

October 5, 2020

Joey Davis, President
Tallahassee Professional Firefighters
IAFF Local 2339
113 E. College Avenue
Tallahassee, FL 32301

RE: Constitutional and statutory rights of Union representatives and elected City officials to communicate with each other.

Dear President Davis:

IAFF Local 2339 representatives and elected City Officials, including City Council Members, are entitled and are absolutely within their rights to speak with each other, regardless of whether the Union representatives also are City employees. City Charter provisions have no bearing whatsoever on this right. The constitutional and statutory rights of Union representatives and elected officials to communicate with each other cannot be abridged or restricted by the City's Charter, Ordinances, Rules, Policies or Management. A city charter, ordinance, rule, policy or manager cannot "trump" or contravene the state and federal laws which guarantee this right.

Article 1, Section 6 of the Florida Constitution
and Chapter 447, Part II, Florida Statutes
(Florida Public Employees Relations Act)

Long ago, the law was settled that Union representatives (regardless of whether or not they are city employees) and the members of the public employer's legislative body have the right to speak with each other about matters of public concern. This includes the right to share and discuss information about collective bargaining. In 1985, the Florida Public Employees Relations Commission (PERC) relied on a decision of the United States Supreme Court in stating:

Appeals for support to public officials are a traditional and appropriate part of the dynamics of public sector bargaining.

See United Faculty v. Palm Beach Junior College, 11 FPER ¶16101 at 323 (1985), relying upon Eastex, Inc. v. NLRB, 437 U.S. 556 (1978).

Article 1, Section 6 of the Florida Constitution guarantees public employees the right to unionize and engage in collective bargaining activities. Chapter 447, Part II, Florida Statutes (the Florida Public Employees Relations Act) was enacted to implement these constitutional rights. These provisions of law prevail over any local laws, charters, ordinances or policies -- otherwise, the law enacted by the people and legislature of this State would mean nothing. The right to freedom of speech is further guaranteed in Section 447.501(3), Florida Statutes.

One reason the parties have the right to talk is that the elected officials decide how collective bargaining issues will be resolved. The legislative body of the public employer directs management in bargaining, and will ultimately vote to ratify the contract or resolve disputes through the impasse process. There must be a free flow of information for elected officials to make informed decisions. Likewise, the Union must have information from the elected officials to make decisions in the bargaining process.

Union representatives are free to meet and correspond with individual City Council Members to share information and positions (under the public meetings law two or more Council Members may not meet together outside the "Sunshine"). There are only three restrictions on the right of Union representatives and elected officials to speak with each other and to share information:

- (1) The communication cannot be profane, coercive, libelous, opprobrious, or contain an unlawful threat of reprisal or promise of benefits.
- (2) The Union representatives and elected officials cannot engage in "direct dealing" -- actually negotiating with each other; engaging in a give-and-take bargain.
- (3) During the "Insulated Period" in the impasse process neither the Union nor City Management Officials may communicate with the City's Elected Officials about issues that remain in dispute. The Insulated Period is only after either: (A) the parties have signed a written agreement waiving the right to have a special magistrate hold a hearing and issue a recommendation; or (B) the parties have filed their

rejections to the special magistrate's recommendations and are awaiting the legislative body's hearing.

It has been held:

[C]ommunication with the legislative body outside of the insulated period is not unlawful.

See City of Tampa v. IAFF, Local 754, 15 FPER ¶20305 at 626 (G.C. 1989).

Constitutional Rights to Freedom of Speech

The First Amendment to the United States Constitution guarantees each of us the right to freedom of speech and to petition our governments. Article 1, Section 4 of the Florida Constitution guarantees these same rights. Moreover, the courts give the highest protection to our right to communicate with our elected officials on matters of public concern. This right is critical because it keeps our society free and democratic -- this is the cornerstone of our state and nation, and applies with equal force to cities and counties.

If government officials or representatives attempt to restrict union representatives' abilities to speak to or petition elected officials, then they may commit an unlawful "prior restraint." And, the government cannot retaliate by taking adverse employment or other action against a person who lawfully exercises First Amendment rights on matters of public concern. The City's Officials can be sued in state or federal court for violating these civil rights. Under 42 United States Code Section 1983, the court may award injunctive relief and attorneys fees against the City, as well as damages against the officials taking the unlawful action.

You may share this letter with anyone you chose, including the Fire Chief, City Manager or Council Members. Please feel free to contact me if you have any questions or if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Brantley", with a stylized flourish at the end.

Jim Brantley, Esq.