

COLLECTIVE BARGAINING

CHAPTER 447, FLORIDA STATUTES

FEN TRAINING
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§447.203, FS - Definitions

Bargaining Unit:

That unit determined by the public employer and the public employee organization and approved by PERC to be appropriate for the purposes of collective bargaining. May be approved by PERC without public employer approval.

Managerial Employees (s. 447.203(4)):

Employees who perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs. (see additional restrictions in subsection (4).)

Confidential Employees (s. 447.203(5)):

Employees who act in a confidential capacity to assist or aid managerial employees.

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.

Bargaining Agent:

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

Collective Bargaining:

The performance of the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment, except that neither party shall be required to make a concession unless otherwise provided.

Good Faith Bargaining:

Willingness of both parties to meet at reasonable times and places, as mutually agreed upon, to discuss issues which are proper subjects of bargaining, with the intent of reaching a common accord. An obligation for both parties to actively participate in the negotiations with an open mind and a sincere desire, as well as making a sincere effort, to resolve differences and come to an agreement.

Bad Faith Bargaining:

- Failure to meet at reasonable times and places
- Placing unreasonable restrictions on the other party 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

§447.209, FS - Public employer's rights.

- It is the right of the public employer to **determine unilaterally the purpose of each of its constituent agencies, set standards of services** 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**.
- ***However**, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.*

History.Cs. 3, ch. 74-100.

§447.301, FS - Public employee's rights.

- (1) Public employees shall have the **right to form, join, and participate in, or to refrain from forming, joining, or participating in**, any employee organization of their own choosing.
- (2) Public employees shall **have the right to be represented by any employee organization of their own choosing** and to negotiate collectively, through a certified bargaining agent, with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have **the right to refrain from exercising the right to be represented**.
- (3) Public employees shall have the right to **engage in concerted activities not prohibited by law**, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.
- (4) Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his or her own grievances, in person or by legal counsel, to his or her public employer and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and **if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances**.
- (5) *[Community colleges]*

History.C s. 3, ch. 74-100; s. 9, ch. 77-343; s. 191, ch. 79-400; s. 6, ch. 83-214; s. 154, ch. 97-103; s. 1007, ch. 2002-387.

§447.305, .307, .308, 1012.2315(4), FS – Registration, certification, revocation of employee organization

2018 Amendments to provisions relating to certification, registration, and revocation of certification of employee organizations: See 2018 Addendum.

§447.309, FS - Collective bargaining

- The bargaining agent for the certified organization and the chief executive officer or his or her representative of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.
- In conducting negotiations with the bargaining agent, the chief executive officer or his or her representative shall consult with, and attempt to represent the views of, the legislative body of the public employer.
- Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and such agreement shall be signed by the chief executive officer and the bargaining agent.
- Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until such agreement has been ratified by the public employer and by public employees who are members of the bargaining unit.
- Upon execution of the collective bargaining 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 of a collective bargaining agreement 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.
- If the agreement is not ratified by the public employer or is not approved by a majority vote of employees voting in the unit, in accordance with procedures adopted by the commission, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.
- Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term.

§447.401, FS – Grievance procedures

- A grievance procedure shall be negotiated to be used to settle disputes involving the interpretation or application of a collective bargaining agreement. *See also s. 447.301(4), FS.*
- The negotiated grievance procedure shall settle disputes between:
 - Employer and employee
 - Employer and groups of employees
- Such negotiated grievance procedure **shall have as its terminal step a final and binding disposition** by an impartial neutral, mutually selected by the parties.
- The arbiter or other neutral shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement.
- All public employees shall have the right to a fair and equitable grievance procedure administered **without regard to membership or nonmembership** in any organization.
 - NOTE: Certified employee organizations shall not be required to process grievances for employees who are not members of the organization. **However, whenever nonmembers have filed a grievance pursuant to this section, the bargaining agent must be given reasonable opportunity by the administration to be present at any meeting called for the resolution of such grievances.** *See s. 447.301(4), FS.*
- A decision on a grievance involving abuse, abandonment, or neglect by an employee under s. 39.201 or s. 415.1034, FS, may not be decided until such abuse, abandonment, or neglect has been judicially determined.
- NOTE: Career service employees are additionally restricted to various options under this section.

§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).

History.Cs. 3, ch. 74-100; s. 23, ch. 77-343; s. 18, ch. 91-269; s. 302, ch. 96-406; s. 1075, ch. 97-103.

§447.4095, FS - Financial urgency.

In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, 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 pursuant to the provisions of 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.

History.Cs. 2, ch. 95-218; s. 159, ch. 97-103.

§1001.42(21), FS - Educational emergency

As amended by 2017 Legislature in CS/HB 7069 – Ch 2017-116, LOF

1001.42 Powers and duties of district school board.--The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(21) EDUCATIONAL EMERGENCY.

Negotiate special provisions of its contract with the appropriate bargaining units to free schools with a school grade of “D” or “F” from contract restrictions that limit the school’s ability to implement programs and strategies needed to improve student performance. The negotiations shall result in a memorandum of understanding that addresses the selection, placement, and expectations of instructional personnel and provides principals with the autonomy described in s. 1012.28(8). For purposes of this subsection, an educational emergency exists in a school district if one or more schools in the district have a school grade of “D” or “F.”

