

Paul A. Donnelly & Laura A. Gross  
Donnelly & Gross, P.A.  
2772 N.W. 43<sup>rd</sup> Street, Suite S  
Gainesville, Florida 32606  
(352) 374-4001  
(352) 374-4046 (fax)

ELECTED OFFICIALS & UNION REPRESENTATIVES  
HAVE THE RIGHT TO SPEAK WITH EACH OTHER

Union representatives and elected officials, including city council, county commission and other board members, are entitled and are absolutely within their rights to speak with each other, regardless of whether the union representatives also are employees of the public employer governed by the elected officials. Governmental 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 charters, ordinances, rules, policies or managers. A city charter, ordinance, rule, policy or manager cannot "trump" or contravene the state and federal laws that 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, but is not limited to, 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. The right to freedom of speech is further guaranteed in Section 447.501(3), Florida Statutes. These laws prevail over any local laws, charters, ordinances or policies -- otherwise, the constitution enacted by the people of Florida and statutes passed by the state legislature would mean nothing.

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 ultimately will vote to ratify the contract or resolve disputes through the statutory impasse process. Information must flow freely for elected officials to make informed decisions. And, 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 council and board members to share information and positions (under the public meetings law two or more elected officials 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) Communication cannot be profane, coercive, libelous, opprobrious, or contain an unlawful threat of reprisal or promise of benefits.
- (2) Union representatives and the elected official with whom they are communicating should not engage in an actual negotiation of give-and-take bargaining. This is virtually never an issue because the elected official has only one vote on the board and cannot bind the public employer.
- (3) During the "Insulated Period" which can occur at one particular phase of the statutory impasse process, union and management officials are forbidden from communicating with the legislative body's members about impasse issues that remain in dispute. The Insulated Period only occurs 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 liberty of our state and nation, and applies with equal force to cities, counties and other governmental entities.

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.