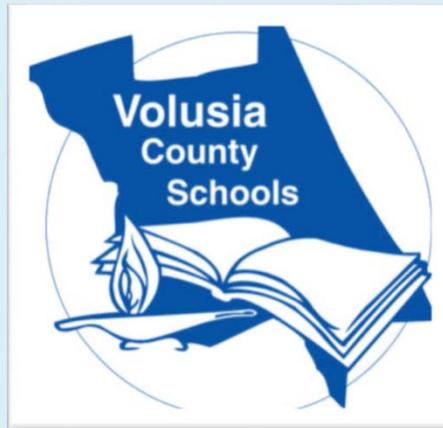


**AVOIDING PAID UNION LEAVE  
PITFALLS AFTER PERC'S DECISION IN  
*ALLEN V. UNITED FACULTY OF MIAMI-DADE  
COLLEGE***

A presentation to the Florida Education Negotiators by:  
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Disclaimer: The information appearing in this presentation is for general informational purposes only and is not intended to provide legal advice to, or reliance by, any individual or entity. We urge you to consult with your own legal advisor before taking any action based on information appearing in this presentation.



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## WHAT DOES PAID UNION LEAVE LOOK LIKE?

- When a public employer releases an employee from duty during work hours to tend to union activities or business while being compensated by the public employer.
- For example, a public employee may be permitted to engage in the following while also being paid by the public employer:
  - Attend national and state union conventions;
  - Attend local union business meetings;
  - Engage in political activities in favor of a candidate or issue;
  - Attend grievance meetings to represent employee;
  - Engage in collective bargaining while serving on union negotiating team; or
  - Engage in any other form of activity or business on behalf of the union.



## POTENTIAL SOURCES OF PAID UNION LEAVE

- Collective bargaining agreements
- School board policies
- Personnel manuals
- Other procedures and practices



## APPLICABLE LAW

- Florida law governs the issue of paid union leave granted by public employers:

### **447.501. Unfair labor practices**

*(1) Public employers or their agents or representatives are prohibited from:*

...

*(e) Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization **or contributing financial support** to such an organization.*

...

Section 447.501, Florida Statutes



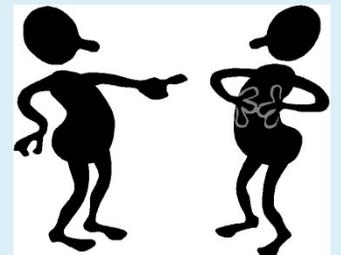
## APPLICABLE LAW

- Issue of paid union leave centers on the phrase “...or contributing financial support...” in Section 447.501(1)(e), Fla. Stat.
- Granting paid union leave to conduct union business may constitute a form of financial support to unions by a public employer and constitute an unfair labor practice.
- The Florida Public Employees Relations Commission is charged with the responsibility to process unfair labor charges. Section 447.501(6), Fla. Stat.



## NEW PERC RULING: BACKGROUND

- On May 27, 2016, PERC issued a final order in *Del Pino Allen v. Miami-Dade College Board of Trustees v. United Faculty of Miami-Dade College, FEA, AFL-CIO, AFT, Local 4253*, case no. CA-2015-070, order no. 16U-144 (Fla. PERC May 27, 2016).
- Charging party was a former employee of the college:
  - filed unfair labor practice charge with PERC against college alleging that college was financially supporting the faculty union in violation of section 447.501(1)(e), Fla. Stat. by granting paid union leave status to union president.
  - union president was college employee.



## NEW PERC RULING: BACKGROUND

- The collective bargaining agreement authorized paid union leave in three forms:
  - Option 1:
    - a faculty member may be on unpaid leave for entire year;
  - Option 2:
    - a faculty member may be on paid leave on a semester basis with full reimbursement to college by union for the member's pay and benefits; or
  - **Option 3 (source of ULP charge):**
    - **A faculty member may be released from duty with pay for union business and Union reimburses the college for the cost of a replacement adjunct professor.**



## NEW PERC RULING: BACKGROUND

- Union president was elected in 2000 and a college employee;
- Union president was extended paid leave and did not perform any teaching or other faculty duties under option 3 of the collective bargaining agreement's union leave provision.
- Union president was not paid by the union but paid by college while also maintaining a private law practice.
  - Union did not provide any reimbursement to college.
- College paid union president \$100,000 in salary in 2015.
- College paid adjunct professors covering his classes \$30,000 in 2015.

## NEW PERC RULING: BACKGROUND

- Union president's self-described activities while being compensated by the college included:
  - recruitment of employees for union membership;
  - lobbying for political issues;
  - attending convocations and alumni affairs;
  - communicating union positions;
  - coordinating with other unions; and
  - advocating for academic and education issues.
- PERC found that none of these activities constituted direct representation of employees in the bargaining unit.



## NEW PERC RULING: OUTCOME

- PERC's appointed hearing officer issued a recommended order on March 2, 2016, concluding that Allen did not prove the College unlawfully contributed financial support to the Union.
- PERC rejected the hearing officer's determination on that issue.
- PERC ruled that none of the union president's duties were an "appropriate use of tax collections."
- PERC also ruled that "the Union cannot use paid release leave to perform these types of ancillary union activities unless it completely reimburses the College."



## NEW PERC RULING: OUTCOME

- PERC reiterated that employer paid release time “must be limited to direct representational activity.”
  - Said that its prior decisions “did not provide the parties with beneficial guidance on the types of activities an employer could fund with release time.”
  - Revisited its decision in *In re City of Jacksonville*, 13 FPER ¶ 18250 (1987) and ruled that union release time may not be so vague as to cover any union activity.
  - Recognized prior summary dismissal of another unfair labor practice charge involving this issue was in error in *Riley v. Miami-Dade Transit Authority*, 25 FPER ¶ 30112 (G.C. Summary Dismissal 1999).
- Because of the lack clarify on the subject, PERC did not find the college guilty of an unfair labor practice.



## NEW PERC RULING: OUTCOME

- PERC ruled that “any paid release time for union officials must be strictly limited to time directly representing employees...”
- The ruling identified three examples of when a union is directly representing employees:
  - Collective bargaining
  - Grievance activities
  - Discipline activities
- Appeal filed by charging party with the Third District Court of Appeal (case no. 3D16-1288)
  - Charging party seeks for college to be found guilty of unfair labor practice.



## NEW PERC RULING: THE WARNING

- PERC put public employers on notice to get their houses in order to avoid future violations:
  - Public employers should examine their obligation for paid release time which do not:
    - limit the union activity to be performed; or
    - require complete reimbursement by a union.
  - Public employers “must ensure that employer funded release time is only used by unions for direct representational activities and that it has objective corroboration of a union’s direct representational activities.”
- In other words, public monies may not be used to subsidize all union activities but only those which involve direct representation of employees.



## LESSONS LEARNED

- The following are examples of activities which may not be subsidized by the public employer:
  - Union business meetings or social gatherings;
  - Lobbying;
  - Attending union conventions;
  - Campaigning for political candidates or issues;
  - Protests; and
  - Anything which is not a form of direct representation of an employee.



## LESSONS LEARNED

- Consult with district legal counsel.
- Examine collective bargaining agreements for language authorizing paid union leave:
  - Any paid union leave should require complete reimbursement to the district; **or**
  - Ensure that any paid union leave be used only for direct representational activities which is objectively corroborated by the district.
    - Ask for documentation of intended union activity before approving it (e.g. agenda of a meeting, description of the purpose of the leave)
    - Identify direct representational activities in advance
- Discuss implications of the ruling with your union leadership to avoid confusion and promote understanding.



# QUESTIONS / COMMENTS

