

Recent Union Initiatives During Negotiations - Wages

- ◆ Unions want same benefits/compensation being offered by employers (including within organization) due to difficulty in attracting/retaining a sufficient number of qualified candidates.
- ◆ Example: Many LEO agencies are currently offering better compensation packages, including:
 - ◆ Signing bonuses
 - ◆ Better take-home vehicle privileges
 - ◆ Improved pension benefits
 - ◆ Higher rates of pay for off-duty assignments
- ◆ Unions also have been recently relying on statistics of competing employers at the bargaining table to advocate for higher wages/benefits.

Recent Union Initiatives During Negotiations – Paid Release Time

- ◆ Unions are consistently seeking to be provided increased amounts of paid release time.
 - ◆ Release time refers to an employer's agreement to “release” a bargaining unit employee from duty during work hours to perform union activities or business while still being compensated.
- ◆ However, employers are statutorily prohibited from contributing financial support a union. F.S. 447.501(1)(e).
- ◆ Also cannot release union members on full-time basis to conduct union activity as opposed to their actual job.

Recent Union Initiatives During Negotiations – Paid Release Time



- ◆ Examples of activities which may not be subsidized by employers:
 - ◆ Union business meetings or social gatherings;
 - ◆ Lobbying;
 - ◆ Attending union conventions;
 - ◆ Campaigning for political candidates or issues;
 - ◆ Protests; and
 - ◆ Basically, anything which is not a form of direct representation of bargaining unit employees.

Recent Union Initiatives During Negotiations – Promotions



- ◆ Unions want to use promotional eligibility list based on the “Rule of 5.”
 - ◆ Rule of 5 describes process where employer chooses from five current employees on a promotional eligibility list which are ranked based on several factors, such as scoring on a promotional exam, years on the promotional eligibility list, and seniority.
- ◆ Employers want to hire most qualified candidate for position based on merit/qualifications.
- ◆ The final authority regarding the selection of a candidate should remain with agency head.

Recent Union Initiatives During Negotiations – Benefits

◆ Pensions

- ◆ Unions want increases to employers' contributions to employees' retirement accounts without increasing employees' required contributions.
- ◆ Can be extremely costly and lead to situations of adverse financial consequences, like in 2008.

◆ Paid Time Off

- ◆ Unions want increased rates of accrual of PTO in the form of sick/vacation leave.
- ◆ Also want to be able to “cash out” accrued/unused leave balances periodically.

◆ Paid parental and medical leave

Questions?

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