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8/20/85

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 67-430

THE UNITED TEACHERS OF DADE,
FEA/UNITED, AFT, LOCAL 1974,
AFL-CIO, et al.,

Appellants,

vs.

DADE COUNTY SCHOOL BOARD;
SUPERINTENDENT LEONARD BRITTON;
and THE STATE BOARD OF EDUCATION
OF THE STATE OF FLORIDA,

Appellees.

INITIAL BRIEF OF APPELLANTS

FILED
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On Appeal from the Decision of The District
Court of Appeals for the First District of Florida,
Docket No. BG-39

Second Judicial Circuit Case No. 83-0169

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STATED ALTERNATIVELY

WHETHER F.S. SECTIONS 231.533 AND 231.534 ALONG WITH STATE BOARD OF EDUCATION RULE 6A-4.46 IS AN ABRIDGMENT OF THE CONSTITUTIONAL AND STATUTORY GUARANTEE OF PUBLIC EMPLOYEES' RIGHT TO COLLECTIVELY BARGAIN [F.S. SECS. 447.201; 447.309(1) AND ARTICLE I, SECTION 6 OF THE FLORIDA CONSTITUTION]?

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STATEMENT OF THE CASE AND OF THE FACTS

During the 1984 Legislative Session of the State of Florida, Florida Statutes Sections 231.533 and 231.534 were amended and/or passed. [A copy of these statutes in their entirety are attached hereto in the Appendix as "A-1" and "A-2" for easy reference by the Court.] On September 20, 1984, the State Board of Education promulgated SBE Rule 6A-4.46. [A copy of that Rule, too, is attached hereto in the Appendix as "A-3" for the Court's reference.] The two referenced statutes established the "State Master Teacher Program" and the subject area examinations thereunder. The legislation was implemented by the Appellee State Board of Education in its rule. Basically, the law provides for the payment of $3,000.00 to some teachers in the State who meet a set of criteria to be designated a "master" teacher.

When the two Statutes and the Rule were passed, there existed a contract between the Appellee Dade County School Board and the Appellant, the United Teachers of Dade, FEA/United, AFT, Local 1974, AFL-CIO. This contract covered the period from July 1, 1982, through June 30, 1985, and was amended and supplemented from time to time, including an amendment entered into September 8, 1984, which dealt with the "incentive pay plan". [The contract and its amendments were attached to the initial complaint in this cause as Exhibits "C" and "D".] Suffice it to say, this contract and its amendments set forth specific, bargained-for salary schedules for all the teachers in Dade

County public schools. The new "master" teacher payment would occur with no consideration of negotiated salary schedules in the various school districts and with *no resort to collective bargaining* with the public employee unions who are the constitutional and statutory representatives of the affected teachers.

On December 5, 1984, Appellant, UTD, filed a suit for declarative and injunctive relief against the Appellees, coupled with a breach of contract count and a Petition for Mandamus against the Superintendent of Schools for Dade County, Leonard Britton [Record at 8-41]; the latter two counts were later voluntarily dropped in order to expedite the decision on the constitutionality of the challenged statutes. [R. at 104-105.] The case was initially filed in the Eleventh Judicial Circuit in Dade County, Florida. However, the State Board of Education moved for a change of venue to Leon County. [R. at 91-92.] Dade County Circuit Court Judge Joseph P. Farina entered an Order granting both Appellant's Motion to Expedite and the Appellee State Board's request for a change of venue. [R. at 3-5.] By the time the Court issued that Order, some eight other county teacher's unions [Broward County; Pasco County; St. Lucie County; Charlotte County; Brevard County; Sarasota County; Martin County; and Lake County] had moved to intervene in the case. [R. at 48-61; 93-96.] That demonstration of wide-spread interest was found by the Circuit Judge to manifestly demonstrate the great public interest in the case and

to be a part of the reasons why the Motion to Expedite was granted.

On January 2, 1985, the Appellant had filed a Motion for Summary Judgment on Count I (the constitutional attack) of the Complaint. On January 23, 1985, the Appellant entered voluntary dismissals on Counts II and III of the Complaint, "in order to expedite the hearing on the merits on the constitutional attack in Count I and to focus the judicial energies to that single issue." [R. at 104-105.]

The State Board had filed, along with its Motion for Change of Venue, a Motion to Dismiss that was still pending when the case was moved to Leon County and placed before Circuit Judge Charles Miner. [R. at 74-88; 100-103.] On February 5, 1985, a hearing was had on the State Board's Motion to Dismiss. Extensive oral argument was made. The Court reserved ruling, announcing that it would rule within the week. On February 6, 1985, the State Board of Education filed a "Motion for Leave to withdraw Motion to Dismiss" which was granted on February 7, 1985. [R. at 106-109; 110.]

During the oral argument on the Motion to Dismiss, all parties had agreed this matter would come up for final hearing on the merits at the next hearing. Appellant, UTD, still had its Motion for Summary Judgment pending. An Affidavit in support of that Motion by Pat L. Tornillo, Jr., was filed on February 15, 1985. [R. at 122-128.]

The Dade County School Board had filed its Answer on

December 20, 1984, [R. at 62-68] and the matter had been at issue since. The Answer of the State Board of Education was filed February 13, 1985, placing all parties at issue. [R. at 111-114.] One further Motion to Intervene had been filed, this one on behalf of the Alachua County Education Association. [R. at 93-94.]

On February 15, 1985, when the pleadings were closed, the Plaintiff/Appellant filed an "Alternative Motion for Judgment on the Pleadings". [R. at 115-119.]

The matter was set for full final argument on February 19, 1985. On that day, the Defendants submitted a responsive affidavit to the Plaintiff's Motion for Summary Judgment from Governor Bob Graham. [R. at 179-183.] Both sides exchanged memoranda of law. [R. at 140-156 (plaintiff); 157-167 (defendants).] The memorandum of the Appellee State Board agreed "that the closed pleadings present no issue of material fact, the need for resolution of which would bar the issuance by the Court of a declaratory decree concerning the constitutionality of the State Master Teacher Program." [R. at 157.] The State Defendant/Appellee chose not to file any Motion on its own behalf, rather relying on a responsive position to the motions filed by the Appellant. The intervening nine teachers' unions joined in the pleadings filed by the United Teachers of Dade.

