IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

v.

DADE COUNTY SCHOOL BOARD, et al.,

Respondents.

CASE NO. 67,430
First DCA Case No. BG-39

BRIEF OF INTERVENORS

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE

The 1984 legislative session of the State of Florida amended Sections 231.533 and 231.534, Florida Statutes (See Appendix-A.1, A.2), and on September 20, 1984, the State Board of Education promulgated Rule 6A-4.46 (See Appendix-A.3) implementing the two above-referenced amendments to Florida Statutes. The effect of the legislation and rule was to establish the "state master teacher program" and, pertinent to this appeal, to provide for the payment of three thousand dollars ($3,000.00) to certain teachers meeting criteria and standards established by the legislation.

On December 5, 1984, Appellant, United Teachers of Dade, FEA/United, AFT, Local 1974, AFL-CIO, filed a suit for declaratory and injunctive relief against the Appellees, and simultaneously sought relief for breach of contract and a petition for mandamus against the superintendent of schools for Dade County. The action for breach of contract and the petition for mandamus was voluntarily dropped in favor of expeditiously resolving the sole remaining question--the constitutionality of the challenged statutes.

Circuit Court Judge Joseph P. Farina, in his order granting UTD's Motion to Expedite and the State Board of Education's Motion for Change of Venue on January 11, 1985, noted but

did not rule on the request for intervention from Lake County Education Association, Local 3783, AFT, FEA/United, AFL-CIO; Martin County Education Association, Local 3615, AFT, FEA/United, AFL-CIO; Sarasota Classified/Teachers Association, Local 4322, AFT, FEA/United; Brevard Federation of Teachers, Local 2098, AFT, FEA/United, AFL-CIO; Charlotte County Classified and Teachers Association, Local 3841, AFT, FEA/United; St. Lucie County Classroom Teachers Association, Local 3616, AFT, FEA/United; Pasco Classroom Teachers Association, Local 3600, AFT, FEA/United; and Broward Teachers Union, Local 1975, AFT, FEA/United, AFL-CIO. Judge Charles Miner of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, received an additional Motion to Intervene on behalf of the Alachua County Education Association on January 16, 1985. At the hearing conducted in this matter on February 19, 1985, Judge Miner granted the nine pending motions for intervention.

Full final argument on the pleadings was heard on February 19, 1985. On that date, the State Board of Education submitted a responsive affidavit to Plaintiff's Motion for Summary Judgment. In its supporting memorandum of law, the Appellee State Board agreed "that the closed pleadings present no issue of material fact, the need for resolution for which would bar the issuance by the court of a declaratory decree concerning the constitutionality of the state master teacher program." The

intervening nine teacher's unions joined in the pleadings filed by the United Teachers of Dade. Judge Miner issued his Order on Motion for Judgement on the Pleadings on March 19, 1985, concluding that "it seems clear that the master teacher plan does not abridge the right of public employees to bargain collectively."

A notice of appeal on behalf of the Appellant and the intervenors in this cause of action was filed on April 9, 1985, together with a Motion for Expeditious Prepartation of the Record, Briefing, Hearing, and Directions to the Clerk. On April 26, 1985, the First District Court of Appeal granted the Motion to Expedite and adopting the briefing schedule set forth in Appellant's motion. The case was fully briefed and oral argument was held on June 20, 1985. The court issued its opinion on July 3, 1985, adopting per curium Judge Miner's decision in the court below. In addition, the First District Court of Appeal certified to the Supreme Court of Florida the following question as one of great public importance:

> IS FLORIDA'S MASTER TEACHER PROGRAM (FLORIDA STATUTES, SECTIONS 231.533 and .534 (SUPP. 1984)) AN ABRIDGMENT OF THE CONSTITUTIONALLY GUARANTEED RIGHT TO COLLECTIVE BARGAINING?

On July 29, 1985, Appellants filed Notice to Invoke Discretionary Jurisdiction with the Florida Supreme Court pursuant to Rule 9.030(a)(2)(A)(i), (ii), (iii), and (v), and Rule

9.120 of the Florida Rules of Appellate Procedure. In addition, Appellant's filed with the court a suggestion that the certified question be reviewed immediately. On August 2, 1985, the briefing schedule was established, and on August 6, 1985, this court granted the suggestion that the certified question be reviewed immediately.

