



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

J.5.

10/6/2020

Subject:

Policy Restricting Board Members from Negotiating with Unions During Formal Negotiations

Fiscal Impact:

N/A

Dept/Office:

District 3

Requested Action:

Board consideration and adoption of the attached policy.

Summary Explanation and Background:

Currently, Union members are generally restricted from engaging in direct negotiations with Board members during periods of formal negotiations. For instance, Article 1 of the County's current agreement with the IAFF states in part "the Union further recognizes its obligation to bargain solely and exclusively with the County Manager and/or designees, *and to refrain from any direct negotiations with the legislative body of the County (County Commission)* or any of its members regarding work related issues" [emphasis added].

The attached policy attempts to apply similar restrictions to members of the Board. This is necessary for several reasons. First and foremost, it is a matter of parity; both sides of the negotiations should be placed under the same constraints where possible.

Second, this policy will reach those situations where an individual is acting (knowingly or not) as an agent of a Union but is not a party to a collective bargaining agreement. This could include family members, friends, and others who may not realize the formal and complex nature of these negotiations. It is far more sensible in these circumstances to put the onus on elected officials and their staff to refrain from engaging in negotiations than to pursue a potential breach of the collective bargaining agreement by a Union.



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October 7, 2020

M E M O R A N D U M

TO: Commissioner John Tobia, District 3

RE: Item J.5. Policy Restricting Board Members from Negotiating with Unions During Formal Negotiations

The Board of County Commissioners, in regular session on October 6, 2020, denied the adoption of the collective bargaining policy restricting Board members from negotiating with Unions during formal negotiations.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

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cc: County Manager

This policy does not reduce access to the negotiation process. Indeed, it will likely serve to direct interested individuals to the proper channels to give input: publicly advertised meetings in which lawful negotiation take place.

Similarly, this policy does not infringe on any Union member's ability to access members of the Board on matters not related to labor negotiations. For example, should there be a zoning issue which a Union member would like to discuss with a Board member, nothing in this policy would prevent such a discussion.

Clerk to the Board Instructions:



BOARD OF COUNTY COMMISSIONERS

TITLE: Collective Bargaining

POLICY

Number: BCC-

Approved:

Originator:

Review:

I. Objective

The purpose of this policy is to ensure good faith negotiations between Brevard County and public employees pursuant to Florida Statutes section 447.201, et. seq. and, where applicable, articles set forth in the County's collective bargaining agreements.

II. References and Authority

Section 447.201, et. seq. is the statutory implementation of section 6, Article 1 of the Florida Constitution intended to promote harmonious and cooperative relationships between government and its employees.

The Board of County Commissioners for Brevard County is a public employer and the legislative body as defined by section 447.203(2) and section 447.203(10), Florida Statutes.

The County Manager is the chief executive officer for Brevard County as defined by section 447.203(9), Florida Statutes.

Pursuant to Article 1.01 of the current collective bargaining agreements with the Firefighters' union and in accordance with the certification of the Public Employees Relations Commission in case number R.C.-85-028 on August 20, 1985, and as modified in case number 93-001 on May 26, 1993, the County recognizes the Brevard County Professional Firefighters Local 2969, an affiliate of International Association of Fire Fighters, AFL-CIO as the sole collective bargaining agent for the bargaining unit consisting of all permanent full time employees of Brevard County Fire Rescue, who are engaged in fire and medical services, in the occupation of Firefighters (including recruits), Assistant Fire Marshal, Lieutenants, Paramedics, Emergency Medical Technicians, Emergency Vehicle Dispatchers, Emergency Vehicle Dispatcher Supervisors, Fire Prevention Inspectors, or any occupation combining the duties of the foregoing occupations.

Brevard County has two collective bargaining agreements with the Firefighters' Union; one for Rank and File members and one for the Supervisory Unit.

