Management Rights and Teacher Evaluation

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Orange County Public Schools

The Teacher Evaluation Procedures Litigation

Evaluation Procedures

- Orange County Public Schools was first challenged over its evaluation procedures in 2017 in Orange County Classroom Teachers Association v. School District of Orange County, CA-20170017.
- OCPS uses Marzano Evaluation System.
- In this case, the Union challenged changes in definitions for the terms “Not Using, Beginning, Developing or Innovating without bargaining such changes with the Union.

Evaluation Procedures

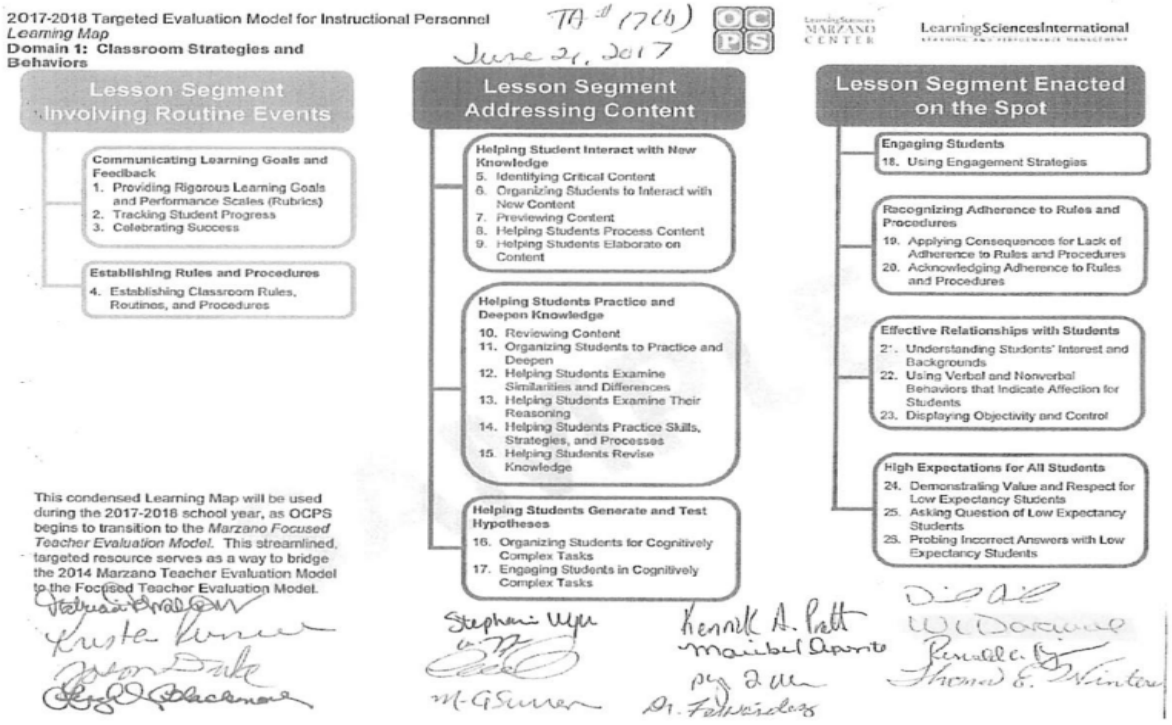
- The District moved to dismiss on multiple bases.
  - First, s. 1012.34(1)(a), Fla. Stat., states:

    "For the purpose of increasing student academic performance by improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the district school superintendent shall establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district."
  - If the Superintendent "shall establish procedures for evaluating the performance of duties and responsibilities of all instructional personnel" then by terms of the statute, the District had the management rights to do so under s. 447.209.

Evaluation Procedures

- The Union president also received notice of the change to the rating standards on May 12, 2016, but the Charge was filed on March 21, 2017. The District moved to dismiss the Charge as untimely as it was filed more than six months after the Union knew or should have known of the alleged illegal conduct.
- May 4, 2027:
  - The Union filed a Notice of Voluntary dismissal.