After a hearing on February 19, 1985, the Judge agreed that he would expedite his decision, probably issuing it that afternoon. On March 19, 1985, one month later, the Court

entered its "Order on Motion for Judgment on the Pleadings". [R. at 184-187.] [A copy of that Order is attached in the Appendix, A-4.] The Court agreed with the parties that "a judicial declaration in the premises is appropriate and that Plaintiff has stated an entitlement to such a declaration, albeit, one that may not be to its liking." [R. at 184.] That summary proved accurate. In the four-page order, with no citation to a single case precedent or mention of authority other than a general reference to sections of the Florida Constitution, the Court found:

> Turning to the limited constitutional issue raised here, it seems clear that the Master Teacher Plan does not abridge the right of public employees to bargain collectively.
>
> * * *
>
> Accordingly, the premises considered, the Court finds as follows:
>
> 1. The challenged statutory sections and the State Board of Education rule challenged in this litigation do not violate Article I, Sec. 6 of the Florida Constitution.

> 2. Whether the Master Teacher Plan violates other constitutional provisions was neither raised in the pleadings nor considered or decided in this Order.
> [R. at 185-187.]

A Notice of Appeal on behalf of the Appellant, UTD, as well as on behalf of all of the intervenors in the cause, was filed on April 9, 1985. [R. at 188-189.] Accompanying that Notice of Appeal, and filed simultaneously, was a Motion for Expeditious Preparation of the Record, Briefing and Hearing, and Directions to the Clerk. [R. at 190-191.] The Court ordered expeditious briefing [R. at 193.]. The matter was heard before the District Court of Appeal for the First District of Florida on June 20, 1985 and a *per curiam* affirmance of the trial court's decision issued on July 3, 1985. [Appendix, A-5.] The District Court certified to this, the Supreme Court of Florida, the following question as one of great public importance:

> IS FLORIDA'S MASTER TEACHER PROGRAM (F.S. SECTIONS 231.533 AND 231.534 (SUPP. 1984)) AN ABRIDGMENT OF THE CONSTITUTIONALLY GUARANTEED RIGHT TO COLLECTIVELY BARGAIN?

On July, 29, 1985, Appellants filed a timely Notice to Invoke Discretionary Jurisdiction (Rule 9.030) and a Suggestion that Certified Question Be Reviewed Immediately. This Court agreed to an immediate review and thus this brief and appendix are filed expeditiously.

SUMMARY OF THE ARGUMENT

In accordance with Florida Rules of Appellate Procedure 9.210(b)(4) a summary of the argument presented in this cause is set forth hereafter. Essentially, the Appellant teacher unions contend that the legislature in passing Florida Statutes Sections 231.533 and 231.534 abridged the rights of public employee union members to collectively bargain as guaranteed in Article I, Section 6 of the Florida Constitution which provides:

> Right to Work--The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Appellants contend that this Court has interpreted Article I, Section 6 of the Florida Constitution to assure to public employees the same bargaining rights as are held by private employees. See, *Dade County Classroom Teachers' Association, Inc. v. Ryan,* 225 So.2d 903 (Fla. 1969); *Dade County Classroom Teachers' Association, Inc. v. The Legislature,* 269 So.2d 684 (Fla. 1972); and *City of Tallahassee v. Public Employees Relations Commission,* 410 So.2d 487 (Fla. 1981).

Appellants contend that the State has attempted in the challenged statutes to by-pass the collective bargaining process and to give to certain teacher public employees, members of bargaining units represented by the Appellants, wages, compensation, salary, money, different and unique from the salaries

provided in the collectively bargained contracts in the various Appellant school districts. The so called "merit raises" are, in Appellants' perspective, nothing more than the unilateral grant of a bonus to some employees and not to others under conditions established outside the collective bargaining process. Such a unilateral change in the wages, terms and conditions of employment on the part of a private employer with its union-represented employees would obviously be an unfair labor practice. It is no more acceptable behavior for the State of Florida to engage in an unprecedented misadventure into established employer/employee negotiated salary arenas.

<u>ARGUMENT</u>

WHETHER THE DISTRICT COURT ERRED IN UPHOLDING THE TRIAL COURT'S DENIAL OF PLAINTIFF/APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR JUDGMENT ON THE PLEADINGS FINDING THE STATE MASTER TEACHER PLAN TO BE UNCONSTITUTIONAL?

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The Complaint in this cause stated a straightforward attack on the facial constitutionality of the legislative and regulatory scheme that established the State Master Teacher Program. The Plaintiff/Appellant, the United Teachers of Dade, is the exclusive bargaining agent representing the instructional personnel (as well as the paraprofessional and clerical staff) of the Dade County Public Schools. There are in excess of 18,000 teachers in the bargaining unit that it represents. The UTD is a labor union representing pubic employees and an employee organization certified as an exclusive bargaining agent pursuant to F.S. Sec. 447.307. [See Paragraph 3 of the Complaint.] The other Appellants, as stated in their motions to intervene, are similarly situated in that they are public employee unions representing the teachers in their respective counties. The Defendant/Appellee, Dade County School Board, is the duly elected Board established under the Florida Constitution, Article IX, Section 6, and Florida Statutes 230.03(2) which has the responsi-

bility for the organization and control of the public schools of Dade County. The Dade County School Board is the "employer" of the members of the UTD represented bargaining unit. It is a party to the contract between the Dade County Public Schools and the United Teachers of Dade, 7/1/82 - 6/30/85. It is the body under Chapter 447 of the Florida Statutes, which is empowered to negotiate with and enter into contracts with UTD in order to fix, for the duration of the contract, the "wages, hours, and terms and conditions of employment" in accordance with Florida Statutes Chapter 447, Part II. [See Paragraph 4 of the Complaint; R. at 10-11.] The Defendant/Appellee, State Board of Education, is composed of the Governor and the Cabinet of the State of Florida and is the executive-administrative body constitutionally and statutorily defined as the body corporate which has supervision over the system of public education as provided by law, Florida Constitution, Article IX, Section 2. The State Board of Education is the agency of the State of Florida which has been given the responsibility under F.S. Sec. 231.533 and Sec. 231.534 to promulgate rules and to recommend subject area examinations and qualifying scores for the State Master Teacher Program. The Board adopted on September 20, 1984, SBE Rule 6A-4.46 which establishes the methodology by which the State Master Teacher Program will be implemented.