SUMMARY OF ARGUMENT

When the Legislature amended and passed Florida Statutes 231.533 and 231.534, the effect was to deny teachers in Florida the right to negotiate concerning wages, a mandatory topic of bargaining. This right is secured for teachers and other public employees in Florida by Article I, Section 6 of the Florida Constitution.

Yet, despite Article I, Section 6, and without addressing or even referring to three significant Florida Supreme Court cases on this point, Judge Charles Miner, in an opinion which cited no case law, concluded that the statutes in question did not deny teachers in Florida their constitutional right to bargain collectively in the same manner as do employees in the private sector. The First District Court of Appeal affirmed Judge Miner's decision per curium.

Nevertheless, the facts in this case clearly establish that "the recognitional award" provided by Sections 231.533 and .534 are wages and are a mandatory topic of bargaining. If the three thousand dollars ($3,000,00) paid to certain public employees pursuant to these statutes had been paid instead by public employers--i.e., local school boards, without negotiation, there is no question that the school boards would have been guilty of an unfair labor practice and required to negotiate concerning

the wages. However, it is Judge Miner's reasoning that because the State is not the employer, it is entitled to take such unilateral action. This is just a type of reasoning this Court found unacceptable when it determined certain state statutes unconstitutionally deprived public employees of their right to bargain collectively in City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981).

The right of public employees to bargain collectively must be protected by this Court. This right does not conflict with the right of the State to establish statewide educational standards. It operates coextensively with the State's rights and obligations in this regard. There is nothing so fundamental to the collective bargaining process as a negotiation of wages. The decision of the First District Court of Appeal must be reversed, and Florida Statutes 231.533 and .534 (Supp. 1984) must be declared unconstitutional.

ARGUMENT

I. FLORIDA STATUTES 231.533 AND 231.534, AND STATE BOARD OF EDUCATION RULE 6A-4.46 IMPLEMENTING THESE SECTIONS CONSTITUTE AN UNCONSTITUTIONAL ABRIDGMENT OF PUBLIC EMPLOYEES RIGHT TO BARGAIN COLLECTIVELY.

The issue in this case is straight forward. It is whether Florida Statutes 231.533 and 231.534 and State Board of Education Rule 6A4.46 represent an unconsitutional abridgment of public employees' rights to bargain collectively. Article I, Section 6 of the Florida Constitution Declaration of Rights provides:

> Right to work--The right of persons to work shall not be denied or abridged on account of membership or non-membership 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 added)

Other than the denial of the right to strike, Article I, Section 6 of the Florida Constitution provides an unqualified right to bargain collectively for public employees. It is significant to note at the outset that no other state in the United States provides a constitutional right for public employees to collectively bargain. The rights of other states' public employees are provided pursuant to statute.

The Florida Supreme Court has interpreted this right of public employees to bargain collectively in three significant cases. In Dade County Classroom Teachers Association v. Ryan, 225 So.2d 903 (Fla. 1969), this Court stated unequivocably:

> 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. It is difficult, if not impossible, to place more than one interpretation on this statement. The plain meaning is clear and needs no elaboration.

However, as this court is well aware, the Florida Legislature failed to provide for legislation implementing the constitutional right of public employees to bargain collectively, and in Dade County Classroom Teachers Association, Inc. v. Legislature, 269 So.2d 684 (Fla. 1972), this court found it necessary to prod the Legislature stating,

> When the people have spoken through their organic law concerning their basic rights, it is primarily the duty of the legislative body to provide the ways and means of enforcing such rights; however, in the absence of appropriate legislative action, it is the responsibility of the courts to do so.
>
> Where people in a constitution or charter vote themselves a governmental benefit or privilege, they the people in whom the power of government is finally reposed, have the right to have their constitutional rights enforced.

