

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

BROWARD COMMUNITY COLLEGE, :

Charging Party, :

Case No. CB-2008-016

v. :

BROWARD COMMUNITY COLLEGE, :
UNITED FACULTY OF FLORIDA, :
FTP-NEA, :

Respondent. :

BROWARD COMMUNITY COLLEGE, :
UNITED FACULTY OF FLORIDA, :
FTP-NEA, :

Charging Party, :

Case No. CA-2008-061

v. :

BROWARD COMMUNITY COLLEGE, :
FTP-NEA, :

Respondent. :

FINAL ORDER

Order Number: 08U-288

Date Issued: December 3, 2008

Paul O. Lopez, Fort Lauderdale, attorney for Broward Community College.

Thomas W. Brooks, Tallahassee, attorney for Broward Community College, United Faculty of Florida.

The Broward Community College United Faculty of Florida, FTP-NEA (UFF), represents a bargaining unit of faculty employed by Broward Community College (BCC). BCC filed its charge on May 19, 2008, alleging that UFF violated Section 447.501(2)(a) and (c), Florida Statutes (2008),¹ by refusing to submit for bargaining unit ratification a

¹All references to the Florida Statutes are to the 2008 edition.

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finalized collective bargaining agreement created as a result of statutory impasse resolution procedures and subsequent legislative body action, refusing to bargain after the conclusion of the impasse resolution process, and insisting on inclusion in the contract issues on which the parties did not agree pre-impasse constitute unfair labor practices. UFF filed its charge on June 30, alleging that BCC violated Section 447.501(1)(a) and (c), Florida Statutes, by unilaterally altering wages and terms and conditions of employment, conditioning its agreement to a proposed collective bargaining agreement on UFF's acquiescence to elimination or modification of provisions of the parties' current contract that were not the subject of reopener negotiations and were not subject to the impasse resolution proceedings, and failing to vest its negotiating representative with the authority to conduct collective bargaining negotiations.

The Commission's General Counsel found both charges to be sufficient. The charges were assigned to the same hearing officer who granted BCC's unopposed motion to consolidate the two cases for hearing. A telephone evidentiary hearing was conducted between Tallahassee and Davie on August 27. The hearing officer issued her recommended order on October 28 concluding that BCC's unfair labor practice charge should be dismissed and that UFF's charge was meritorious, with one exception. UFF was awarded its attorney's fees and costs as the prevailing party; BCC was not awarded fees for the portion of UFF's case upon which it prevailed. Neither party filed exceptions. A hearing transcript has been filed.

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The hearing officer rejected UFF's argument that the BCC violated Section 447.501(1)(a) and (c), when it sent a representative to collective bargaining negotiations that was not authorized to tentatively agree to any bargaining proposal. Consequently, that issue was recommended to be dismissed from the charge filed by UFF.

The hearing officer resolved conflicting evidence and concluded that UFF did not commit an unfair labor practice when it refused to submit a purported agreement for ratification because it did not contain the proper wording as to a pay raise. However, also based upon that resolution, she concluded that the BCC committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), Florida Statutes, when it ratified and then unilaterally implemented the agreement with the improper wording. The hearing officer further concluded that UFF did not commit an unfair labor practice when it refused to meet and bargain following the legislative body action because the parties had irreconcilable differences as to the agreement's contents.

The hearing officer also concluded that the BCC committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), when it deleted a pay bonus provision from the proposed agreement when the parties had not negotiated concerning the elimination of the bonus provision. The hearing officer further concluded that UFF did not commit an unfair labor practice when it refused to submit the proposed agreement to ratification because it omitted evaluation materials from the proposed agreement. However, the hearing officer concluded that the BCC committed an unfair labor

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practice in violation of Section 447.501(1)(a) and (c), when it incorporated into the proposed and ratified agreement changes to the professional development and obligations provisions that were not either agreed to by the parties or submitted as an impasse item to the special magistrate.

Accordingly, upon review of the entire record, including the recommended order, the exhibits, and the transcript, the Commission concludes that the hearing officer's findings are supported by competent substantial evidence received in a proceeding that satisfies the essential requirements of law. Further, the Commission agrees with the hearing officer's analysis of the dispositive legal issues and her conclusions of law. Accordingly, the hearing officer's recommended order is incorporated into this final order. § 120.57(1)(l), Fla. Stat.

