

Public Employee Collective Bargaining: The Florida Experience

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Executive Summary

Gov. Bob Martinez (1987-1991) summarized the fundamental responsibilities of Florida government as "public health, public safety, public education, and public works." The ability of state and local governments to provide these basic services in an efficient manner has markedly eroded in recent years.

It's no coincidence that this erosion has coincided with a period in which public employees and their unions were increasingly empowered by a series of controversial court decisions that constitutional scholars have good reason to question. Those court rulings have raised fundamental questions about the nature of government employment. For example:

Are public employees agents of the state dedicated to public service or merely laborers organized for their own economic self-interest? Can a state truly exist and exercise sovereign powers if the state cedes its own authority to outside agents who have no accountability to the public?

Both our nation and our state face these critical questions. In an era defined by the terrorist attacks of September 11th, 2001, such questions are not topics of parlor debates or academic circles. Florida's experience with public employee unions – how they came into being and how political leaders are grappling with these issues – presents a unique study.

This paper will summarize that issue, examining the events that led to the establishment of a "right" to collective bargaining for public employees in Florida. It will explain how that "right" has been interpreted. It will attempt to review the implications of what collective bargaining means for state agents, whether a civil service system is compatible with unionism, and will look at recent developments.

Finally, it will attempt to answer a fundamental question: Is public employee collective bargaining in the best interests of the public, and the state?

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INTRODUCTION

Collective bargaining by public employees is a relatively recent phenomenon in labor history, and the experience in Florida offers an interesting case study. On one hand, public employee unions are recognized as powerful contributors and organizers for the state and national political candidates who support their views. On the other hand, their right to bargain collectively is restricted in various ways, including statutes barring strikes by public employees. This leads some observers to conclude that while public employees in most states are guaranteed the right to bargain collectively, the unions have limited leverage at the bargaining table.

Government employees in Florida obtained the right to bargain collectively as a result of the state Supreme Court's rather liberal interpretation of Florida's Constitution and statutes on the heels of massive strikes during the tumultuous 1960's. The 1969 *Ryan* case presents a fascinating example of judicial activism. In its decision, the Court jumped from one extreme (public employees do not have the right to bargain) to the other (they do) based on no meaningful change in the language used in the 1885 constitution and the then recently adopted 1968 constitutional revisions. The history also shows the Court was quite willing to impose that interpretation on the people if the Legislature was unwilling to act.

Meaningful or not, collective bargaining by public employees presents several contradictions. First, it strikes at the very heart of the nature of sovereign government. Collective bargaining is an adversarial process, pitting employee against management. Sovereign government relies upon state agents to implement and uphold law, and one wonders to whom the agents are ultimately loyal – the union leadership or the public? And if government is compelled to negotiate with its own agents in order to make public policy (wages and working conditions are ultimately public policy), then how legitimate can government be?

Second, collective bargaining is an inherent contradiction in a civil service

system. Public employees become lobbyists and activists, defeating the civil service system's original goal of replacing the highly politicized "spoils system" with a new class of non-partisan, non-political, and highly professional class of government employees. The civil service system was designed to prevent political coercion, yet unionism compels political activism. The civil service system was supposed to base hiring and promotions on "merit," but collective bargaining tends to diminish the values of a merit-based system of hiring and promotion in favor of one based on longevity and seniority.

Recent developments also highlight the importance of this issue. While collective bargaining strikes at the heart of sovereignty and defeats the intent of a civil service system, it also has very real financial implications for the state government and, especially, for local governments. Taxpayer-funded pensions, health-insurance costs, and workers compensation programs threaten to bankrupt government entities or force huge increases in government taxing and spending.

Unions are not afraid to exercise their political muscle to get the contracts they want. After the terrorist attacks of September 11, 2001, the problems with public employee collective bargaining hit home. Attempts by elected policy makers to create a new Department of Homeland Security, with less restrictive prohibitions on management decisions regarding employees, met with stiff resistance from government employee union leaders and their supporters in Congress. The debate laid bare the fact that even on matters of national security, union concerns would ultimately trump the defense of the homeland in the eyes of the union.

Under the Gun

It can almost be said that Florida came to allow collective bargaining by public employees at the point of a gun. From 1960 to 1969, there were 25 public employee strikes. They idled 31,000 workers, and the public lost nearly 400,000 workdays of service. This series of escalating disruptions culminated

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in a statewide teacher strike of 35,000 professional educators in 1968 – the nation’s first statewide teacher strike. (McGuire 28)

Local school boards were forced to go to court to seek a judicial remedy to return teachers to work. This would naturally create an excessive financial burden on smaller districts. The growing number of work stoppages, coupled with the fiscal burden on public resources, led public managers to begin to promote collective bargaining as well, in the hopes it would return state and local government to stability.²

With local governments and public managers joining public employee unions in demanding collective bargaining powers, under the guise of promoting “labor peace” and improving working conditions (and theoretically the delivery of public services), the Florida Constitutional Revision Commission adopted language to require bargaining with public employees. This language was submitted to the Florida Legislature in 1967, where it was amended before the new Constitution was put before voters during the 1968 election and subsequently adopted. In 1969, the Florida Supreme Court overturned a lower court ruling and held that the then-new Florida Constitution, which had been adopted in 1968 to replace the venerable 1885 Constitution, guaranteed a “constitutional right” for public employees to bargain collectively. It would be another five years before the Legislature would finally codify that right in the 1974 Public Employee Relations Act, or “PERA.”

The Calm Before the Storm

Florida is known as a “Right to Work” state, wherein employees are not compelled to join unions in order to find employment. Florida adopted this constitutional protection in 1943 as part of the movement that swept parts of the country in response to the enactment of the National Labor Relations Act of 1935. (Vause 115) That act guaranteed collective bargaining rights to private employees “whose employment came

within the purview of Congress’s Commerce Clause Powers.” (Orta 269) Prior to 1943, both the Florida statutes and the 1885 state constitution were silent on public employee collective bargaining or strikes. As a matter of common law, however, employers were under no obligation to bargain, and public employees were prohibited from striking. (McGuire 34)

Unionizing among public employees was in its infancy, and the primary issues of the 1940’s and 1950’s were whether public employees could even join unions or form associations to bargain, and whether a public employer could willingly bargain. (McGuire 34)

In 1943, the Florida Legislature passed a statute to allow employees to self-organize, not expressly including or excluding public employees. That same year, a constitutional amendment passed that included the “Right to Work” clause³, to protect workers from discrimination based on membership or non-membership in a union. Public employees again were not expressly included or excluded. (McGuire 35)

The issue was far from being resolved. In 1946, Florida Supreme Court determined in *Miami Water Works Local 654 v. City of Miami* that neither the statute nor the Constitution required the City to recognize the union for purposes of collective bargaining. (McGuire 36) Public agencies were still under no compulsion to negotiate with their employees.