Id. at 686. The court stated further in pertinent part:

> ...and it is fair to assume that many legislators, like the then governor, may be opposed to the principle of collective bargaining for pubic employees and to incorporate this principle into our state constitution, as was the author of this opinion at the time when a member of the Florida Constitutional Revision Commission. But the people of this state have now spoken on this question in adopting Section 6 of Article I, supra. The question of the right of public employees to bargain collectively is no longer open to debate. It is a constitutionally protected right which may be enforced by the courts, if not protected by other agencies of government.

Id. at 687.

In City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981), this Court issued its third major decision regarding the rights of public employees to bargain collectively. The issue in that case involved the constitutionality of two sections of Chapter 447 that removed from public employers the obligation to negotiate over pension plans to the extent that the proposals sought to be negotiated were controlled by state statute or local ordinance. The court determined that the exclusion amounted to an actual prohibition of bargaining on matters which are appropriately included as "terms and conditions of employment" and thus negotiable. The court struck those sections of the statute prohibiting negotiation on these topics. The court, quoting extensively from Ryan and Dade County Classroom Teachers Association, Inc. v. Legislature emphasized that Article I, Section 6 "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." 410 So.2d at 490.

It is indeed unfortunate that public employees are again before this Court seeking judicial enforcement of their constitutional right to bargain collectively. The "other agencies of government" mentioned in Dade County Classroom Teachers Association v. Legislature (supra) have sought by the passage of Section 231.533 and 231.534, Florida Statutes, to significantly abridge this right in much the same manner as was attempted in City of Tallahassee (supra). Thus, it is again this Court's responsibility to enforce these basic rights so completely ignored by the Legislature in 1984.

II. THE THREE THOUSAND DOLLAR "RECOGNITIONAL AWARD" PAID TO "MASTER TEACHERS" IS A WAGE, AND AS SUCH IS A MANDATORY TOPIC OF NEGOTIATIONS.

The rights of employees, to bargain collectively, whether private sector or public sector employees, necessarily must encompass the fundamental right to negotiate concerning wages. Indeed, Chapter 447, Part II, Florida Statutes, specifically mentions wages within its very broad scope of bargaining. Section 447.309(1) states in pertinent part as follows:

> ...the chief executive officer or the public employer or the appropriate employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees in the bargaining unit. (Emphasis added)

The question of constitutional abridgment thus depends in large part upon whether Chapter 231.533 and 231.534 provide for the payment of "wages" to public employees. If the answer is in the affirmative, then the legislation is unconstitutional in that, because the Legislature is admittedly not the public employer of the public employees involved, and as such, is not entitled to pay "wages", public employees are deprived the right to negotiate concerning those wages and are thus denied the same rights to bargain collectively concerning wages as are enjoyed by employees in the private sector.

It cannot be denied, nor was it argued in this case, that wages are not a mandatory subject of bargaining. It is well

settled that, where the language of a statute is plain and unambiguous, the statute must be given effect according to its plain and obvious meaning. The scope of bargaining defined by Section 447.309(1) clearly establishes that the Legislature intended wages to be negotiated. Webster's Third New International Dictionary 2568 (1961) defines wages as "monetary remuneration by an employer...for labor or services...." Black's Law Dictionary Fourth Edition, 1951, defines wages at page 1750 as follows:

> 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; (citations omitted) every form of remuneration payable for a given period to 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 other similar advantage received from the individual's employer or directly with respect to work for him. (emphasis added; citations omitted)

Yet, the Appellees in this case would have this Court believe that the three thousand dollar payment to teachers for achieving certain standards and meeting certain criteria is not a "wage."

The opinion of Judge Miner, adopted verbatim by the First District Court of Appeal per curium, attempts to characterize this "grant award" as something other than wages. Judge Miner stated at page 3 of his opinion,

> One normally thinks of wages as flowing from the employer-employee relationship. However, the recognitional award under attack in this litigation springs from a determination by a stranger to the employment relationship 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 Florda's public sector labor act to characterize this grant award as "wages" for the purposes of collective bargaining.