Evaluation Procedures



2017-2018 Targeted Evaluation Model for Instructional Personnel
Learning Map
Domain 1: Classroom Strategies and Behaviors

TA # 1766
June 21, 2017

OCPS

Learning Sciences MARZANO CENTER

LearningSciencesInternational

Lesson Segment Involving Routine Events

Communicating Learning Goals and Feedback
1. Providing Rigorous Learning Goals and Performance Scales (Rubrics)
2. Tracking Student Progress
3. Celebrating Success

Establishing Rules and Procedures
4. Establishing Classroom Rules, Routines, and Procedures

Lesson Segment Addressing Content

Helping Student Interact with New Knowledge
5. Identifying Critical Content
6. Organizing Students to Interact with New Content
7. Previewing Content
8. Helping Students Process Content
9. Helping Students Elaborate on Content

Helping Students Practice and Deepen Knowledge
10. Reviewing Content
11. Organizing Students to Practice and Deepen
12. Helping Students Examine Similarities and Differences
13. Helping Students Examine Their Reasoning
14. Helping Students Practice Skills, Strategies, and Processes
15. Helping Students Revise Knowledge

Helping Students Generate and Test Hypotheses
16. Organizing Students for Cognitively Complex Tasks
17. Engaging Students in Cognitively Complex Tasks

Lesson Segment Enacted on the Spot

Engaging Students
18. Using Engagement Strategies

Recognizing Adherence to Rules and Procedures
19. Applying Consequences for Lack of Adherence to Rules and Procedures
20. Acknowledging Adherence to Rules and Procedures

Effective Relationships with Students
21. Understanding Students' Interest and Backgrounds
22. Using Verbal and Nonverbal Behaviors that Indicate Affection for Students
23. Displaying Objectivity and Control

High Expectations for All Students
24. Demonstrating Value and Respect for Low Expectancy Students
25. Asking Question of Low Expectancy Students
26. Probing Incorrect Answers with Low Expectancy Students

This condensed Learning Map will be used during the 2017-2018 school year, as OCPS begins to transition to the *Marzano Focused Teacher Evaluation Model*. This streamlined, targeted resource serves as a way to bridge the 2014 Marzano Teacher Evaluation Model to the Focused Teacher Evaluation Model.

Evaluation Procedures

- “This condensed Learning Map will be used during the 2017-2018 school year, as OCPS begins to transition to the Marzano Focused Teacher Evaluation Model. This streamlined targeted resource serves as a way to bridge the 2014 Marzano Teacher Evaluation Model to the Focused Teacher Evaluation Model.”
- Evaluation Committee meets during the fall of 2017 and the early winter of 2017. The purpose of those meetings were to receive input from CTA on the Marzano Focused Teacher Evaluation Model OCPS was implementing.
- Committees do not bargain. All witnesses, both District and Union, testified that committees “don’t make changes” and don’t bargain.

Evaluation Procedures

- The Evaluation Committee met on January 27, 2018. The minutes reflected as follows:
  - “The committee had a collaborative discussion to focus on what was needed to streamline the evaluation process. The committee reported they had a good conversation on what is working or not working with the process. More work is needed before there is a recommendation from the committee to the bargaining team.”
- The Union representative testified that the Evaluation Committee never made any recommendations regarding evaluation protocols, criteria and scales between June 2017 and May 18, 2018.

Evaluation Procedures

- On May 18, 2018, for the first time since the implementation of Marzano, the Union passes an offer across the bargaining table to the District. It proposed revisions to the meaning of the scales:
  - Highly effective – Adapts and creates for unique student needs and situations
  - Effective – Evidence exists that the strategy is being used correctly
  - Developing – Partial evidence exists that the strategy is being used correctly
  - Beginning – Uses strategy incorrectly or with parts missing.

Evaluation Procedures

- Chief Negotiator Leigh Ann Blackmore tells Union “that it is the District’s position that we cannot negotiate the model, but we can negotiate the impacts of the model.”
- The District supported this position with Gilchrist Employees United v. School Board of Gilchrist County, 30 FPER ¶71 (Fla. PERC 2003)(Recommended Order).
- In that case the teachers union filed an unfair labor practice charge based upon the alleged unilateral adoption of criteria for determining a teacher had “outstanding” performance.