CONCLUSIONS OF LAW

1. The BCC is a public employer within the meaning of Section 447.203(2), Florida Statutes.
2. UFF is an employee organization and a certified bargaining agent within the meaning of Sections 447.203(11) and (12), Florida Statutes.
3. BCC violated Section 447.501(1)(a) and (c), Florida Statutes, by refusing to negotiate in good faith by unilaterally altering wages and terms and conditions of employment, conditioning its agreement to a proposed collective bargaining agreement

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on UFF's acquiescence to elimination or modification of provisions of the parties' current contract that were not agreed upon or the subject of reopener negotiations, and failing to submit all terms and conditions of employment in a proposed agreement for ratification.

4. UFF is a prevailing party and is entitled to a pro rata award of attorney's fees and costs pursuant to Section 447.503(6)(c), Florida Statutes, for the portion of the charge upon which it has prevailed and as prevailing respondent in the charge filed by the BCC.

In consequence of the foregoing, the Commission orders the following:

1. BCC shall cease and desist from:
 - a. Refusing to negotiate in good faith by unilaterally altering wages and terms and conditions of employment, conditioning its agreement to a proposed collective bargaining agreement on UFF's acquiescence to the elimination or modification of provisions of the parties' current contract that were not agreed upon or the subject of reopener negotiations, and failing to submit all terms and conditions of employment in a proposed agreement for ratification; and
 - b. In any like or related manner interfering with, restraining or coercing public employees in the exercise of rights guaranteed them by Chapter 447, Part II, Florida Statutes.
2. BCC shall take the following affirmative action:
 - a. Reduce to writing a collective bargaining agreement consistent with this order and submit the resultant agreement for ratification and otherwise proceed in accordance with statutory impasse procedure for the resolution of collective bargaining impasses;

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- b. Upon request by UFF, reimburse it for its pro rata reasonable attorney's fees and costs incurred in prosecuting the unfair labor practice charge and incurred in defense of the charge filed by the BCC; and
- c. Post immediately, for sixty (60) days, in conspicuous places where notices to employees represented by UFF are customarily posted the attached Notice to Employees. Copies of this Notice shall be signed by the BCC's authorized representative prior to posting.² BCC shall take reasonable steps to insure that the notices are not altered, defaced, or covered with other materials. BCC shall notify the Public Employees Relations Commission in writing within twenty (20) calendar days from the date of this order, of the steps that BCC has taken to comply with this order.

This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes (2008), and the Florida Rules of Appellate Procedure.

²In the event that the Commission's order is affirmed by appellant court, the words in the notice reading "Posted pursuant to an order of the Public Employees Relations Commission" shall be modified to read "Posted by an order of the Public Employees Relations Commission, affirmed by the District Court of Appeal."

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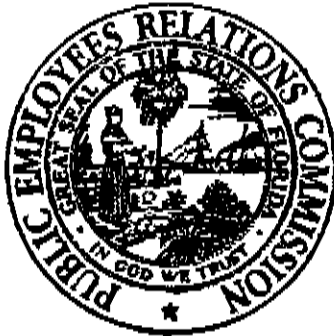
It is so ordered.

RAY, Chair, KOSSUTH, JR., and VARN, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on December 3, 2008.

BY: *Bruyeden*
Clerk

/bjk



NOTICE TO EMPLOYEES



POSTED PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYEES RELATIONS COMMISSION

AN AGENCY OF THE STATE OF FLORIDA

AFTER A HEARING IN WHICH ALL PARTIES HAD AN OPPORTUNITY TO PRESENT EVIDENCE, IT HAS BEEN DETERMINED THAT WE HAVE VIOLATED THE LAW AND WE HAVE BEEN ORDERED TO POST THIS NOTICE. WE INTEND TO CARRY OUT THE ORDER OF THE PUBLIC EMPLOYEES RELATIONS COMMISSION AND ABIDE BY THE FOLLOWING:

WE WILL NOT refuse to negotiate in good faith by unilaterally altering wages and terms and conditions of employment, conditioning agreement to a proposed collective bargaining agreement on the Broward Community College, United Faculty of Florida's acquiescence to the elimination or modification of provisions of the parties' current contract that were not agreed upon or the subject of reopener negotiations, and failing to submit all terms and conditions of employment in a proposed agreement for ratification.

WE WILL reduce to writing a collective bargaining agreement with the Broward Community College, United Faculty of Florida consistent with the Commission's final order and submit the resultant agreement for ratification and otherwise proceed in accordance with statutory impasse procedure for the resolution of collective bargaining.

WE WILL NOT, in any like or related matter, interfere with, restrain, or coerce employees in the exercise of any right guaranteed them under Chapter 447, Part II, Florida Statutes.

WE WILL pay to Broward Community College, United Faculty of Florida its reasonable attorney's fees and costs incurred.

DATE

BY

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Commission.