It appears to be Judge Miner's reasoning that the three thousand dollars ($3,000.00) in question is not a "wage" because it is not provided by an "employer." Using this reasoning, it would appear possible for the judge to construe virtually any legislation affecting wages and terms and conditions of employment as something other than "wages and terms and conditions of employment" so long as they are imposed unilaterally by the state legislature, the public employees' "stranger to the employment relationship." Such an intrepretation obviously flies to the face of both the spirit and the letter of Article I, Section 6 of the Florida Constitution. It is significant to note that Judge Miner cited no case in support of this unusual interpretation.

This "grant award program" or "recognitional award," as characterized by Judge Miner, is a wage nevertheless. It cannot be otherwise. Of interest in discussing Judge Miner's attempt to distinguish this recognitional award as apart from wages is the case of Fort Dodge Community School District v. PERB, 317 N.W.2d 181 (Iowa 1982). The court in Ft. Dodge stated,

> We are convinced the legislature did not intend to give "wages" the broad application contended for here. If it had intended to include all "wage-related" remunerations of all species within the term "wages," it would have been unnecessary to include in the list of mandatory subjects so many wage-related items such as insurance, vacation, overtime compensation, and supplemental pay.

319 N.W. 2nd at 183, 184. Chapter 447, Part II, Florida Statutes, of course, does not list mandatory subjects with specificity as does the Iowa Statute. Thus, using the Ft. Dodge court's compelling rationale, the absence of such specificity suggests and supports the concept that the Legislature in Florida did intend to give "wages" the broad application contended for here. Chapter 447, Part II, Florida Statutes, does not define or limit "wages" beyond its accepted meaning. The three thousand dollar payment to teachers provided for by the "Master Teacher Plan" is a wage and must be negotiated.

III. THE RIGHT OF PUBLIC EMPLOYEES TO BARGAIN COLLECTIVELY DOES NOT CONFLICT WITH THE RIGHT OF THE STATE TO ESTABLISH STATEWIDE EDUCATIONAL STANDARDS.

Judge Miner's opinion either ignores the rights guaranteed to public employees under Article I, Section 6 of the Florida Constitution, or, at the very least, ascribes lesser weight to these constitutional rights than to those rights given to the Florida Legislature with specific reference to its role in public education. Judge Miner stated in his order at pages 2 and 3,

> 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, Sections 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 Section 2 of Article IX. Finally, local control over Florida's public schools is constitutionally reposed into several district school boards. Article IX, Section 4.

What is meant by "the predominant role in Florida's' scheme of public education" is not explained. Nor, is any case law cited to establish that this "predominant role" is any more "predominant" than Florida public employees constitutional right to bargain collectively.

There is no apparent willingness on the part of Judge Miner to admit to the possibility that Article I, Section 6 and

Article IX, Sections 1, 2, 4 and 6 may peacefully coexist. The right to bargain collectively does not require agreement. Indeed, Section 447.203(14), Florida Statutes, provides that "neither party shall be compelled to agree to a proposal or be required to make a concession...." The Florida Legislature's "predominant role in public education" may continue so long as it does not infringe upon public employees right to negotiate concerning their wages as do employees in the private sector.

The position of private sector employees in a similar situation has been clearly enunciated by the United States Supreme Court in NLRB v. Katz, 369 U.S. 736, 82 S.Ct. 1107 (1962). The employer in that case had unilaterally granted merit increases and changed policies concerning increases in wages during the time it was to be involved in collective bargaining with the union. The court found that the employer had committed an unfair labor practice by violating its statutory duty to bargain collectively. The court stated in pertinent part:

> The respondents' third unilateral action related to merit increases, which are also a subject of mandatory bargaining. NLRB v. J. H. Allison and Co., 6 Cir. 165 F.2d 766. The matter of merit increases 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 twenty employees out of the approximately fifty in the unit, the increases ranging between two dollars and ten dollars. This action too must be viewed as tantamount as an outright refusal to negotiate on that subject, and

> therefore as a violation of Section 8(a)(5) unless the fact that the January raises were in line with the company's longstanding 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. 1113. (Emphasis added)