The tide began to turn in 1959. That year, the Florida Legislature defined the limits of union membership for government employees. It prohibited employment of any person who participates in a strike or asserts the right to strike against the government, or who is a member of an organization asserting that right. However, employees were allowed to be members of organizations that adhered to the prohibition against striking, and they also were afforded the right to present proposals regarding salaries and other conditions of employment through representatives of their own choosing. (McGuire 38-39) Thus, the question of whether public employees could join or form a union and at least present

proposals to public employers had been settled in the affirmative.

Subsequent opinions issued by the attorney general held that employers were under no obligation to adopt or consider proposals, an important distinction. In 1968, however, the Florida Supreme Court stated in *Pinellas County Classroom Teachers Ass'n v. Board of Pub. Instruction* that the 1959 statute guarantees “the right to bargain as a member of a union or labor organization.” This was clearly a reach, since the statute said nothing about “bargaining” but merely allowed the employee organization to present proposals – proposals that the employer was under no obligation to entertain. Because this statement was not essential to the holding that the circuit court had authority to enjoin public schoolteachers from striking and because the Court did not elaborate, the question of whether public employees could bargain collectively was postponed. (McGuire 39) However, it is clear from this interpretation — rendered *prior* to the adoption of the revised Constitution — that the Court had every intention of ruling sooner or later (probably sooner) that public agencies would be forced into compulsory wage and labor negotiations with employees.

Teachers vs. Teachers

Ironically, the very case that the Florida Supreme Court would use to find that public employees enjoyed a *constitutional* “right” to bargain collectively was one brought by one teachers’ union to prevent another from being recognized as the exclusive bargaining agent. So much for “labor peace”! In November of 1968 – the same month that Florida voters approved the revised state Constitution – the Dade County Education Association, together with two newly employed teachers (one of whom was named Ryan) filed an action in Dade County Circuit Court seeking an injunction preventing the Dade County Board of Public Instruction from recognizing the Dade County Classroom Teachers Association as the exclusive bargaining agent for Dade County teachers. (McGuire 41)

The Supreme Court noted that the lower court had found that “the revised Constitution

of 1968 does not change” the previous court findings that “the process of collective bargaining contravenes the laws and statutes of the state of Florida,” going on to cite the *Miami Water Works* case among others. Chief Justice Ervin, in the unanimous court decision, rejected the lower court’s construction of the newly adopted Article I, Section 6 of the Florida Constitution. He stated that the lower court had “[painted] with too broad a brush in eliminating all collective bargaining by public employees . . .” and held 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.” Ervin went on to write that the previously cited cases, including *Miami Water Works* and *Dade County v. Amalgamated Ass’n of St. Employees* “only went so far as to construe the law then existing and did not pass upon later modifications in the law relating to collective bargaining rights of public employees.” (McGuire 41)

There is one immediate problem with the Court’s conclusion in *Ryan* that, except for the capability to strike, public employees “have the same rights of collective bargaining as are granted private employees.” The Court appeared to make no distinction between public employment and private employment. The Court also seemed to ignore several fundamental differences between the two, including these:

1. Most public employees enjoy civil service protections, including a merit hiring process, tenure, and significant due process rights in the event of termination or layoffs. Private sector employees enjoy no such significant protections.
2. Public employees work for agencies that provide goods and services the market is unwilling, unable, or not allowed to provide, and therefore enjoy a monopoly on the provision of those services. Typically, once government begins to provide a service, it often does not stop providing that service or reduce the workforce. And even if it does reduce the workforce, civil service protections

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usually require the employee to be offered a different position within government.

3. In the private sector, employees provide their time and services in exchange for compensation. That compensation is rendered only if the employer enjoys sufficient profits. In theory, it is in the best interests of both the employees and the employers in private bargaining negotiations to work toward the common goal of increasing profits, so as to improve both the business and the livelihood of its employees. In the public sector, however, additional revenues must be generated either through higher taxes or through reduced government spending on items other than employees' compensation. Therefore, public employees could theoretically gain from higher taxes and/or reduced spending on other programs in order to increase spending for their own wages and benefits. Therefore, collective bargaining by public employees has a fiscal impact that the public must bear, while private sector bargaining only has an impact on the employer, and to a lesser extent the consumer, who may either pay higher prices or purchase from a different provider.

The Court might be excused, however, from failing to make a distinction, since the newly adopted Constitution itself made no distinction. And given the legislative history of how the change came to be adopted, there was much confusion to go around.

The Court interpreted that the "Legislature intended both private and public employees to be included in the word 'employees' in the second sentence of Section 6." More important to the Court, however, was section 839.221 of Florida Statutes (the 1959 law). The Court determined that the constitutional revision was "in large part a constitutional restatement" of that statute, which the Court had previously found in *Pinellas County Classroom Teachers' Ass'n* to guarantee public employees "the right to bargain as a member of a union or labor organization." To the Court, Article I, Section

6, merely "elevates to constitutional status a right which was given to public employees by the Legislature when it enacted section 839.221 in 1959." As was pointed out earlier, section 839.221 only allowed public employees to join organizations that did not advocate strikes, and it allowed for organizations to "make proposals" related to compensation and working conditions. There was no mandate that public employers recognize employee unions for the purpose of negotiating wages, benefits, and working conditions. Ervin's opinion appears to contradict the statute as it was written.

Chief Justice Ervin also relied primarily on a legislative background document prepared by William A. O'Neil, a member of the Constitutional Revision Commission, titled "Statement-Chronology-History." He stated that the final resolution, approved and submitted to the people and later adopted, indicates that the Legislature intended that the word "employee" include both public and private. McGuire goes on to point out that, "Although the *intent of the staff members* who advised the Conference Committee emerges clearly from this account of the creation of art. I, sec. 6, whether their intent was shared by the Conference Committee itself is problematic." (Emphasis added.)

In 1965, the Legislature established the Constitutional Revision Commission to "consider and formulate a proposed constitutional amendment for the Florida Legislature." In its proposed language, released in November of 1966, the revision stated, "The right of employees, *public or private*, by and through a labor union or association, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." (Emphasis added) The version was then introduced to the Legislature in January 1967. It was clear the Constitutional Revision Commission intended to recommend that public employees enjoy collective bargaining powers.

The Florida Senate later adopted the language, which was modified to delete the word "association" while still retaining the

words “public or private.” The House of Representatives, however, after debating, adopted the following: “The right of *private employees*, by and through a labor organization, to bargain collectively shall not be abridged or denied. Public employees shall not have the right to strike.” This seems to imply that the House of Representatives deliberated and determined that only *private* employees should enjoy collective bargaining rights. At best, the Legislature, at this point, was divided on the subject.