It is the fundamental contention of the Appellants that the State of Florida has improperly interposed itself into the employer-employee relationship between the members of

certified public employee unions and their employer school boards. The State Master Teacher Program awards to some teachers represented by the Appellants $3,000 annually in additional compensation. The Department of Administration, in answer to an inquiry from Commissioner Ralph Turlington, stated that the monies would not be subject to retirement contributions but would be subject to social security contributions. [R. at 127-128.]

Article I, Section 6 of the Florida Constitution provides:

> Right to Work--The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. *The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.* Public employees shall not have the right to strike. [Emphasis supplied.]

That constitutional guarantee has been definitively interpreted by the Supreme Court of Florida as granting to public employees the same rights of collective bargaining as are granted to private employees, *see citations infra.* Private employees, and, for that matter, until the challenged statutes were passed, public employees, have always had the right to collectively bargain all matters incidental to compensation. By law, public employees of the State of Florida have had the scope of bargaining defined by Florida Statutes Sec. 447.309(1) which states:

> . . . The chief executive officer of the 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. [Emphasis supplied.]

By establishing a methodology totally outside the scope of collective bargaining by which some Appellant-represented employees will receive additional wages while other members of their bargaining unit will not receive them, the statutory scheme and the implementing regulations unconstitutionally abridge the right of organization and representation of public employees. By law and constitutional protection, the teachers of each school district have the right to mandatorily, collectively bargain through their properly certified representative each and every negotiable aspect of their employment, and, specifically, the right to bargain the impact on the wages of represented unit members of any changes in the salary schedule whether such changes in compensation are characterized as supplements, bonuses, or merit pay.

The statutory implementation of the constitutional guarantee of bargaining for public employees is contained in Chapter 447 of Florida Statutes. The policy behind the constitutional guarantee is set forth in F.S. Sec. 447.201:

> 447.201 Statement of Policy
>
> It is declared that the public policy of the State, and the purpose of this part, is to provide statutory implementation of s. 6, Art. I of the State Constitution, with respect to public employees; to promote harmonious and cooperative relationships between government and its employees, both collectively and individually; and

to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. It is the intent of the Legislature that nothing herein shall be construed either to encourage or discourage organization of public employees. These policies are best effectuated by:

(1) Granting to public employees the right of organization and representation;

(2) Requiring the state, local governments, and other political subdivisions to negotiate with bargaining agents duly certified to represent public employees;

(3) Creating a public employees relations commission to assist in resolving disputes between public employees and public employers; and

(4) Recognizing the constitutional prohibition against strikes by public employees and providing remedies for violations of such prohibition.

The purposeful avoidance of the collective bargaining process is old time union busting in a new State approved incarnation. It looks no better in its new clothes. The State, in bypassing UTD and the intervening unions as the exclusive bargaining agents for their county's teachers, is just as much in violation of the public employees' right to bargain as is the Dade County School Board and each of the intervening unions' school boards in tolerating without protest this interference with the collective bargaining process. By providing additional wages for some employees and not to others without resort to the collective bargaining system, the Appellees have unilaterally changed the terms of the existing contracts between the individual county school systems and their public employee unions and have sub-

verted the collective bargaining process in an ultimate and unconstitutional fashion.

The Complaint in this cause raised unambiguously the question of the facial unconstitutionality of the State Master Teacher Plan. Moving to get that issue resolved as quickly as possible, the Appellants filed alternative motions for summary judgment and/or motions for judgment on the pleadings. The only distinction between the two was that under the Motion for Summary Judgment, a supportive affidavit on behalf of Pat L. Tornillo, Jr., set forth certain facts of public record that could be considered in the context of a summary judgment. Obviously, that affidavit was not properly before the Court for purposes of consideration of the motion for judgment on the pleadings.

Plaintiff/Appellant began with the proposition that legislative acts are presumed constitutional. Nonetheless, given the legal issue raised in the Complaint in this cause, Appellant argued that the duty of the Court was to strike down the challenged statutes (and their correlative State Board Rule) since the scheme was in positive conflict with a provision of the organic law. Appellants argued that the Court must do this irrespective of the appeal of the State as to the wisdom of such legislation and without consideration of the consequences of the Court's determination. The Order entered by the Court wrapped the logic of the legislation around it and rattled the saber of dire consequences. Even more upsetting, the Order of the Court

dealt with not a single case cited by the Plaintiff and Intervenors -- nor, for that matter, with the cases brought forth by the Defendants/Appellees. It simply ignored the legal basis for the action.

The United Teachers of Dade came before the trial court with a clear sense of historical context of the constitutional attack they made on a piece of "popular" legislation. While politicians and the media are seeking instant panaceas to the public school system's problems, the appeal of a program called "Master Teacher" is easy to understand. However, UTD and its sister unions remembered back to when Article I, Section 6 was a meaningless series of words to the public employees of Florida. That was not too long ago. When UTD, through its earlier incarnation of CTA, brought *Dade County Classroom Teachers Association v. Ryan,* 225 So.2d 903 (Fla. 1969), public employees, including teachers, had no recognized right to collectively bargain with their governmental employers. In that case, the Supreme Court of this State recognized for the first time that there was an equation of the right to collectively bargain by public employees with the right held by private employees, save for the right to strike. That recognition was enhanced and expanded in *Dade County Classroom Teachers Association, Inc., v. The Legislature,* 269 So.2d 684 (Fla. 1972). In that case, the Florida Supreme Court stated that "the right of public employees to bargain collectively is no longer open to debate". The Court instructed the Legislature that if it failed

to provide appropriate guidelines, "in order to make sure that there may be no denial of that right, the Court would be required to take steps itself to assure that the constitutional guarantee of public employees' right to collectively bargain was enforced."

Three years ago, this Supreme Court entered its third major decision regarding the rights of public employees in the collective bargaining arena. In *City of Tallahassee v. Public Employees Relations Commission*, 410 So.2d 487 (Fla. 1981), the Court had to consider the constitutionality of a portion of the legislative scheme that had been established to protect the constitutional promise of collective bargaining. *City of Tallahassee* dealt with a constitutional challenge to two sections of Chapter 447 of the Florida Statutes. Those sections removed from public employers the obligation to negotiate over pension plans to the extent that retirement matters were controlled by state statute or local ordinance. Justice Adkins, writing for the Court, stated that since the exclusion amounted to an actual prohibition of bargaining on matters which are logically and legally included as a "term and condition of employment" that the statutes must fall. The city had argued that the statutory phrases did not limit or infringe upon the right of public employees to bargain but only defined the "scope" of the right. The city further contended that many other sections of the Public Employees Relations Act were probably unconstitutional

under the Court's interpretation, a losing argument that Judge Miner nonetheless consistently echoed in his Final Order in the instant cause.