As in Katz, the instant case involves "raises" which were "in no sense automatic, but were informed by a large measure of discretion." However, unlike Katz, in this case local union's were unable to file an unfair labor practice charges to compel negotiations concerning this "wage" because the wage was provided by the state, a non-employer. Nevertheless, the three thousand dollars ($3,000.00) received by certain public employees is income derived solely from the fact that the teacher is employed by and has a contract with his or her local school board, not the state. There can be no question that, if the local school board provided the $3,000.00 without negotiation, it would have been guilty of a flagrant unfair labor practice.[1]

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[1] See Pasco County School Board, 3 FPER 9 (1976), where PERC found that unilateral action on wages, especially in states which prohibit public sector strikes, is a per se violation of law.

Failing as he has in his opinion to explain that the recognitional award of three thousand dollars ($3,000.00) is not a wage, Judge Miner attempts to justify his conclusion by raising by spector of chaos in education should he do otherwise. He states at page 4 of his Order:

> The practical effect of holding a grant award program unconstitutional as violative of Article I, Section 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.

Such a conclusion is not "inescapable." In the first place, it would not be possible to negotiate statewide standards with the state because, as the Judge has already pointed out, the state is not the employer of teachers in Florida. Obviously statewide educational standards can and must be established at the state level. However, such educational standards cannot be used to impose unilaterally terms and conditions of employment which employees would otherwise be entitled to negotiate.

Judge Miner continues at page 4,

> 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.

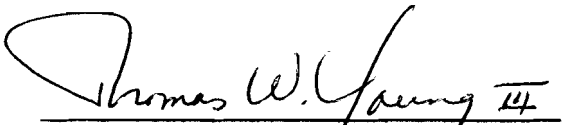
Appellants in this case have never argued that it was their intent to negotiate locally concerning stateside standards. Logic, let alone the absence of statutory authority, dictates the inappropriateness of doing so. It is difficult to understand where Judge Miner came upon this concept, other than from his own conjecture.

What the Appellants requested of Judge Miner, and are now requesting of this Court, is to permit them to negotiate with local school boards concerning the implementation of statewide standards established by the Legislature and the State Board of Education. These negotiations could involve, for example, the amount of the "recognitional award," the means by which criteria and standards would be measured, and increased or more stringent standards than those established by the state.

What is being demanded here is a right to negotiate concerning wages and terms and conditions of employment--an opportunity to make proposals concerning this important and controversial subject in the mutual give and take at the bargaining table. Had this process been permitted, it would no doubt have avoided most, if not all, of the problems of the tragically flawed Master Teacher Program that even now is about to begin its second year.

CONCLUSION

Article I, Section 6 of the Florida Constitution grants to public employees the same rights to bargain collectively as those provided to private sector employees, with exception of the right to strike. Private sector employees are entitled to negotiate concerning wages. The three thousand dollars ($3,000.00) provided by Sections 231.533 and 231.534, Florida Statutes, for certain public employees constitutes a wage. The payment of that wage to public employees, bypassing the public employer and depriving public employees the right to negotiate concerning that wage constitutes an unconstitutional abridgement of the rights guaranteed public employees under Article I, Section 6 of the Florida Constitution. The decision of the First District Court of Appeal should be reversed and Florida Statutes 231.533 and .534 should be declared unconstitutional.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 27th day of August, 1985 to Elizabeth J. duFresne, duFresne and Bradley, P.A., 2950 Southwest 27 Avenue, Suite 310, Coconut Grove, Florida 33133; Frank A. Howard, Jr., Esq., Attorney for Dade County School Board and Leonard Britton, Suite 301, 1450 Northeast Second Avenue, Miami, Florida 33132; Gerald A. Williams, Esq., Haygood & Williams, P.A., 1410 Northeast Second Avenue, Miami, Florida 33132; Judith A. Brechner, Esq., General Counsel, Department of Education, Knott Building, Tallahassee, Florida 32301; Richard T. Donelan, Jr., Esq., Carson & Linn, P.A., Cambridge Centre, 253 West Virginia Street, Tallahassee, Florida 32301; and Jim Smith, Attorney General, The Capitol, Tallahassee, Florida 32301.

Thomas W. Young III

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