The failure to concur from both houses resulted in the appointment of a conference committee. According to Mr. O’Neil, a memorandum was prepared by staff for comparison by the conferees before final adoption titled: “Section 6-Right to Work, draft: New provisions *specifically giving public employees the right to join labor unions, to bargain collectively, but prohibits them from striking.*” (Emphasis added) This can more readily be interpreted to state the position of Mr. O’Neil, but again, cannot be taken to mean that the committee agreed with that determination. The conference committee adopted the following, striking the reference to either public or private, stating: “The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” This language was then adopted by both houses and submitted to the people for approval. To suggest, however, that this clearly defines the “intent” of the Legislature does not follow. The Legislature merely deleted both the words “public” and “private.” At best, it remained silent on the issue by adopting language that was substantially similar to the original 1885 Constitution. The Florida electorate would later approve this language in the referendum.

McGuire then poses another important question:

[It is unknown] whether the Legislature could have intended to work a change from Section 12 of the declaration of rights (1885 Constitution) by using almost precisely the same language – language, moreover, that had been commonly interpreted as prohibiting collective bargaining by public employers

and employees. (Emphasis added) Even if the conference committee adopted the intent of the staff, and the Legislature that of the conference, it does not follow that the people necessarily adopted the intent of the Legislature. A more reasonable interpretation is simply that since no major language changes occurred in the transition from sec. 12 [of the 1885 Constitution] to Article I, Section 6 [of the 1968 Constitution], the meaning of the section remained unchanged. Thus, if section 12 had prohibited public employee bargaining, so should Article I, Section 6. Chief Justice Ervin, however, reached a contrary conclusion: In his view, Section 12 had been interpreted as prohibiting public employee bargaining ... but he concluded that those cases had been legislatively overruled by the enactment of Article I, Section 6, a virtually identical provision to section 12 ... The legislative history does not necessarily support that interpretation. (Emphasis added)

While McGuire’s history lesson regarding the adoption of Article I, Section 6 provides fodder for debate, it is now a moot point. After all, whether or not the Court erroneously reached its conclusion that public employees have a right to bargain collectively does not dismiss the fact that public employees in Florida may form or join unions for compulsory wage and benefit negotiations. It should be noted that the Legislature clearly shares part of the “blame,” as it were, for intentionally adopting language that was ambiguous. It appears that the Legislature may have hoped to shift the issue to the Courts if they themselves could not reach consensus on the issue. Politically, this is not unheard of. After all, legislative supporters of collective bargaining would correctly assume that the Court had shifted to a more liberal position (see the *Pinellas* decision) and would almost certainly allow compulsory bargaining, while opponents could vote for language not expressly providing public employees bargaining powers and therefore blame the Courts if it held otherwise. In the end, this ambiguity provided the very straws that Justice Ervin could grasp to find these newfound “rights.”

Between 1969 and 1973, legislative attempts to create the statutory mechanism implementing collective bargaining

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procedures for all government employees failed. Obviously, this frustration led to government employee unions filing suit to demand that the Legislature act on the Ryan decision. In 1972, the Florida Supreme Court ruled in *Dade County Classroom Teachers Association v. The Legislature of Florida* that “unless the Legislature acted within a ‘reasonable time’ to implement the constitutional right, the court would ‘have no choice but to fashion such guidelines from judicial decree’...” (Vause 117)

To demonstrate this, in 1973, the court appointed the Supreme Court Public Employees Rights Commission to recommend guidelines for judicial implementation.

Under this threat, the Legislature adopted in 1974 the Public Employees Relations Act, creating Section II of Chapter 447 Florida Statutes.⁴ Once again, Florida was “under the gun” to act.

Post-PERA –

More Than We Bargained For?

Not surprisingly, judicial opinions that discover constitutional rights and mandate their implementation⁵ do not necessarily resolve questions but often provide more impetus for further litigation and controversy. This should have come as no shock, even to supporters of public employee compulsory negotiation powers.

Collective bargaining and union representation naturally creates an adversarial relationship between employee and employer, more so than the typical complaints every employee has about “the boss” or complaints employers have about their employees. This adversarial relationship is formalized in federal law that seeks to “level the playing field” by requiring employers to recognize unions for collective bargaining purposes and by largely preventing employers from firing employees who engage or participate in strikes.

The strike is the ultimate weapon of the union, but in Florida, the government employees do not have such a weapon in their arsenal. In Florida, dispute resolution

– the reason behind the desire to strike – is addressed through a process of mediation and arbitration outlined under Part II of Chapter 447 of Florida Statutes. Florida is not alone, since most states that require negotiating with government employees concerning wages and benefits do not allow strikes by those public employees. (Vause 109)

In Florida, the preferred approach when agreement cannot be reached through bargaining is to resort to a third party dispute resolution process. This process provides for mediation as the first step, followed by the appointment of a fact-finding panel to make non-binding recommendations, and finally permitting arbitration. (Vause 111-113) However, final decision making authority still rests with the legislative body in Florida, and binding interest arbitration is also denied as an alternative, much to the disappointment of government union advocates.⁶

The Court has, not surprisingly, faced a number of legal questions due to the inherent conflict of mandating compulsory wage and benefit negotiations with public employee unions. This has led to several significant decisions that further delineate that ability.

In 1979, the First District Court of Appeals in *United Faculty of Florida v. Board of Regents* noted that a collective bargaining agreement “is subject to required funding by the Legislature through its appropriations power” when the state Legislature is the legislative body. It is important to recognize that even though this ruling does not require the Legislature to appropriate funds, it does limit the Legislature’s authority to amend or change existing law when it impacts a constitutional right on anything *other than* the funding issue. This decision also reaffirmed the Court’s position that despite concerns over the separation of powers doctrine, the Florida Supreme Court “has consistently reaffirmed the judiciary’s right to review legislative action which impinges on a constitutional right.” (Orta 281)

The Court has also noted some procedural aspects of the compulsory negotiation process that distinguish it from private sector

bargaining. In *City of Tallahassee v. Public Employees Relations Commission*⁷ the Court affirmed that Section 447.301(2) Florida Statutes abridged the collective bargaining powers of public employees by “excluding retirement provisions from the bargaining process.” While recognizing these differences from the private sector, the Court went out of its way to “reinforce the [Court’s] stance that, notwithstanding any distinctions between public and private sector bargaining, the constitutional rights of *all* employees to bargain collectively must not be abridged.” (Orta 283)