Evaluation Procedures

- In 2003, the Legislature required that school boards adopt a performance pay system for instructional personnel that paid teachers rated as outstanding a five-percent supplement.
- The Hearing Officer made as a finding of fact the following:

  > "Jim Surrency, Assistant Superintendent for Instruction with the School District, worked with District staff to put together the instructional staff's performance criteria for determining 'outstanding.' [The Union] was neither contacted for input nor negotiated with regarding the criteria for determining whether a teacher's performance is 'outstanding' for the purpose of receiving additional pay." School Board of Gilchrist County, 30 FPER ¶71, Findings of Fact paragraph 28.

- The Union argues that since performance pay was at issue, the setting of criteria for determining "outstanding" performance was essentially bargaining over wages.

Evaluation Procedures

- The Hearing Officer rejected that argument:

  "It appears that GE/U is treating the instructional performance pay plan proposal and the definition of the 'outstanding' criteria as one in the same, but these are two different items. As stated before, the Legislature provided that the performance pay policy is generally subject to bargaining, but it specifically requires that 'the adopted salary schedule must allow school administrator and instruction personnel who demonstrate outstanding performance, as measured under § 1012.34, to earn a 5-percent supplement in addition to their individual, negotiated salary.' Section 1012.34(3)(a), Florida Statutes, sets forth the specific assessment criteria, which must be considered in measuring 'outstanding' performance. These provisions clearly indicate that the Florida Legislature intended to exclude the criteria for 'outstanding,' in this context, out of the bargaining process." School Board of Gilchrist County, 30 FPER ¶71.

Evaluation Procedures

- The Hearing Officer further held:

  "In addition, defining the 'outstanding' criteria is fundamental to the School Board's basic mission of providing good education through outstanding teachers. **The School Board may unilaterally set standards of service. Therefore establishing what criterion a teacher's proficiency is measured is a management right. Thus, the School Board was entitled to unilaterally implement the criteria for an 'outstanding' rating and it did not commit an unfair labor practice when it did so**." Id. (Emphasis added.) School Board of Gilchrist County, 30 FPER ¶71.

Evaluation Procedures

- The Commission remanded this Recommended Order to the Hearing Officer to determine whether the Union contractually waived the right to bargain over performance pay criteria.
- In the Supplemental Recommended Order, the Hearing Officer reaffirmed that performance criteria and scoring is a management right:
  - "The School Board did not violate Section 447.501(1)(a) and (c), Florida Statutes, when it unilaterally established 'outstanding' criteria to be applied in the determination of the instructional performance-pay plan." Gilchrist Employees/United v. School Board of Gilchrist County, Case No. CA-2003-024 (Hearing Officer's Supplemental Recommended Order, page 5)

Evaluation Procedures

- On May 23, 2018, the District presented to the Union the system it would be implementing for the 2018-2019 school year. This was not bargaining, but merely a presentation. After the presentation, the Union president asked our representatives to leave the Union building.
- On May 25, 2018, the Union sent a "Demand to **Impact Bargain**" letter to the District. The letter stated that the Union "demands to bargain **the impact** of the 'OCPS Instructional Framework' on workload and pay." Id. (Emphasis added)
- Impact bargaining occurs prior to the implementation of a management right. "It is axiomatic that although a public employer has the right to unilaterally exercise its managerial prerogative, it may nonetheless have to bargain over the impact that the decision has on the terms or conditions of employment of the members of the bargaining unit." Sch. Dist. of Indian River County v. Florida Pub. Employees Relations Com'n, 64 So. 3d 723, 728 (Fla. 4th DCA 2011).

Evaluation Procedures

- OCPS argued that by demanding to **impact** bargain, the Union tacitly acknowledged that creation of the evaluation model is a management right.
- Despite the fact the District believed it has the unilateral right to change evaluation procedures, the District decided not to go forward with the new system.
- On November 20, 2018, the Union filed its unfair labor practice charge, claiming OCPS unilaterally changed the evaluation system without bargaining with the Union.
- The parties continued the matter during 2019, trying to settle the matter short of having the unfair labor practice charge heard.
- The parties were unable to settle the matter. The case was heard in three days on January 15, 2020 and October 27-28, 2020.