> Even assuming for the sake of argument that such is correct, the decision was nevertheless the proper one. The unconstitutionality of a statute may not be overlooked or excused for reasons of convenience. While a court cannot resolve disputes in a vacuum, the "realities", as the City calls them, of the situation cannot justify acceptance of that which is clearly unconstitutional.
>
> * * *
>
> [We] note that the language employed in the *Ryan* holding is quite straightforward and clear
>
> > We hold that with the exception of the right to strike, public employees have the *same rights of collective bargaining* as are granted private employees by Section 6.
>
> *Id.* at 905.
>
> The opinion does not limit the rights of public employees by reference to a particular statute or in any other way qualify the same, except for the reference to strikes. Rather, it very clearly provides that public employees may collectively bargain on the same matters as may private employees. If private employees may bargain over retirement matters, then under the plain language of *Ryan* so too may public employees.
>
> In *Dade County Classroom Teachers' Association, Inc. v. Legislature*, 269 So.2d 684 (Fla. 1972), we reiterated the above, noting that "with the exception of the right to strike, public employees do have the same right of collective bargaining as are [sic] granted private employees by Section 6 of the Declaration of Rights, Florida Constitution. . . ." *Id.* at 685. The language in *Dade County Classroom Teachers' Association, Inc. v. Legislature,* like that in *Ryan,* does

> not qualify the collective bargaining rights of public employees by reference to any then-existing statute, rather, it describes those rights as being commensurate with those of private employees. It does not matter whether private employees were not assured the right to bargain over retirement matters at the time of the *Ryan* decision. What matters is that today private employees are permitted to collectively bargain on that subject and so public employees must also be so treated.
>
> It would be impractical to require that collective bargaining procedures for retirement matters be identical in the public and private sectors. We must make sure, however, that the constitutional right of all employees to bargain collectively is not abridged. The sections here in question are not a "reasonable regulation of the scope of collective bargaining" as the City characterizes them.
>
> 410 So.2d at 490, 491.

The public employee union begins its battle to make collective bargaining of real assistance for its members in an uneven situation. The ultimate economic weapon of the private labor organization, the strike, has already been removed from its arsenal. The Public Employees Relations Commission has described the weighted power struggle in the public arena extremely well in the case of *United Faculty of Palm Beach Junior College v. Palm Beach Junior Colleg Board of Trustees*, 7 FPER Paragraph 12300. There, the Commission, speaking in the context of mandatory subjects of negotiation, described the unique balance of power involved in the public sector bargaining context.

> The Florida collective bargaining law, like all similar collective bargaining legis-

lation, was enacted in recognition of the fact that labor unrest is inimical to the public welfare and should be discouraged. The Florida law was enacted not for the benefit of unions or employers, but for the purpose of providing a forum for the exercise of public employees' constitutional right to bargain collectively in a manner consistent with public goals of labor stability and the operation of government services uninterrupted by strikes. Sec. 447.201, Fla. Stat. (1979). This Commission has historically attempted to interpret the provisions of Chapter 447, Part II, Florida Statutes, consistent with these legislatively mandated goals.

We have therefore interpreted Section 447.309(1), Florida Statutes (1979) as requiring a relatively broad scope of negotiations to help counterbalance the absence of the right to strike by public employees. *Duval Teachers United v. Duval County School Board*, 3FPER 96 (1977), *aff'd*, 353 So.2d 1244 (Fla. 1st DCA 1978). It is readily apparent to those familiar with the collective bargaining process that the absence of the power to compel an employer to make concessions in negotiations through a strike or a substitute mechanism such as binding arbitration creates a significant imbalance of bargaining power in favor of the employer. But the prohibition against strikes was never

> intended to give public employers a power advantage over their employees in contract negotiations. Strikes are prohibited to protect the public, not to circumvent the rights of public employees to meaningful collective bargaining with their employer.

School Board of Escambia County v. PERC, 350 So.,2d 819, 3 FPER 170 (Fla. 1st DCA 1977). It was therefore necessary for the Legislature to provide in Chapter 447, Part II, sufficient counterbalancing factors to ensure meaningful collective bargaining. Otherwise, the disparity of bargaining power would lead to frustration and labor unrest

in contravention of the primary public goalsof the statute. A broad scope of negotiations is one of those factors.[3]

In broadly construing the scope of negotiations under Section 446.309(1), we have acted in accordance with the greater weight of authority in other public sector jurisdictions.[4] In practically every state possessing major public employee collective bargaining legislation, the duty to bargain has been described in terms of "wages, hours and terms and conditions of employment."[5] The determination of the scope of bargaining has focused upon development of a test which provides a basis for drawing a line between "terms and conditions" and "inherent rights of management," the latter category in some instances defined by statute and in others by case law.[6]

The courts in other public sector jurisdictions which prohibit strikes by public employees have broadly construed the phrase "terms and conditions of employment" because of the special nature of public employment and the need to promote stable labor relationships to assure the orderly and continuous operation of government. Thus, the Minnesota Supreme Court in *Teamsters Local 320 v. City of Minneapolis,* 222 N.W.2d 254, 1PBC par. 10,000, 274 at 10,961-62 (Minn. 1975), concluded that despite a statutory management rights clause:

> A major purpose of PELRA is to further the resolution of labor disputes through negotiation. Because of its severe restrictions on strikes contained in the act, we believe the legislature intended the scope of the mandatory bargaining area to be broadly construed so that the purpose of resolving labor disputes through negotiation could best be served.

Similarly, in *Vanburen Public School District v. Wayne County Circuit Judge*, 232 N.W.2d 278, 90 LRRM 2615, 2622 (Mich. Ct. App. 1975), the Court noted that the scope of bargaining must be construed because

> [o]nly by requiring mandatory bargaining on a wide range of subjects are public employees' rights protected, since pursuant to Sec. 2, public employees are forbidden to strike. *Davison Board of Education,* 8 MERC Lab. Op. 824, 827 (1973); *Westwood Community Schools,* 7 MERC Lab. Op. 313, 321 (1972).