In 1988, the Florida Supreme Court followed up with *Hillsborough County Governmental Employees Ass’n v. Hillsborough County Aviation Authority*⁸ and again asserted that the right to bargain collectively was a fundamental, constitutional right requiring the state to demonstrate a compelling state interest before engaging in conduct that may abridge that right. The court noted that the “Florida Constitution guarantees public employees the right of *effective* collective bargaining. This is not an empty or hollow right subject to unilateral denial. Rather it is one which may not be abridged except upon the showing of a compelling state interest.” (Emphasis added) Note the use of the word “effective.” Here the Court has raised the bar on its protection of collective bargaining powers, requiring that the “right” be “meaningful” in the sense that attempts to curtail it would be rigorously scrutinized.⁹

Later in *Chiles v. United Faculty of Florida*¹⁰ the Florida Supreme Court held that “once the legislature funds a negotiated agreement, it may not unilaterally retract that funding.” The ruling did not permit employees to *require* the Legislature to appropriate funds, but it also did not allow the Legislature to retract such funding once appropriated. The Court reasoned that once funded, such an act would be in violation of Articles 6 and 10 of the Florida Constitution because “a valid contract existed once the contract occurred.” (Orta 261)

The appropriation power issue was also visited in *State v. Florida Police Benevolent*

Ass’n.¹¹ The Florida Supreme Court held that the Legislature, through its appropriations powers, can unilaterally alter the terms of any negotiated public employment agreement provided the Legislature has not appropriated sufficient funds to finance the agreement. This nuance has left government employee union advocates disheartened, since the Court has effectively said the Legislature may simply *under fund* an agreement, thereby altering the terms of the agreement. In the majority opinion, the Court cited a number of significant differences it found between private sector bargaining and public sector bargaining. These included:

1. Public employee unions must engage in a political process – lobbying – in order to achieve the same concessions attained by private employee unions at the bargaining table.
2. The employer is not the body that determines funding in the public sector. Typically, the employer is an agency while funding comes from a legislative body, such as state legislature, school board, or county commission.
3. For state employees, the Legislature has sole constitutional authority over the appropriations process, and agencies cannot exceed their constitutional authority without violating the separation of powers doctrine. This also includes the fact that the Legislature is not required to fund the agreement at all or may fund only a portion of the agreement, although as mentioned earlier, once an agreement is funded, the Legislature cannot rescind a portion or all of that funding.

Proponents of government employee bargaining have chaffed at the ruling as cited above. Orta would write:

Notwithstanding this apparent conflict [between the legislative appropriations power and the right of public employees to collectively bargain], the ... holding raises serious questions about the sanctity of article I, section 6. More importantly, the ... holding undermines collective bargaining rights of public employees ... [and] ... the possible effects ... present other concerns which implicate the dynamics of

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Bush's proposal
was known as
the "Service
First" initiative.

the public bargaining process and which may change the concept of collective bargaining.

Arguably, this holding transforms the collective bargaining process into an exhibition of collective begging.

In spite of Orta's lament, a number of government employee unions successfully litigated to be included under Article I, Section 6. These include deputy sheriffs,¹² attorneys¹³, and deputy clerks.¹⁴ If indeed public employees are reduced to "collective begging," then one wonders why so many wish to be put in that position.

Two Minds Are Not Better Than One

It has been shown that government employee collective bargaining presents some unique constitutional difficulties. Florida's Constitution goes on to create one more conflict by requiring the Legislature to create a civil service system. The Florida Constitution currently states in article III, section 14:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

Currently, Florida statutes governing the civil service system are found in Chapter 110. This current system has been in place since 1979. While the statutes do not define "civil service system," legal commentators have stated:

While security of tenure in office is an important object of the civil service system, and it has been said that civil service statutes have been enacted to afford state and municipal employees with reasonable job security by protecting them from political considerations and partisanship, and that civil service statutes are designed to secure adequate protection to career public employees from political discrimination, the civil service was not established for the sole benefit of public employees, but also to ensure efficient public service for state, county, and municipal government.¹⁵

Since 1980, a number of issues have been

identified with Florida's civil service system, including the constraint managers face in hiring and firing, the practice of using seniority to determine retention and "bumping," a poorly differentiated compensation system and a tight control on employee work that "inhibits responsiveness and problem solving ... [and forces employees] to abide by cumbersome, work increasing rules [that] deaden personal initiative and cooperation and fosters an attitude of indifference."¹⁶

In 2001, Governor Jeb Bush proposed legislation to overhaul the state's Career Service System. The stated priorities were "a smaller, more efficient government with a reduced infrastructure which does more with less; performance pay; the implementation of portable retirement plans; a reduction in the number of boards, councils and commissions; consolidation of multiple information technology operations into an enterprise organization; and pursuit of purchasing, facility and travel economies which produce value and avoid expense." These proposals came on the heels of notable reports from the Florida Council of 100 and other groups that criticized the current system and recommended reforms.

Governor Bush's proposal was known as the "Service First" initiative. Key elements included allowing supervisors to use "reasonable cause" to dismiss an employee, removing career service protections from roughly 16,300 managers and supervisors, and improving employee benefits such as permitting cash payouts for unused vacation and sick leave.¹⁷ The proposal was passed into law, and most parts of it have survived court challenge and are now in effect.

The problem arises from the fact that the Florida Constitution appears to be of two minds on the subject of government employees. On one hand, the Constitution mandates that the Legislature create a professional employee system designed to hire and promote on merit and keep employees free from political coercion. On the other, the Constitution now mandates that government agencies reach a negotiated agreement with

their employees' labor union for wages, benefits, and working conditions.

It also cannot be argued that unionization of public employees does not, in fact, create *politicization* of public employees. The court has even recognized this when it suggested that employees would have to lobby the Legislature for concessions.¹⁸ The media would report that opposition to Governor Bush's civil service reforms would be "seen as a direct attack on public employees unions long tied to the Democratic Party. The unions representing Florida government workers gave \$5.1 million to Democratic candidates nationwide [in 2000], making it the party's largest single contributor."¹⁹ The Democratic leader in the Florida House of Representatives at that time, Rep. Lois Frankel, stated that the reforms would "lead to the politicization of public employment." The state chapter of the largest government employee union in Florida, the American Federation of State, County, and Municipal Employees (AFSCME) Local 79, would lead the court challenges to undo policymaking decisions made by the elected representatives of the people. As evidenced by the political contributions and legal actions of the public employees union, it appears that government employees are already "politicized," in spite of Representative Frankel's concerns.

Consider another example of how collective bargaining not only allows but encourages political activity that conflicts with the civil service goal of keeping politics out of public employment. It is the practice of local unions to "bank" paid leave hours into a pool that can be used by union members to lobby elected officials on behalf of their members. In this way, government employees are paid through taxpayer funded dollars to lobby on behalf of a private interest group.