Evaluation Procedures

- During the Hearing, the Union representative admitted that when the system was implemented in 2011, the parties did not bargain over the criteria and scales:

  "A. So we bargained which one we were going to use. So out of these 60, yes. So we couldn't tell LSI, take out 13, take out 14.
  Q. Right. Because that's what LSI sent down. That was the system that was chosen.
  A. That was purchased.
  Q. And that was the system itself, correct? Is that correct?
  A. Yes. I'm sorry, I'm nodding my head. (Hearing Transcript Vol. 1 (Jan.): Page 59, Lines 14-22)

  …

  Q. Those scales, innovating, applying, beginning, not using, those came directly from LSI, correct?
  A. Yes.
  Q. There were no negotiations back and forth between the union and district saying, hey, I don't like the wat innovating is worded, I think it should change?
  A. Correct.
  Q. So that was – purely came from the system, from LSI, correct?
  A. This type of scale, yes. Multiple scales involved with Marzano. This one came with the system."

Evaluation Procedures

- The teachers testified during the hearing that they were evaluated under the old evaluation system, not the new system OCPS decided not to impose:

  "Q. And you would agree, would you not, that the old system, the old evaluation system, was – you were observed on the old evaluation system in '18-'19 too, correct?

  A. Yes." (Hearing Transcript Vol. 2 (Jan.): Page 264, Lines 7-11)

Evaluation Procedures

"Q. Are you familiar with the requirements of the Marzano Focused Evaluation System.

A. Yes.

Q. That focused evaluation system was not implemented here, was it?

A. No." (Hearing Transcript Vol. 2 (Jan.): Page 291, Lines 3-8)

…

"Q. And you would agree that the – you're familiar with the Marzano Focused Evaluation system?

A. Yes.

Q. The Marzano focused evaluation system was not implemented in your evaluation, correct?

A. It was not." (Hearing Transcript Vol. 2 (Jan.): Page 301, Lines 1-6).

…

"Q. So this is the evaluation system that you have seen traditionally since Marzano has been implemented, correct?

A. Yes." (Hearing Transcript Vol. 2 (Jan.): Page 312, Lines 19-22).

Evaluation Procedures

- In its Proposed Recommended Order, OCPS argued the Charge was untimely, because it informed the Union that it would not bargain the evaluation model on May 18, 2018, and the Charge was not filed until November 20, 2018.
- Under s. 447.503(6)(b), Fla. Stat.: "If the commission determines that the alleged unfair labor practice occurred more than 6 months prior to the filing of the charge, the commission shall issue an order dismissing the case...."

Evaluation Procedures

- The Commission decided on the evaluation procedures in Orange County Classroom Teachers Association v. School District of Orange County, 47 FPER ¶79 (PERC 2020)(Final Order). In that case, the Commission reaffirmed the "knew or should have known" standard for finding a charge untimely:
  - "Section 447.503(6)(b), Florida Statutes, provides that if the alleged unfair labor practice occurred more than six months prior to the filing of the charge, the Commission shall issue an order dismissing the case, unless the person filing the charge was prevented from doing so by reason of service in the Armed Forces. The Commission has consistently held that the six-month limitations period to file a charge commences when the charging party 'knew or should have known' of the complained-of actions. *See Central Florida Police Benevolent Association v. City of Casselberry,* 25 FPER ¶ 30305 (1999); *Bruckner v. City of Daytona Beach,* 25 FPER ¶ 30216 (1999)."

Evaluation Procedures

- On January 20, 2021, the Hearing Officer issued a Recommended Order.
- The Hearing Officer made some findings:
  - “Private vendors offer a variety of evaluation systems. The School District selected the Marzano model of evaluation and began using it in 2011. The School District and OCCTA did not negotiate the choice of the Marzano model.”
- The Hearing Officer recommends dismissal of the Charge on timeliness.

Evaluation Procedures

- “Applying the applicable statute, and longstanding Commission precedent, OCCTA ‘knew or should have known’ as of May 18, 2018, that the School District would not bargain with respect to the evaluation model. On that date, during the in-person Collective Bargaining Leadership Team meeting, OCCTA submitted a proposal to the School District seeking to amend the evaluation procedures. The School District clearly and unequivocally informed OCCTA that the School District’s position is “that we cannot negotiate the model, but we can negotiate the impacts of the model.” The School District asserted that it had a management right to use the model. The School District explicitly communicated its position and proceeded to state that section 1012.34, Florida Statutes, and a Commission case supported its position. (R 29-30; Blackmore’s testimony) The School District then stated that it wanted to reconvene a committee to address the impacts of the model on teachers. In response to these unequivocal statements, OCCTA expressed disagreement with the School District’s position and its interpretation of the law.”