* * *

The statutory right to negotiate over the impact upon bargaining unit employees of management decisions prior to their implementation is therefore an essential element in the legislative scheme of meaningful collective bargaining for public employees. In our view, the elimination of such an important right by virtue of a provision such as Article XXII, Section C, can be justified only if it is clearly and voluntarily relinquished. *See Local 1365, I.A.F.F. v. City of Orlando*, 4 FPER par. 4214 (1978), *aff'd*, 384 So.2d 941 (Fla. 5th DCA 1980). To make such a provision a mandatory subject of bargaining under our statutory scheme would be inconsistent with this principle of voluntary relinquishment.

As previously discussed, denomination of such a waiver provision as a required subject of bargaining would permit an employer to condition the implementation of a collective bargaining agreement containing provisions governing a wide range of other mandatory subjects upon the union's agreement to waive its statutory right to bargain over the effects of management decisions during the term of the agreement. In the private sector this result has been viewed as being justified because the union is free to use its economic weapons, including the strike, to counter the employer's attempt to extract a waiver. *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395 (1952); *Long Lake Lumber Company,* 182 NLRB 435, 74 LRRM 1116 (1970). As the United States Supreme Court recently stated in *First National Maintenance Corp. v. N.L.R.B.,* No. 80-544,

49 U.S.L.W. 4769, 4771-72 (June 22, 1981), with regard to mandatory subjects of bargaining:

> [B]oth employer and union may bargain to impasse over these matters and use the economic weapons at their disposal to attempt to secure their respective aims. *NLRB v. American National Ins. Co.,* 343 U.S. 395 (1952).
>
> The aim of labeling a matter a mandatory subject of bargaining, rather than simply permitting, but not requiring, bargaining, is to "promote the fundamental purpose of the Act by bringing a problem of vital concern to labor and management within the framework established by Congress as most conducive to industrial peace." [*Fiberboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 211 (1964)]. The concept of mandatory bargaining is premised on the belief that collective discussions *backed by the parties' economic weapons* will result in decisions that are better for both management and labor and for society as a whole. (Emphasis added, citations and footnotes omitted.)

This proposition simply does not have the same validity in the public sector where one of the parties is not "backed" by the possible legal use of meaningful economic weaponry. Thus, a public sector union faced with an employer's insistence upon the inclusion of a waiver clause such as that proposed in this case has no effective lawful means to counter that insistence without our statutory scheme. The most likely result of permitting such insistence would be enhancement of frustration in the bargaining process and encouragement of unions to resort to remedies not sanctioned by law. We decline to interpret the statute in a manner which is so likely to lead to consequences antithetical to the statute's fundamental purposes.

3 Other counterbalancing factors include, for example, mandated binding grievance arbitration resolution, employee organization dues deduction, and an impasse resolution process. Secs. 447.303, 401, 403, Fla. Stat. (1979)

4 *E.G. West Irondequoit Teachers Ass'n. v. West Irondequoit Bd. of Educ.*, 4 PERB par. 3089 (1972) *aff'd., 315 N.E.2d 775 (N.Y.App. 1974); Westwood Community Schools*, 1972 MERC Lab. Op. 313; *Beloit educ. Ass'n. v. PERC*, 242 N.W.2d 231, 92 LRRM 3318 (Wis. 1976); *West Hartford Educ. Ass'n v. DeCourcy*, 295 A.2d 526 (Conn. 1972); *City of Biddeford v. Biddeford Teachers Ass'n.*, 304 A.2d 387 (Me. 1973); *Sutherlin Educ. Assn. v. Sutherlin School Dist. No. 130*, 548 P.2d 204 (Ore.App. 1976); *National Educ. ASs'n, Shawnee Mission, Inc. v. Board of Educ. of Shawnee Mission*, 512 P.2d 426 (Kan. 1973); *School Dist. of Seward Educ. Ass'n. v. School Dist. of Seward*, 199 N.W.2d 752 (Neb. 1972).

5 Thirty seven states plus the District of Columbia have state or local legislation thus describing the scope of negotiations.

6 The jurisdictions with statutory management rights provisions are: California, Florida, Hawaii, Indiana, Illinois, Iowa, Kansas, Montana, Minnesota, Nevada, New Hampshire, New Mexico, New York City, Pennsylvania, Vermont, Wisconsin and the District of Columbia.

7 FPER par. 12300 at p. 594-595; 595-596.

It may be that this up hill battle for public employee unions has one place where things are evened out a bit. The constitutional protection afforded public employees has been embodied in the Declaration of Rights of the Florida Constitution. The primacy of rights placed by the framers in that position has been held by the courts to emphasize the importance

of each of the rights enumerated within the Declaration of Rights of our Constitution. *State ex rel Davis v. Stuart*, *97* Fla. 69, 120 So. 335, 64 ALR 1307 (1929). The protection afforded under the Florida Declaration of Rights is much broader than the guarantees of the Federal Bill of Rights or the 14th Amendment to the United States Constitution. The inalienable rights secured under the Declaration of Rights of the Florida Constitution are designed not only to protect each individual's rights against unconstitutional invasion by the state, but to offer protection from violation by other governmental agencies and private individuals as well. It is the strongest quality of constitutional protection offered in either the national or the state constitution. Certainly public employee unions and their members need every drop of that extra-strength protection . . . when one studies the positions taken by the Appellee State Board of Education below, one understands how easily the weight of government can crush the individual's rights. The State Board suggested that Article IX of the Constitution was somehow more sacred, more important, more specific, and just downright *better* than peoples' rights. In reality, the Declaration of Rights as embodied in Article I of the Florida State Constitution is and should be the ultimate expression of the state's concern over its individual citizen's rights--and that concern should always prevail even when the state itself is exercising one of its powers granted by a later section of the Constitution.