Public employee unions are certainly not afraid to flex their political muscle. The Fraternal Order of Police in Orlando has been feuding with the city's mayor, Buddy Dyer over his refusal to agree to a salary increase of more than 2 percent – the same as the other city employees. The union has

decided to target city council candidates in the upcoming election who refuse to agree to their salary demands, and it has not ruled out instituting a recall election against Dyer. In an article published in *The Orlando Sentinel*, the police union is taking a page from the locally powerful firefighters union. The *Sentinel* lists union political activities, including "issuing a coveted endorsement ... campaign tirelessly for candidates they ordain, knocking on doors, planting campaign signs, handing out barbeque at district picnics and appearing at debates."²⁰

One wonders, therefore, about the efficacy of having a civil service system at all if public employees are afforded the ability to form unions for the purpose of political activity and collective bargaining. Florida's contradictory constitutional minds on public employees appear to show that the intention of creating a non-politicized public employee workforce is secondary to the unionization of government employees.

"To Collect and Serve"

The *St. Petersburg Times*, in an exhaustive investigative report entitled "To Collect and Serve,"²¹ exposed how generous disability pension programs for government employees were rampant with fraud and abuse. The *Times* found that in some areas around Tampa, "1 in every 3 police officers and firefighters retires on a disability pension." These officials are "rarely called back to work – even if they recover." In fact, these disability pensions are typically more appealing than the regular pension benefit, and are tax free.

Of course, these benefits did not come about overnight. In 1953, the Florida Legislature approved a premium tax on car insurance and homeowners insurance to fund local police and fire disability pensions. The report cites "strong lobbying by public safety unions." The power of the local unions is also found in the individual contracts with very "liberal" retirement plans.

In 2002, the Florida Legislature extended to law enforcement officers the same hypertension disability presumption available to firefighters.²² Prior to the

Public employee unions are certainly not afraid to flex their political muscle.

Indeed, all over the country, generous benefit packages afforded to public employees through collective bargaining agreements or union lobbying are creating a massive fiscal problem.

new law, a law enforcement officer would have to prove that a hypertension-related disability was directly work-related. Now, that presumption is already made. According to a study conducted by the Florida Sheriff's Association, the number of heart and hypertension claims for sheriff's department employees went from six in 2000-2001 to 58 in 2003-2004. The total paid to date in claims rose in that period from \$285 to \$447,294.30.

Indeed, all over the country, generous benefit packages afforded to public employees through collective bargaining agreements or union lobbying are creating a massive fiscal problem. On June 13, 2005, *Businessweek Online* published a special report titled "Sinkhole: How public pension promises are draining state and city budgets."²³ It noted that liabilities to state and local governments are creating a "flood of debt" and that the cost of public employees' retirement plans continue to rise. The U.S. Census Bureau estimates that major public pension plans paid out \$78.5 billion in the year that ended on September 30, 2000. By 2004, during that same time period, that number had climbed by more than 50 percent, to \$117.8 billion. The *Businessweek* report goes on to note that excluding federal employees, "more than 14 million public servants and 6 million retirees are owed \$2.37 trillion by more than 2,000 different states, cities, and agencies." And to further add fuel to the fire, the report notes that no one knows "how much retiree health care has been promised to public retirees." As people live longer, and the cost of extending life grows, taxpayers are definitely going to shoulder more of the burden.

Florida attempted to get a handle on its own pension problems by offering a traditional defined contribution plan to state employees in 2000 – a typical 401(k) model. By 2002, only 3.5 percent of state employees had enrolled in this plan, according to *Businessweek*. Even in 2004, when the markets had recovered, only 18 percent of new hires took advantage of the 401(k) plan.

Better benefits and job security for public employees have traditionally been seen as "trade offs" to make public employment

more attractive despite wages and benefits that traditionally were lower than wages and benefits for comparable jobs in the private sector. However, the *Businessweek* special report cites data from the Employee Benefit Research Institute and the U.S. Department of Labor showing that in 2004, the average salary for a public employee was \$49,275 compared to \$34,461 for the rest of us. It should be noted that the government calculates low-wage private sector jobs in the retail and service industry to make this comparison; however, public employee salaries are clearly looking like a good deal. The U.S. Department of Labor also shows that state and local government managers and professional staff earned the equivalent of \$42.87 an hour in 2004, while their private sector counterparts earned \$41.52. One big reason is that government employees earn \$2.62 an hour in retirement benefits alone, compared to \$1.63 for private sector employees. All in all, the Employee Benefit Research Institute, according to *Businessweek*, concludes that "state and local government wage and salary costs are 40 percent higher than the private sector's; its employee benefit costs are 60 percent higher."

Much Ado About Nothing?

Even the most ardent opponent of public employee unionization and compulsory bargaining cannot dispute the fact that public employee unions' representatives are at a disadvantage when sitting at the bargaining table to negotiate with public agencies. First, under no circumstances may public employees strike. Often, advocates of collective bargaining cite this limitation as proof that public employee unions' bargaining ability is not truly meaningful. Moreover, as has been noted, the courts have also held that the Legislature is under no obligation to fund a collective bargaining agreement, and may alter the agreement arbitrarily by simply underfunding it. In Orta's opinion, for example, collective bargaining in Florida can become an exercise in "collective begging."

But what of it? The weak position

of public employee unions in Florida as compared to other states does not resolve certain fundamental problems of government employee collective bargaining. The legal prohibition against strikes, for example, does not make compulsory negotiation any more appropriate than if public employees enjoyed that right to strike. Whether the position is strong or weak does not change the *nature* of the position.

Supporters of collective bargaining powers have long dominated the research and literature in the academic world. Today, fundamental questions are no longer asked of the appropriateness of public employee unionism. One can go as far back as 1974 and find the following:

[The voluminous scholarly literature on the subject has been virtually of a single mind. One searches in vain among recent law review articles for a commentator who opposes these trends [of public sector unionism and bargaining]; not a one has stated in print that the irreconcilable conflict between meaningful sovereign government and meaningful public-sector collective bargaining should be resolved in favor of the former. More than that, while some have implicitly recognized the existence of the conflict, no one has seen fit to explore it in any depth. The law review writer typically puts the word "sovereignty" in quotation marks and then as a rule move swiftly to the conclusion that compulsory public-sector bargaining laws are justified – or even necessary – "on the private sector analogy."²⁴

Rather, academic and legal research typically focuses on the impact that unionism has had on topics such as wage growth, budgets, personnel issues, strikes, and employment. Usually, this research reflects a positive disposition toward public sector unionism. To those who wrote that collective bargaining was inappropriate for the public sector, they argue that early concerns about its viability were "exaggerated." Loney wrote in 1989 that the previous 25 years of labor relations research had born out that the reservations held by some about public employee unionism and mandatory wage and benefit negotiation "had not come to pass." For example, he argued that the research

showed that collective bargaining had not usually produced crippling increases in pay and benefits, and that there did not appear to be a significant interruption of services due to work stoppages and strikes. He also argued that the research showed that, other than police and teachers, most unions have had minimal impact on public policy.