Evaluation Procedures

- The Hearing Officer also went further and recommended an award of attorney's fees to OCPS because the Union's Charge was frivolous:
  - "The School District, however, may be entitled to attorney's fees if the record affirmatively establishes that the charge was frivolous, unreasonable, or groundless when filed, or that the charging party continued the litigation after it clearly became so. See, Pittman v. Southeast Volusia Hospital District, 8 FPER ¶ 13419 (1982), aff'd, 436 So. 2d 294 (Fla. 1st DCA 1983). The facts show that the School District clearly and unequivocally informed OCCTA of its position during the in-person meeting on May 18, 2018. Further, Doromal testified that she was present at the meeting. Thus, before filing the charge, OCCTA knew or should have known that the six month period commenced on May 18, 2018. When OCCTA filed the charge on November 20, 2018, it knew or should have known that the charge was untimely."

Evaluation Procedures

- The Union filed exceptions to the Recommended Order.
- The Public Employee Relations Commission, on April 20, 2021, reversed the legal holding of the Hearing Officer:
  - Although the District contends that the Union was aware on May 18 that the District 'believed it could unilaterally change the model,' see Response at 17, this is different than taking action based on that belief. We reiterate that the timeliness standard is, as it has been since at least 1981, when the complaining party 'knew or should have known' of the alleged unlawful conduct – not a belief of the ability to engage in such conduct in the future. Indeed, in Orange County, 47 FPER ¶ 79, the issue was when the union knew or should have known of the alleged unlawful conduct that the district had repudiated the CBA language in question."

Evaluation Procedures

- When remanding, the Commission stated as follows: “Accordingly, we grant exceptions one, two, and three. **In doing so, we do not necessarily endorse all of the Union’s legal arguments contained in those exceptions**.”
- The Hearing Officer issued a Supplemental Recommended Order on May 27, 2021.
- In the Supplemental Recommended Order, the Hearing Officer now found bargained over the initial adoption of Marzano. This directly contradicted his previous ruling in the first Recommended Order that we did not bargain over the initial adoption of Marzano.
- The Hearing Officer also stated SDOC actually implemented the Marzano Focused Evaluation Model in 2018-2019 despite the District committing in writing not to do so and despite no changes to the Learning Map.

Evaluation Procedures

- The Hearing Officer held that the District requiring the usage of close reading techniques was an implementation of the May 23, 2018 evaluation system.
- In the legal analysis, the Hearing Officer determined that evaluation procedures are a mandatory subject of bargaining rather than a management right.
- Section 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 services to be offered to the public, and exercise control and discretion over its organization and operations."

Evaluation Procedures

- Mandatory subjects of bargaining are delineated in s. 447.309(1), Fla. Stat.:
  - “After an employee organization has been certified pursuant to the provisions of this part, the bargaining agent for the organization and the chief executive officer 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.”

Evaluation Procedures

- The Hearing Officer ruled that OCPS and the Union bargained over "all aspects of teacher evaluations" since 1999. This is factually inaccurate.
- The Hearing Officer utilized a balancing test enunciated in FOP v. Miami Lodge 20 v. City of Miami, 609 So. 2d 31 (Fla. 1992):
  - "Where, as here, we are dealing with a subject which is arguably both a managerial prerogative and a 'term or condition of employment,' we hold that a balancing test should apply to determine which characteristic predominates." Fraternal Order of Police, Miami Lodge 20 v. City of Miami, 609 So. 2d 31, 34 (Fla. 1992).

Evaluation Procedures

- The Hearing Officer came to the exact opposite conclusion as the Hearing Officer in School Board of Gilchrist County:
  - "After careful consideration, I conclude, based upon the reasons discussed below and the specific facts of this case, that the teacher evaluation system imposed by the School District is a mandatory subject of bargaining. To determine otherwise would have the effect of significantly preventing the bargaining unit members in the School District of Orange County from negotiating over matters that directly and substantially impact their workloads, wages, hours, and terms and conditions of employment."
- Because Florida has perform pay under s. 1012.22, Fla. Stat., and because the evaluation system can affect how much performance pay a teacher receives, the Hearing Officer ruled evaluation procedures were a mandatory subject.