Judge Miner's Order accepted the State Board's logic hook, line and sinker. He said:

> There can be little doubt that the Florida Legislature has the predominant role in Florida's scheme of public education. It must make "adequate provision by law"--"as the needs of the people may require" and appropriate funds for the "support and maintenance of free public schools". Article IX, Secs. 1 and 6. Statewide supervisory authority over public education by the Governor and Cabinet sitting as the State Board of Education is provided for in Sec. 2 of Article IX. Finally, local control over Florida's public schools is constitutionally reposed into several district school boards. Article IX, Sec. 4.
>
> It is axiomatic that the Legislature and the State Board of Education, the latter acting at the direction of the former, subject only to constitutional limitation, have the constitutionally mandated authority, indeed the responsibility, to unilaterally establish, in the public interest, uniform statewide standards of quality for Florida's public school system. Thus, it is that Article I, Sec. 6 must co-exist with Article IX and all other constitutional provisions. All must be given affect to the extent possible under the doctrine of separation of powers.
>
> * * *
>
> The practical effect of holding a grant award program unconstitutional as violative of Article I, Sec. 6 of the Florida Constitution leads one inescapably to the conclusion the uniform statewide educational standards which one might argue are local terms and conditions of employment could only be established through some type of statewide bargaining. Accordingly, many of the existing statewide programs could be called into question. This Court is unable to find anything in Florida's Public Labor Act which envisions a species of bargaining designed to negotiate statewide instructional standards between the state and local

> instructional employees acting through their public sector labor organization. Conversely, there is nothing that requires statewide standards to be locally negotiated. Local district school boards and the representatives of their instructional personnel have no statewide authority to impose statewide standards, similar to the one that is the subject of this litigation. To effectuate a policy of statewide bargaining requires clear legislative intent and the means to implement such a policy. The Court is of the view that existing law does not contemplate such a policy. If such should be deemed to be desirable and appropriate it would require substantial amendments to the public sector labor law as well as the school code.

Order of March 19, 1985 at pp.2;3.

Of course, the trial court created a straw horse of statewide standards being negotiated that was not ever suggested by the Appellants as an appropriate course of action. Rather than speaking to *City of Tallahassee, supra, Katz, infra,* or any of the cases relied upon in *The United Faculty of Palm Beach* PERC decision, the Court simply did not talk law. Instead, the Court holds Article IX dominant and compelling with no authority for such holding-- and then suggests that to do otherwise would be to make a situation where local unions were negotiating statewide instructional standards.

What has always happened previous to this legislation is that the Legislature established a general pool of monies or set of criteria and then the local School Boards drew from that pool or met those standards while negotiating the specific terms of such actions with their individual public employee unions. A simple and easy comparison is available in the "Merit School

Plan" that was passed at the same time as the "Master Teacher Plan". The Merit School Plan, Florida Statute Section 231.532 set "statewide standards". *How* those standards would be met within the context of a local district was left to the local district to negotiate with its employee representatives, and then that plan would be sent to the State for ratification. The plan would not be ratified if it did not meet the basic minimal standards. The State was responsible, as it always has been, for minimal statewide standards. However, the impact on the actual terms and conditions of employment of the individuals employed by a district school board would be and have been negotiated between the employer and employee.

If Article I, Sec. 6, means what it literally says, and if the Supreme Court of this state means what is has said, then the appeal filed by the Appellants is undeniable. The state cannot close its sovereign eyes and pretend it is not breaching the right of public employees to collective bargain through their properly certified representative unions. The Appellants argued below that the State of Florida purposely bypassed the collective bargaining process by choosing to make a direct payment of compensation to individual employees of district school boards. Certainly this kind of dog-in-the-manger activity would not be tolerated in the private sector. It would be characterized as just what it is--a pretext for a unilateral change of some of the most important parts of the collective bargaining agreement without any resort to the bargaining

process with the employees and their representatives. For example, in *Berry v. Michigan Bell Telephone Co.*, 319 F.Supp. 401, 406 (E.D. Mich. 1967), one of AT & T's subsidiaries tried to play games in bypassing the labor union that represented its employees and dealing directly with the employee:

> An employer cannot avoid his responsibility to deal with the authorized agent of the majority of his employees by offering individual employment contracts to his employees. *NLRB v. Cooke & Jones.*, 339 F.2d 580 (1st Cir. 1964); *Union Mfg., Co.*, 179 F.2d 511 (5th Cir. 1950). Similarly, where an employer grants unilateral increases, promulgates a bonus plan and informs an employee that these benefits are voluntarily given such action constitutes a refusal to bargain and interference with the employee's right to self organization. *NLRB v. Union Mfg. Co., supra; Southwestern Wholesale Grocery Co.,* NLRB 1485 (1951).
>
> As was stated in *NLRB v. Cooke & Jones, Inc. supra*, to permit such action would give employers an effective method for rendering fruitless any efforts on the part of labor organizations to bargain for employees. It also would deny to the employer a measure of the consideration it receives for entering into the collective bargaining contract, by allowing employees to circumvent the provisions they dislike. It would be disruptive of the entire collective bargaining process.

That is, of course, the natural result of the bonus or supplemental wage plan put forth by the state herein. It is a complete disruption of the collective bargaining process. The state counters that plain and unadorned fact with the statement: "Gosh darn, we just aren't the employer!" District school boards are, of course, both autonomous and yet still creatures of the state. For the state to act on one hand as a

correspondent in power with the school boards by setting all sorts of minimal standards that they jointly and severally impose upon the uniform and free public school system of the state and on the other hand to say they can act as an employer but define themselves away from that relationship, is to allow the state the kind of false and fraudulent position that we do not allow to the private litigant.

The trial court not only allowed the distortion of reality proffered by the state, but added its own variations on the theme under a "when-is-a-wage-not-a-wage-not-a-wage" method:

> Plaintiff argues that a voluntary grant/award program of the type contemplated here is, regardless of nomenclature, "wages" subject to the collective bargaining process. It contends that the Legislature's bypassing of that process and making these awards directly to teachers amounts to nothing more than "union busting".
>
> One normally thinks of wages as flowing from the employer-employee relationship. However, the recognition award under attack in this litigation springs from a determination by a stranger to the employment that perceived excellence in public school teaching should be monetarily rewarded. Coming as it does from a non-employer, it seems to the Court that it would be an unreasonable and unwarranted extension of Florida's Public Sector Labor Act to characterize this grant award as "wages" for purposes of collective bargaining. Even assuming arguendo, that these awards are "wages", the duty to bargain attaches to the public employer, which under the Public Labor Act is defined to be the district school board with respect to district level instructional personnel. As to these public employees, there is no state level employer. Given the present language of the Florida Public Labor Act neither the State Board of Education or the Department of Education is a public employer

> and hence, there is no duty on the part of either of these entities to bargain statewide policies with representatives of the employees of a local school board.