Loney's points are debatable and in conflict with later academic research that shows a strong correlation between public sector unionism, wage growth, and political influence,²⁵ as well as the examples cited above about pay and pension benefits. Moreover, his points do not address the primary problem with public sector unionism and collective bargaining: *the abdication of state sovereignty*. Why is this important? First, a definition:

[T]here is a broad concept - not a definition, but a wide philosophical category - which unites most of sovereignty's past, and with which we can begin: authority. Authority is "the right to command and correlatively, the right to be obeyed."^[5] It is legitimate when it is rooted in law, tradition, consent or divine command, and when those living under it generally endorse this notion. Legitimate authority is crucially different from power, which is raw, pure, physical and direct. Power, according to Steven Lukes, is exercised "when A affects B in a manner contrary to B's real interests."^[6] Even at its most monarchical and dictatorial, even in the case of the absolute law-giving monarch of Thomas Hobbes, sovereignty is conferred by some notion of right which provides a basis for assent other than coercion.^{[7]²⁶}

Sovereignty begins with legitimate authority, which may also be considered as being the legitimate use of force. We expect our governments, local, state, and especially federal, to be able to exercise force in order to protect our territorial integrity and preserve domestic order. These issues are once again of paramount importance since the terrorist attacks of September 11th, 2001. The tension between the ability of government to protect the territorial integrity of the nation and public employee unions who only wish to protect their special interests was highlighted after President Bush proposed the creation of

... the primary problem with public sector unionism and collective bargaining: the abdication of state sovereignty

The Florida Supreme Court also brushed aside the notion of the sovereignty doctrine when it considered municipal tort liability. Comparing a city to nothing more than a large business institution...

the Department of Homeland Security. Public employee unions moved to block any attempt to limit union rights in spite of national security concerns.²⁷ Sovereignty is again taking on a whole new meaning.

Sovereignty is conferred in this country through a means of representative democracy. We elect public officials to perform two basic functions: (1) to make and administer laws and budgets and (2) to exercise public authority. (Summers 7) In both cases, instruments of state authority, or *people*, carry out these functions. These people are usually called “agents of the state,” and take the form of the armed forces, public administrators, teachers, police, firefighters, and the like. Therefore, public employment is essentially different from private employment – more so than the courts have probably acknowledged.²⁸ Summers writes: “Public employment is fundamentally different from private sector employment. The ‘employer’ is a public democratic agency representing the will of the public. The job of that agency is to confer a public benefit. It cannot do this without employees.” (Summers 9)

State agents – public employees – are extensions of state sovereignty. They are the means by which elected officials implement public policy. However, what happens when those state agents are afforded the right to collectively bargain? Herbert Marx made this observation on the implications of local government collective bargaining:

The net effect has been to create what amounts to a two chamber local government. One chamber is made up of elected representatives and chief executives — aldermen, councilmen, county board or commission members, mayors or other chief executives — the traditional decision-making body for local government. The other chamber comprises the organized public employees who have gained official recognition to negotiate. The public business on wages and conditions of work, and therefore indirectly on policy, cannot be carried on without mutual agreement between these two chambers, much as the laws of Congress require the approval of both houses. The implications of this new method of reaching decisions in local government put

an entirely different aspect on the sovereignty of councils and executives and elected officials as well. The challenge of organized public employees can mean considerable loss of control over the budget, and hence over tax rates and over government programs and projects. The gravity of the challenge was recognized by some municipal officials ... but most of them took the position that to study the new phenomenon was to encourage it. As is usually the case, the ostrich stance was a mistake: When employee organizations suddenly burgeoned, municipal officials were not prepared with effective rejoinders before legislatures and in negotiations.

As Petro stated, state sovereignty is “irreconcilable” with meaningful collective bargaining. Orta summarily dismisses the notion of any problem with sovereignty as merely “a demonstration of anti-union hostility.” The Florida Supreme Court also brushed aside the notion of the sovereignty doctrine when it considered municipal tort liability. Comparing a city to nothing more than a large business institution, the Court stated, “To continue to endow this type of organization with sovereign divinity appears to us to predicate the law of the Twentieth Century [sic] upon an Eighteenth Century [sic] anachronism.”²⁹ One wonders whether other eighteenth century concepts such as freedom of speech or the right to bear arms are also nothing more than quaint “anachronisms.”

Merely dismissing the problem of sovereignty does not mean that the problem is resolved however. Petro outlined the problem of sovereignty and bargaining in 1974, and to date, his points, while ignored, have not been refuted.

Collective bargaining creates a conflict of loyalties for state agents. It “subjects the employees involved to union orders and to union control at least as much as to control by the employing government.” He continues:

Thus employers, governmental and private alike, find themselves cast from the employees’ point of view with tragic inevitability in the role of villain, while unions create for themselves with great facility and felicity the role of heroes. And thus, too, is the paradox of the independent sovereign resolved. Of the two competing

governments to which they are subject, the union and the employer, the employees tend to prefer the union sovereign. They look to it as their protector and protagonist. It keeps getting or trying to get more and more for them. Their loyalties go to it, not to their employer.

Advocates of government employee unions might point out that the data show, at least in Florida, that dues-paying union membership among public employees still remains well below 50 percent.³⁰ An argument might be made that if, indeed, employee loyalty was tilted so far to unions, their dues-paying membership rate should be much higher. However, such an argument ignores one of the most common economic problems – “free ridership.” Atkin and Masters examined free rider issues in 1989.³¹ They concluded, quite obviously, that most employees would choose not to pay dues if they received the same benefits as those who do. Ironically, it is public employee unions’ insistence on compulsory public sector bargaining that creates this problem. Unions demand to represent *all* public employees in a bargaining unit, even if only a bare majority of those voting on representation support unionization or representation. It seems that the next logical step for government employee unions is to then demand compulsory union membership. Fortunately in Florida, the state constitution prohibits the requirement to join an organization for employment – for the moment, at least.