§447.505, FS - Strikes prohibited.

No public employee or employee organization may participate in a strike against a public employer by instigating or supporting, in any manner, a strike. Any violation of this section shall subject the violator to the penalties provided in this part.

History.Cs. 3, ch. 74-100.

§447.403, FS – Resolution of impasses.

[Paraphrased – see ch 447.403, FS for complete text.]

Declare Impasse

- (1) **After a reasonable period of bargaining if a dispute exists** between a public employer and a bargaining agent, an **impasse** shall be deemed to have occurred when one of the parties so declares in writing to the other party and to the commission.

The public employer or the bargaining agent may seek the appointment of a mediator to assist in the resolution of the impasse.

Special Magistrate

- (2) (a) If no mediator is appointed, or upon the request of either party, **the commission shall appoint, and submit all unresolved issues to, a special magistrate acceptable to both parties.** If the parties are unable to agree on the appointment of a special magistrate, the commission shall appoint, in its discretion, a qualified special magistrate.

The parties may agree to proceed directly to resolution of the impasse by the legislative body pursuant to paragraph (4)(d) – with or without the services of a mediator.

- (3) The **special magistrate shall hold hearings** in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. The magistrate may establish the time and place for the hearings and; shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on his or her own behalf.

The **magistrate’s recommended decision shall be discussed by the parties**, and each recommendation of the special magistrate shall be deemed approved by both parties unless specifically rejected by either party by written notice filed with the commission within 20 calendar days after the date the party received the special magistrate’s recommended decision.

Rejection of Report / Public Hearing

- (4) **If either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special magistrate:**

NOTE: Once a rejection is received by the superintendent, the school board enters the “insulated period” and no ex parte communication may be conducted by the union or superintendent re the Special Magistrate’s report.

- (a) Within 10 days of rejection, the superintendent shall submit to the school board a copy of the findings of fact and recommended decision of the special magistrate, together with the superintendent’s recommendations for settling the disputed impasse issues. The superintendent shall also transmit his or her recommendations to the union;
- (b) The union shall submit its recommendations for settling the disputed impasse issues to the school board and superintendent;
- (c) The school board or a duly authorized committee thereof shall forthwith conduct a public hearing;
- (d) Thereafter, the school board shall take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues;

After Board Resolution / Ratification

- (e) Following the resolution of the disputed impasse issues by the school board:
- The parties shall reduce to writing an **agreement** which **includes the TA’s and those disputed impasse issues resolved by the school board.**
 - The agreement shall be signed by the superintendent and the bargaining agent and shall be **submitted** to the school board and to the public employees who are members of the bargaining unit **for ratification.**
 - **If such agreement is not ratified** by all parties, pursuant to the provisions of s. 447.309, the school board’s action taken pursuant to the provisions of paragraph (d) shall take effect as of the date of such school board’s action for the remainder of the first fiscal year which was the subject of negotiations; however, the school board’s action shall not take effect with respect to those disputed impasse issues which establish the language of contractual provisions which could have no effect in the absence of a ratified agreement, including, but not limited to, preambles, recognition clauses, and duration clauses.

§447.405, FS –Impasse Factors

The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
- (3) The interest and welfare of the public.
- (4) 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.
- (5) Availability of funds.

History.—s. 3, ch. 74-100; s. 16, ch. 77-343; s. 158, ch. 97-103; s. 82, ch. 2004-11.

§447.501, FS - Unfair labor practices.

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

- (a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.
- (b) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment.
- (c) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit.
- (d) Discharging or discriminating against a public employee because he or she has filed charges or given testimony under this part.
- (e) Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization or contributing financial support to such an organization.
- (f) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the certified bargaining agent for the public employee or the employee involved.

(2) A public employee organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:

- (a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part or 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.
- (b) 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.
- (c) Refusing to bargain collectively or failing to bargain collectively in good faith with a public employer.
- (d) 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.
- (e) 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.
- (f) Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students or students in institutions of higher learning.

(3) Notwithstanding the provisions of subsections (1) and (2), the parties' rights of free speech shall not be infringed, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair employment practice or of any other violation of this part, if such expression contains no promise of benefits or threat of reprisal or force.

History.Cs. 3, ch. 74-100; s. 1, ch. 77-174; s. 160, ch. 97-103.

§447.509, FS - Other unlawful acts.

- (1) Employee organizations, their members, agents, or representatives, or any persons acting on their behalf are hereby prohibited from:
 - (a) Soliciting public employees during working hours of any employee who is involved in the solicitation.
 - (b) Distributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations. This section shall not be construed to prohibit the distribution of literature during the employee's lunch hour or in such areas not specifically devoted to the performance of the employee's official duties.
 - (c) Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.
- (2) No employee organization shall directly or indirectly pay any fines or penalties assessed against individuals pursuant to the provisions of this part.
- (3) The circuit courts of this state shall have jurisdiction to enforce the provisions of this section by injunction and contempt proceedings, if necessary. A public employee who is convicted of a violation of any provision of this section may be discharged or otherwise disciplined by his or her public employer, notwithstanding further provisions of law, and notwithstanding the provisions of any collective bargaining agreement.

History.—s. 3, ch. 74-100; s. 162, ch. 97-103.