Order of March 19, 1985, at p. 3. [Appendix, A-4.]

The trial court adopted the very sort of semantic gamesmanship that has been rejected in the private sector. The National Labor Relations Board and the courts have not allowed corporations to play subsidiary one moment and parent corporation the next and somehow get out of bargaining as a result of that subterfuge. E.g., *Queen Mary Restaurants Corp. v. NLRB*, 560 F.2d 403, 408 (9th Cir. 1977).

The United States Supreme Court has set the standard that is referred to in all these private sector cases in *NLRB v. Katz,* 369 U.S. 736, 82 S.Ct. 1107 (1962). Mr Justice Brennan, writing for the Court, held that the employer who had unilaterally granted merit increases, (sound familiar?) and changed policies concerning increases in wages during the very time it was to carry on contract negotiations with a union, violated its statutory duty to bargain collectively. The Court of Appeals below had found that there was no *per se* unfair labor practice in the described actions of the employer. The Supreme Court reversed stating:

> The duty "to bargain collectively" enjoined by Sec. 8(a)(5) is defined by Sec. 8(d) as the duty to "meet * * * and confer in good faith with respect to wages, hours, and other terms and conditions of employment". Clearly, the duty this defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith

if a party has refused even to negotiate *in fact*--"to meet * * * and confer"-- about any of the mandatory subjects. A refusal to negotiate *in fact* as to any subject within Sec. 8(d), and about which the union seeks to negotiate, violates Sec. 8(a)(5) though the employer has every desire to reach agreement with the union upon an overall collective agreement and earnestly and in all good faith bargains to that end. We hold that an employers unilateral change in conditions of employment under negotiation is similarly a violation of Sec. 8(a)(5), for it is a circumvention of the duty to negotiate which frustrates the objectives of Sec. 8(a)(5) much as does a flat refusal.

* * *

The respondents' third unilateral action related to merit increases, which are also a subject of mandatory bargaining. *NLRB v. J.H. Allison and Co.,* 6th Cir. 165 F.2d 766. The matter of merit increase had been raised at three of the conferences during 1956 but no final understanding had been reached. In January, 1957, the company, without notice to the union, granted merit increases to 20 employees out of the approximately 50 in the unit, the increases ranging between $2.00 and $10.00. This action too must be viewed as tantamount to an outright refusal to negotiate on that subject, and therefore as a violation of Sec. 8(a)(5), unless the fact that the January raises were in line with the company's long-standing practice of granting quarterly or semi-annual merit reviews--in effect, were mere continuation of the status quo--differentiates them from the wage increases and the changes in the sick leave plan. We do not think it does. Whatever might be the case as to so-called "merit raises" which are in fact simply automatic increases to which the employer has already committed himself, the raises here in question were in no sense automatic, but were informed by a large measure of discretion. There simply is no way in such case for a union to know whether or not there has been a substantial departure from past practice, and therefore the union may

> properly insist that the company negotiate as to the procedures and criteria for determining such increases.

82 S.Ct. at p. 1111, 1113.

Illustrative of the many federal courts that have had to deal with the issue of "merit raises", is *Korn Industries, Inc. v. NLRB*, 389 F.2d 117 (4th Cir. 1967). It is not only the public sector that finds employers one day deciding that productivity might be increased by a new, different and additional evaluation system with a bonus or merit increase following that. In *Korn,* the Fourth Circuit said:

> Substantial evidence supports the Board's finding that the company alone, without negotiation, consultation, or conference with the union, planned a general wage increase and a system for evaluating employees and awarding additional merit increases over a period of approximately four years. This plan was made known shortly before the bargaining sessions began, and at the first bargaining session the company announced that it would put it into effect within three days with or without the consent of the union. . . .[of course, UTD never even got the courtesy of that kind of meaningless involvement in the bargaining process.]
>
> * * *
>
> Korn's unilaterally imposed merit system standing alone was an unfair labor practice.

389 F.2d at p. 120, 122. We do not have to look as far away as the Fourth Circuit or the private sector for examples of an employer unilaterally imposing a merit pay plan on the employees and their representatives on the theory that "it's good for you." Florida's Executive Branch of government had touted the State

Master Teacher Plan as equal to Geritol, Audie Murphy, and Elmer Gantry and the savior of Florida's admittedly troubled educational system. The Plan could not and obviously from its first year's record, did not do what its proponents hoped of it. But whatever the wonderful motivation behind its passage and its original public relations sales job, it was and is nonetheless a clear abridgment of a primary constitutional right held by the public employees of this state.

The trial court says that the State is not the employer. [1] The state and the trial judge say this money is not wages.[2] The state says that they have acted in the past on such

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[1] In a case involving numerous of the participants in this action including Judge Miner and undersigned counsel, the First District said, over a decade ago, in a much-cited opinion, "The School Board is to have exclusive authority to form contracts with the instructional personnel of the school system." *School Board of Leon County v. Goodson,* 335 So.2d 308, 310 (1st DCA Fla. 1976).

[2] Black's Law Dictionary, *p. 1750:*

> *WAGES.* A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him. *Ciarla v. Solvay Process Co.,* 172 N.Y.S. 426, 428, 184 App.Div. 629; *Cookes v. Lymperis*, 178 Mich. 299, 144 N.W. 514, 515; *Phoenix Iron Co. v. Roanoke Bridge Co.*, 169 N.C. 512, 86 S.E. 184, 185. Every form of remuneration payable for a given period of an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. *Ernst v. Industrial Commission*, 246 Wis. 205, 16

N.W.2d 867.

In limited sense the word "wage" means pay given for labor usually manual or mechanical at short stated intervals as distinguished from salary, but in general the word means that which is pledged or paid for work or other services; hire; pay. In its legal sense, the word "wages" means the price paid for labor, reward of labor, specified sum for a specified piece of work. *In re Hollingsworth's Estate*, 37 Cal.App.2d 432, 99 P.2d 599, 600, 602.

Maritime Law

The compensation allowed to seamen for their services on board a vessel during a voyage.