Bargaining also “dilutes” government sovereignty by creating the “two chamber” government described by Marx above. Sovereignty, defined as “the unchallengeable power to perform functions it assumes or has allocated to it,” is delegated away to an unelected, unaccountable third party – the union. One can even question whether government truly exists as an institution if bargaining is imposed. Our pluralistic society “depends upon a fully empowered government to keep the peace by definitively resolving the disputes which are bound to arise from them.” (Petro 70) Public employee bargaining strips away that authority, making government just another interest group, with no final arbiter

or authority. This undermines government’s sovereign authority. Petro points out:

When the power of government to govern is challengeable from within by its own human instruments, organized civil servants, it ought in respect to the serviceableness of meaningful language no longer to be called government at all.

Petro and Orta would probably agree, however, that collective bargaining in Florida is a “sham.”³² Public employee union representatives said as much during the recent debate over Governor Bush’s Service First initiative. Consider this quote from a Florida newspaper: “AFSCME maintains that the state does not bargain “in good faith” but simply makes offers it knows will be rejected, then gets the Republican-run legislature to impose them by law.”³³

Sham or not, compulsory bargaining with government employee unions still exists and is still predicated on the Court ruling that it is a “meaningful right.” The state has still delegated a substantial portion of its authority to unelected organizations, and created a structure whereby public employees’ loyalties are divided. While at present, Florida’s state government may appear to be less influenced by government unions; that can certainly change with time. Public officials more sympathetic to unions can be elected and the bargaining power of unions may be enhanced. The fact that government unions may be relatively weak compared to those in the private sector still does not negate the sovereignty problem. Meanwhile, in some of Florida’s largest cities, counties, and school districts, public employee unions exercise tremendous power over spending and public policy issues.

An Uncivil Service

The other irreconcilable problem, reflected in Florida’s Constitution, is the existence of a civil service system and collective bargaining. Does public employee collective bargaining preclude and negate a civil service system? Can Florida have both compulsory negotiation and a meaningful civil service system that protects government employees from political coercion and

The state has still delegated a substantial portion of its authority to unelected organizations, and created a structure whereby public employees’ loyalties are divided.

... a civil service system is meant to afford the public efficient service from government, along with reasonable job security and protection from political favoritism.

provides a merit system of hiring and promotion and due process?

The answer is clearly no.

As was shown above, a civil service system is meant to afford the public efficient service from government, along with reasonable job security and protection from political favoritism. These values are consistent with government sovereignty, which exercises authority on behalf of all people and not one particular interest. Ironically, the leading government union today, AFSCME, was formed to promote civil service for state and local employees. Collective bargaining, while it was viewed favorably, was not considered essential, yet a meaningful civil service system was deemed essential. This view changed in the mid-1960's, and in 1968³⁴, the AFSCME constitution was amended to read, "We are committed to the process of collective bargaining as the most desirable, democratic and effective method ... to promote the welfare of the membership and to provide a voice into the determination of the terms and conditions of employment." Jerry Wurf, then President of AFSCME, stated in 1969 that the civil service system was "a thing of the past," as was "the management system of the boss — he owns it." Except perhaps for recruitment and examination functions, AFSCME believed that civil service functions should be replaced by collective bargaining. (Steiber 116)

Marx explains that it was probably because of the growth of private employee unions in the 1950s and '60s — especially in large urban centers where elected officials were sympathetic to unions — that caused this change in AFSCME's position. The growth in government, which naturally creates a growth in the number of employees, may foster the employee's sense of being "exploited." He also goes on to point out that the collective economic interests of employees played a part. He wrote:

In addition, the civil service system, originally conceived to protect public employees from the spoils system, among some employees has tended to create hostility toward public

administration. The merit principle of promotion and the hierarchical structure of governments necessarily create a pyramidal system for advancement, but of course not everyone can reach the top. Those who can't get anywhere near it seek other means of improving income and maintaining their self-respect, and employee organizations furnish both a method of challenging the rules of advancement under the merit system and a route toward higher income if advancement is stymied. On the other hand, when public employees organize, the civil service system provides shelter and protection against managerial reaction.

A merit based civil service system will not survive compulsory negotiations with government employee unions. The union would have to agree to refuse to take up any dispute with a civil service decision at any point, at either the negotiating table or through the grievance process. It is inconceivable that unions would agree to do so. Also, the principles of collective bargaining do not coincide with a merit-based system. (Petro 84) Collective bargaining is just that — *collective negotiation*. A union must represent all members, and at times, all employees *regardless* of membership. A union seeks to equalize wages and benefits and establish a uniform grievance and due process system. In theory, a civil service system seeks to hire and promote based on merit, and therefore tends (in theory, at least) to favor the best-performing employees. In mathematical terms, unions drive the results toward the mean, while a merit system drives results toward the extremes, both by eliminating the low extreme and elevating the high extreme.

Compulsory bargaining is as much political as it is economic, and this cannot be debated either. Even Florida's courts have recognized this³⁵ as much as common sense tells us this. Petro forcefully points out that "political orientation of public-sector unions constitutes a radical contradiction of the basic objective of civil-service merit systems: insulation of public servants from external political forces, to the end that the sovereign government serves faithfully, without corruption and discrimination, *all the people*." In fact, the old

spoils system — which the civil service system was meant to replace — was at least compatible with government sovereignty, no matter how distasteful. A party had to be elected to power before it could hand out patronage, and as soon as the party lost power, most of those patronage positions were handed to those newly in power. The public does not elect unions, and unions answer only to dues-paying constituents — although recent examples of union corruption suggest that union leaders do not necessarily respond to their members' concerns about the ways their dues are used. The unions' political activities are meant to bolster their position, and not the position of the public in general, in spite of their claims to the contrary. A simple scan of the lobbying and political activities by public employee unions, such as teacher unions, AFSCME and others, confirms this. So when former Florida state representative and House Minority Leader Lois Frankel complained that the Service First initiative would politicize the civil service system, one wonders how such a perceptive lawmaker could be so oblivious to the reality that Florida's public employee unions are, in fact, powerful political advocates, both in the state and nationally.

In one sense, there is probably no good reason against removing the civil service system altogether from Florida's Constitution, since clearly public employee unionism has merely created one more special interest group. It just so happens that the interest groups are the agents of state authority themselves.

Conclusion

Public employees in Florida enjoy the power to bargain collectively, albeit their position is currently constrained by the prohibition against striking and by certain other constitutional issues. While they came to this right through dubious court interpretation of legislative intent and constitutional reasoning, it is clear that the courts are not about to abandon their position altogether.

Weak or powerful, collective bargaining is incompatible with state sovereignty and a meaningful civil service system. Compulsory negotiation power for government employees calls into question whether truly sovereign

government as an institution even exists, in Florida and elsewhere. It grants unions a special status in their advocacy as a special interest group by compelling governments to negotiate with them, thereby undermining other interest groups and their voice in the government.³⁶ It first undermines, and then practically usurps, a merit-based civil service system that is designed to work on behalf of all people.