Evaluation Procedures.

- The Hearing Officer also rejected OCPS's argument that s. 1012.34(1)(a), Fla. Stat., which states "the district school superintendent shall establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel" establishes that evaluation procedures are management rights:
  - "However, section 1012.34(1)(a), Florida Statutes, does not explicitly prohibit collective bargaining in the development of, or decision to impose, an evaluation system. In fact, the statute cannot prohibit such bargaining."

Evaluation Procedures

- The District filed a 63-page exception to the Supplemental Recommended Order.
- The Commission granted OCPS's request for oral argument.
- Oral Argument occurred. OCPS was asked two questions by one commission. The other two commissions did not ask any questions. The Union received no questions in their argument.
- The Commission upheld the ruling of the Hearing Officer in the Supplemental Recommended Order.

Evaluation Procedures

- The Commission held as follows:
  - “We recognize the management right to set levels of service or to assign tasks to employees within the basic scope of employment. However, such rights cannot subsume mandatory subjects of bargaining. To hold that the teacher evaluation system in this case is a management right would essentially eviscerate the Union’s ability to negotiate mandatory subjects of bargaining. For all the above reasons, under the balancing test, we conclude that teacher evaluation systems that essentially determine hours, wages, and terms and conditions of employment are a mandatory subject of bargaining. We note that the requirement to bargain with the Union prior to adopting a teacher evaluation system is the requirement to meet at reasonable times and to negotiate in good faith with the intent of reaching a common accord, but there is no requirement that either party make a concession or be compelled to agree to a proposal. § 447.203(14), (17), Fla. Stat.; § 447.309, Fla. Stat. We additionally emphasize that there is no dispute that any evaluation system adopted must conform to and comply with the applicable requirements, including those set forth in section 1012.34, Florida Statutes, and the FEAPs in Florida Administrative Code Rule 6A-5.065.”

Evaluation Procedures

- The District filed a notice of appeal in October 2021.
- The Legislature came into session in January 2022.
- House Bill 1203 was introduced on January 5, 2022. It clarified s. 1012.34(1)(a), Fla. Stat. as follows:
  - "For the purpose of increasing student academic performance by improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the district school superintendent shall establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The procedures established by the district school superintendent set the standards of service to be offered to the public within the meaning of s. 447.209 and are not subject to collective bargaining."

Evaluation Procedures

- House Bill 1203 passed the House on March 7, 2022.
- The Staff Analysis of the Bill states as follows:
  - "The law prohibits, as an unfair labor practice, a public employer from refusing to bargain in good faith with the certified bargaining agent on terms and conditions of employment. However, a public employer is not per se required to bargain matters of managerial right, including the ability to set standards of services offered to the public. **In September 2021, the Public Employment Relations Commission ruled that a school district's personnel evaluation procedures, including the criteria that it used to evaluate instructional practice and set performance ratings, were a mandatory subject of bargaining. In other words, the school district committed an unfair labor practice by unilaterally changing instructional personnel evaluation procedures**. Based on this decision, a school district may be required to undergo collective bargaining to revise evaluation requirements, which may result in impasse and relating proceedings.
  - Effect of Proposed Changes The bill provides that school district evaluation procedures constitute standards of service offered to the public, within the meaning of Section 447.209, F.S., **and are not subject to mandatory collective bargaining**." The Staff Analysis cited this matter in Footnote 103:"*The Orange County Classroom Teachers Association, Inc. v. School District of Orange Cnty* ., No. 21U-285, CA-2018-050 at 38 (Public Employees Relations Commission Sept. 24, 2021). (requiring the School District of Orange County to meet with representatives of the Union for purposes of collective bargaining concerning the teacher evaluation system)."

Evaluation Procedures

- The Senate had an identical measure, Senate Bill 1386. It passed two committees.
- During the February 1, 2022 Appropriations Subcommittee on Education meeting, sponsor Senator Manny Diaz made it clear that the statutory revision was mere clarification as to what was already law – that the superintendent sets evaluation procedures and that such procedures are not a mandatory subject of bargaining:
- "If you look at the current statute, it clearly says that the superintendent shall establish the procedures for evaluating the performance of duties and responsibilities of all instructional, administrative and supervisory personnel employed by the district. That is current statute. **This clarifies – because of that ruling, they said it lacked clarity, this clarifies that those procedures are the responsibility of the Superintendent and not mandatory part of the collective bargaining system**."
- Senate Bill 1386 died in the Senate Appropriations Committee.