Politcal Economy

The reward paid, whether in money or good, to human exertion, considered as a factor in the production of wealth, for its cooperation in the process. "Three factors contribute to the production of commodities,--nature, labor, and capital. Each must have a share of the product as its reward, and this share, if it is just, must be proportionate to the several contributions. The share of the natural agents is rent; the share of labor, wages; the share of capital, interest. Teh clerk receives a salary; the lawyer and doctor, fees; the manufacturer, profits. Salary, fees, and profits are so many forms of wages for services rendered." De Laveleye, Pol Econ.

and, *Webster's Unabridged Dictionary*, 183, at p. 2053:

Wage, n. 1. [usually pl.] money paid to an employee for work done, and usually figured on an hourly, daily, or piecework basis: often distinguished from *salary*.
I will be a swift witness against those
that oppress the hireling in his *wages*.
--*Mal. iii. 5.*

2. [usually pl.] what is given in return;

issues as sick-leave banks, terms of dismissal and other minimal standards in the educational arena. Take everything the state argued below and grant it. In no way can their arguments meet the essence of the Complaint in this law suit or the legal issue on appeal. If they are not the employer, they are superimposing themselves into the employer role in this case--and not letting the "real" employers honor their contractual obligations. If it is not "wages" they are paying, it is nevertheless a straightforward form of compensation that under any other name is *income that one derives solely from the fact that one is employed in the public school system of this state*. This is *not* sick leave; this is *not* a due process hearing for a dismissed teacher; this

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a reward; a recompense: formerly the plural form was often construed as singular, as,
"The *wages* of sin is death".
That they may have their *wages* duly paid them.
And something over to remember me.
--Shak.

3. (a) a pledge; (b) the state of being pledged; a pawn. [Obs.]

4. [pl] in economics, the share of the total product of industry that goes to labor, as distinguished from the share taken by capital.
living wage; see under living.
minimum wage; the lowest wage payable to an employee of a certain trade or class, as fixed by law or as agreed upon by the union representing the employees of the certain trade and the employer; also, a living wage.
minimum wage laws: laws specifying what the minimum wage for a certain class of employees shall be.
Syn.--remuneration, compensation, salary, stipend, hire, allowance.

is the ultimate subject matter of the collective bargaining process--this *is* what terms and conditions of employment are all about--this *is* how much somebody is going to be paid. This *is* the salary, wages, compensation, remuneration, money that an employee joins a union to assure is paid fairly in return for his labors.

So the state's arguments, even as they were accepted by a supporting trial judge and district court below, do not change the historical and constitutional status of the public employees affected by this State Master Teacher Plan. *If this Court allows this law to stand, teachers will be treated differently from all other public employees.* Teachers will be the only public employees whose constitutional guarantee of collective bargaining is less and different from all others. Teachers will be the only public employees who cannot rely on contracts negotiated by their representatives with their employers for the final say in their employment relationship. Only teachers will be subject to the whim of a non-employer who can dispense funds to public employees outside the negotiated formulas. They would be the only public employees whose unions would have been publicly bypassed and subjected to a "lesson" in power-play tactics from the halls of Tallahassee. They would be the only public employees whose contractually established salary schedules would not be enforce-able. Why should that be?

The only conceivable reason put forth by the state and the courts below has been that Article IX somehow visits upon the

State Board of Education a unique and rare duty in regards to the public school system. Fair enough. However, that unique and rare duty has managed in the hundred years or so of Florida's existence to manifest itself in ways other than direct payment from the state to individual employees of district school boards. If some urgent situation has caused such an overwhelming need to diverge from the methodologies of the past, why is that overwhelming need not articulated and shown in all its compelling light within the statutory scheme proffered? Why do public employee unions,[3] public employees,[4] and district school boards,[5] all have to lose status, position, power, constitutional guarantees, and statutory protections because of this aberrant legislation?

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[3] *See* e.g., F.S. Sections 447.309(1) which categorically and mandatorily gives the power to negotiate the "determination of the *wages*, hours, and terms and conditions of employment of the bargaining unit"; 447.309(5) which provides that such negotiated agreements "*shall* contain *all* of the terms and conditions of the employees in the bargaining unit *during such term* . . ." with the exception which was nullified in *City of Tallahassee, supra.*

[4] See Art. I, Section 6 of the Florida Constitution:

> Right to Work--The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. *The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.* Public employees shall not have the right to strike. [Emphasis supplied.]

[5] *See e.g.* F.S. Sections 228.041(1)(a); 230.22; 230.23(5)-(c) and (d); 230.33(7)(b)(c); 231.41; Art. IX, Sec.4.

CONCLUSION

In *City of Ocala v. Marion County Police Benevolent Assn.*, 392 So.2d 26, 30 (1st DCA Fla. 1980), this Court applied the *Katz* standards to the public sector. Employer-initiated unilateral change mid-contract regarding merit increases is improper and illegal. If the Dade County School Board--or any of the nine district school boards of the intervening unions--had suddenly announced that they would, without resort to collective bargaining, grant some bargaining unit members $3,000.00 more than the contractual salary schedule, they would have undeniably done an illegal and prohibited act. There are sanctions and remedies provided for such an unfair labor practice in Chapter 447. The state cannot step into the School Board's shoes and as a super-employer dole out monies [that are part pure-state revenues *and part derived from individual county school tax millege*] as though the constitutional guarantee of collective bargaining does not exist. That guarantee is alive and well in *City of Tallahassee, supra!* The Appellants pray that this Court, which has consistently taken a leading role in protecting the rights of public employees, will reverse the decisions below and expeditiously declare the statutes and rule challenged herein to be unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Judith A. Brechner, Esquire, General Counsel, Department of Education, Knott Building, Tallahassee, Florida 32304; Leonard A. Carson, Esquire and Richard T. Donelan, Jr., Esquire, Carson & Linn, P.A., Special Labor Counsel, State Board of Education, Cambridge Center, 253 East Virginia Street, Tallahassee, Florida 32301; Frank A. Howard, Esquire, Suite 301, 1450 Northeast Second Avenue, Miami, Florida 33132; Gerald A. Williams, Esquire, Suite 213, 1410 Northeast Second Avenue, Miami, Florida 33132; Jim Smith, Esquire, Attorney General, The Capitol, Tallahassee, Florida 31301, on this 27th day of August, 1985 by United States Mail.

BY:
ELIZABETH J. DU FRESNE