Brevard County has one collective bargaining agreement with the Laborers' Union. In accordance with the Public Employees Relations Commission certification of June 12, 1975, the County recognizes the Public Employees Local 630, Laborers' International Union of North America (AFL-CIO) as the exclusive bargaining agent to represent its employees in various defined categories of laborers.

Pursuant to 447.309(1):

- the bargaining agent for the organization and the chief executive officer of the public employer shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.
- the chief executive officer or his or her representative and the bargaining agent or its representative shall meet at reasonable times and bargain in good faith.
- in conducting negotiations with the bargaining agent, the chief executive officer or his or her representative shall consult with and attempt to represent the views of the legislative body of the public employer.

Pursuant to Article 1.04 of the Firefighters' Rank and File agreement and Article 1.05 of the Firefighters' Supervisory Unit agreement for the Firefighters' Union, The Firefighters' Union "recognizes that the County Manager and designees are the collective bargaining representatives for the County. The Union further recognizes its obligation to bargain solely and exclusively with the County Manager and/or designees, and to refrain from any direct negotiations with the legislative body of the County (County Commission) or any of its members regarding work related issues."

Mandatory subjects of collective bargaining include, but are not limited to, the following:

- Wages, hours and fringe benefits;
- Health and safety;
- Non-discrimination charges;
- Length of contract (not to exceed three years per 447.309(5), Florida Statutes);
- Management rights;
- Discipline;
- Seniority;
- Dues collection;
- Grievance procedures; and
- Arbitration.

Pursuant to 447.605, Florida Statutes, all collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of section 286.011(2), Florida Statutes.

III. Directives

Based upon the statutory requirements as referenced above and intent to ensure good faith negotiations that comply with 286.011, Florida Statutes (Sunshine law);

- A. A member of the Board of County Commissioners, or their staff, shall not engage in discussions or negotiations with a member of a labor union, or a representative/agent of a union, during a period of formal negotiations with said union regarding any subject which is related to a bargaining agreement.
- B. This policy shall not be construed to bar discussions between a Board member and a union member or its agents on matters unrelated to collective bargaining. For instance, this policy shall not restrict a discussion regarding an unrelated zoning matter.
- C. This policy is not intended as a basis to interpret any existing or future contractual agreement, and shall not be used as a basis to construct any provision of a collective bargaining agreement. Any reference to such agreements are intended only as an example.
- D. The procedure that the Board of County Commissioners shall follow to reach a vote on censure and/or a finding of malfeasance is:
 - 1. Any member of the Board may call for a point of order if a violation of this policy is alleged, at which point the Chair may allow the allegedly offending member to explain and/or apologize.
 - 2. First violation: Notwithstanding the provisions of Robert's Rules of Order, if the Board member fails to adhere to the procedures, as deemed necessary by the circumstances, the Board shall hold a contemporaneous vote to censure the Board member for his/her conduct. This vote shall require a majority vote of the Board.
 - 3. Prior to the vote, the Board member in question shall have a reasonable amount of time to rebut or otherwise make a statement for the record. For purposes of this subsection, a "reasonable amount of time" shall not exceed ten (10) minutes.

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4. Second violation: if the Board member fails to comply with the regulations or if the Board member has been censured under this section within the past one (1) year and indicates intent to continue violating this section, the Board shall hold a contemporaneous vote as to whether a petition shall be sent to the Governor, in accordance with Article IV, Section 7(a) of the Florida Constitution, requesting the Board member be suspended from office for malfeasance, misfeasance, or neglect of duty. This vote shall require four fifths (4/5) vote of the Board.

IV. Penalty

Any member of the Board of County Commissioners who violates this policy may be subject to the following after completing the process set forth in section III (D) above:

- A. Censure and/or a finding of malfeasance within the meaning of Article IV, section 7(a), Florida Constitution.
- B. No Board member so censured shall be eligible to be elected Chair of the Brevard County Board of County Commissioners for a period of one (1) year

Attest:

Scott Ellis, Clerk

Bryan Andrew Lober, Chair
Brevard County
Board of County Commissioners

As Approved by the Board on 10/6/20