Evaluation Procedures

- As final negotiations for the budget were completed, Senate Bill 2524 (the budget conforming bill) was introduced on March 11, 2022. The conforming bill had the language in from House Bill 1203.

Evaluation Procedures

- The Legislature passed the bill on March 14, 2022 with votes of 83-24 in the House and 31-2 in the Senate.
- OCPS moved with the 5th District Court of Appeals to have the case dismissed as moot because of the clarification of law.
- The Final Order of the Commission required the District to stop refusing to meet with the Union over teacher evaluation and to bargain upon demand. The clarification of the statute means we do not have to bargain with the Union on evaluation procedures.
- The Florida Supreme Court held as follows in Lowry v. Parole & Prob. Com'n, 473 So. 2d 1248, 1250 (Fla. 1985):
  - "**When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof**. [Citations omitted] This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute." (Emphasis added)

Evaluation Procedures

- The Legislature has interpreted s. 1012.34(1)(a), Fla. Stat. through its adoption of Senate Bill 2524 to mean that the Superintendent sets evaluation procedures unilaterally and that districts are not required to collectively bargain evaluation procedures.
- We are still awaiting a ruling from the 5th DCA on our suggestion of mootness.

Evaluation Procedures

- There are rumblings that the Florida Education Association may challenge the constitutionality of the statute as an abridgement of collective bargaining.
- Dade County Classroom Teachers Association v. Ryan, 225 So.2d 903, 906 (Fla. 1969):
  - "In the sensitive area of labor relations between the public employees and public employer, **it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subjects within the limits of said Section 6**. A delicate balance must be struck in order that there be no denial of the right guaranteed of public employees to bargain collectively with the public employers without, however, in any way trenching upon the prohibition against public employees striking either directly or indirectly or using coercive or intimidating tactics in the collective bargaining process. We do not find that Section 839.31 is contrary to Section 6 or denies in any way the rights granted thereunder. **Said statute is not immutable, however, and like any statutory enactment, may be modified by succeeding Legislatures in light of experience and the needs of the times**. **Legislative enactments regulating the subject matter embraced in said Section 6 should be accorded considerable deference by the judiciary**, similarly as we have accorded legislative enactments relating to tax exemptions authorized by Section 1, Article IX and Section 16, Article XVI, Constitution 1885."

Evaluation Procedures

- Sch. Dist. of Martin County v. Pub. Employees Relations Com'n, 15 So. 3d 42, 45 (Fla. 4th DCA 2009) challenged the Commission's ruling that the School Board's unilateral decision to change the distribution of funds given to teachers for classroom supplies from traditional checks to debit cards without bargaining was an unfair labor practice.
  - "The Commission's construction of the statute in this case was clearly erroneous because the 2008 statutory amendments unequivocally expressed that the method of distribution does not affect a term or condition of employment. **While the Florida Constitution provides that an employer may not abridge an employee's right to collectively bargain, it has left it up to the legislature to define what subjects are matters of collective bargaining**. In exercising this right, the legislature defined mandatory subjects of collective bargaining as those that affect a term or condition of employment. § 1012.71, Fla. Stat. (2007). With the 2008 statutory amendments, the legislature further expressed that the method of distributing FTLP funds did not affect a term or condition of employment and thus, was not a mandatory subject of collective bargaining."

Evaluation Procedures

- The Legislature also has explicitly exempted school recognition awards from collective bargaining under §1008.36(5), Fla. Stat., even though that money may be used as nonrecurring bonuses to the faculty and staff: Section 1008.36(5), Fla. Stat. states:
  - "Notwithstanding statutory provisions to the contrary, incentive awards are not subject to collective bargaining." If the amount of a bonus to be paid to a teacher is exempted from collective bargaining, than teacher evaluation procedures (which does not entail wage payments) may lawfully be exempted from collective bargaining.
- Even after passage of the Bill, teachers unions will still be able to negotiate the amount of performance pay to be paid to teachers under §1012.22(1)(c)(5), Fla. Stat. The Bill does not eliminate bargaining over wages.

Questions?

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