Without question, the impetus toward bargaining could be slowed by elected officials actively reducing the size and scope of government so that there are fewer public employees, and by improving wages, benefits and working conditions of any government employees who are currently under-compensated so that there is less rationale for employees to organize. One does not need a union to realize that some of Florida's best teachers, police, and firefighters feel that they are relatively underpaid for the valuable public service they perform — especially when their compensation is compared to the extravagant contracts afforded athletes and entertainers. However, nothing prevents a local school board in Florida from paying its best teachers \$100,000 a year if it so chose — except for the fact that such an arrangement would likely require a significant “pay for performance” arrangement — i.e. “merit pay” — a concept that has been consistently rejected by local union bosses.

Nonetheless, unionism and collective bargaining is not the appropriate response to these issues, and probably does more harm than good. Therefore, Florida lawmakers ought to revisit this issue with a view toward preventing further damage to the ability of state and local governments to carry out their fundamental duties of public health, public safety, public education, and public works.

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- ⁹ The Florida Supreme Court has used this bar on other notable issues, such as privacy, when ruling that a state law requiring parental notification of an abortion procedure for a minor violated the minor's constitutionally protected privacy rights, and the state showed no compelling interest in abridging that right.
- ¹⁰ 615 So. 2d 671 (Fla. 1993)
- ¹¹ 613 So. 2d 415 (Fla. 1992)
- ¹² *Coastal Police Benevolent Association v. Williams* 765 So. 2d 908 (Fla. 5th DCA 2000)
- ¹³ *Chiles v. State Employees Attorneys Guild*, 714 So. 2d 502 (Fla. 1st DCA 1998)
- ¹⁴ *Service Employees International Union v. Public Employees Relations Commission*, 720 So. 2d 290 (Fla. 5th DCA 1998)
- ¹⁵ Florida Senate Staff Analysis of SB 466, 2001, p. 13
- ¹⁶ Florida Senate Staff Analysis of SB 466, 2001, p. 5
- ¹⁷ See Hollis, Mark. "Florida Governor Unveils Plan to Restructure Career Service System." *South Florida Sun-Sentinel*. March 2, 2001.
- ¹⁸ *State v. Florida Police Benevolent Ass'n*
- ¹⁹ See Hollis, Mark. *Op. Cit.*
- ²⁰ Schluueb, Michael. "Orlando police union to take wage fight to voters." *The Orlando Sentinel*. June 18, 2005.
- ²¹ The series ran from May 31, 1996, to April 2, 1996, in *The St. Petersburg Times*. It was reprinted by the Florida League of Cities in its publication, *Quality Cities*, Vol. 69, No. 11, May 1996, under the same title.
- ²² See sec 112.18 F.S.
- ²³ www.businessweek.com/magazine/content/05_24/b3937081.htm
- ²⁴ Petro, Sylvester. "Sovereignty and Compulsory Public-Sector Bargaining." *Wake Forest Law Review*, 10 1 (1974) p. 26.
- ²⁵ See Linda C. Babcock, John Engberg and Amihai Glazer, "Wages and Employment in Public-Sector Unions," *Economic Inquiry* XXV.3 (1997): 532.
- ²⁶ Daniel Philpott, "Sovereignty: An Introduction and Brief History," *Journal of International Affairs* 48.2 (1995), Questia, 21 Feb. 2004 www.questia.com.
- ²⁷ See Barr, Stephen, "Homeland Security Debate: Union Rights in a Culture of Urgency," *Washington Post* July 17, 2002.
- ²⁸ In the Florida cases cited previously, such as *United Faculty and Florida Police Benevolent Ass'n*, the court has tended to treat the argument as a clash between two constitutional rights – the right of public employees to bargain collectively and the right of legislatures to appropriate budgets. The court attempted to balance these rights, so to speak, by setting limits on bargaining and the appropriations power. However, it appears that the courts were treating the two (public employees and legislatures) almost like two *equal individuals* in a sense, rather than approaching public employees as extensions of state sovereignty.
- ²⁹ *Hargrove v. Town of Cocoa Beach*, 96 So. 2d. 130, 133 (Fla. 1957)
- ³⁰ According to the Bureau of Labor Statistics, public employee unions' dues paying membership from 1993 to 2003 in Florida was approximately 25%. Nationally, that figure in 2003 was 37.2%, well above the private sector unions' dues paying membership rate of 8.2%.
- ³¹ Marick F. Masters and Robert Atkin, "Bargaining Representation and Union Membership in the Federal Sector: A Free Rider's Paradise," *Public Personnel Management* 18 3 (1989), Questia, 21 Feb. 2004 www.questia.com
- ³² "Collective bargaining unsupported by the right to strike is fundamentally a sham. But strikes by public servants reduce government to a sham. Which is the dominant value: collective bargaining or stable, effective, functioning government?" p. 49
- ³³ Cotterell, Bill, "Appeals Court Support Service First," *Tallahassee Democrat*, October 24, 2003 p. A1.
- ³⁴ Ironically, this is also the same year Florida adopted its revised constitution which was interpreted to grant public employees collective bargaining rights.
- ³⁵ See *Florida Police Benevolent Ass'n* for example
- ³⁶ See Denholm, David Y., "The Case Against Public Sector Unionism and Collective Bargaining," *Government Union Review* 18 1 (1998)

Footnotes

- ¹ Robert "Jake" Bebbler is an adjunct scholar with the James Madison Institute. He is pursuing his doctorate in Public Policy from the University of Central Florida (UCF). He holds a baccalaureate degree in political science from Stetson University and a master's degree in public administration from the UCF.
- ² See Vieira, Edwin Jr. "Poltroons on the Bench: The Fraud of the 'Labor-Peace' Argument for Compulsory Public-Sector Collective Bargaining." *Government Union Review*. 18.3 (1998).
- ³ 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; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. FLA. CONST. of 1885, Declaration of Rights, § 12.
- ⁴ One may also question the Court's willingness to overstep its constitutional bounds by taking up and creating law (a legislative act) and implementing it (an executive act).
- ⁵ This is not to suggest that the Florida Legislature does not shoulder a portion of the blame for intentionally adopting ambiguous language either. Of course, both judges and legislators can point their fingers to the voters who, in 1968, approved the language. However, McGuire correctly pointed out that voters adopted language nearly identical to the previous Constitution, whose intent had been interpreted to mean that public employees did not expressly enjoy collective bargaining rights.
- ⁶ See Orta
- ⁷ 410 So. 2d 487 (Fla. 1981)
- ⁸ 522 So. 2d 358 (Fla. 1988)

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