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Subject: United Faculty of Florida (UFF-UCF)

Dear Ms. Andrews, Mr. Bonfanti and Mr. Mattimore:

I understand that you serve as legal counsel to the University of Central Florida (UCF) in collective bargaining matters. On behalf of the United Faculty of Florida (UFF), I am writing to draw your attention to a matter of concern involving UFF and UCF.

I have been advised that the following collective bargaining agreement (CBA) article has been at issue during negotiations over the past six months.

23.12 Administrative Salary Stipends. A temporary salary increase that is provided to an employee as compensation for performing a specific, titled administrative function shall be permitted under this agreement as an Administrative Salary Stipend. At least 14 days prior to the effective date of any Administrative Salary Stipend, the University shall provide UFF a written notification of the stipend which states the name of the employee, the rank and discipline of the employee, the amount of the stipend, and the reason for the stipend. If all or part of the stipend is later added to the employee's salary, the amount so converted shall be treated as an Administrative Discretion Increase during the year

in which the conversion takes place and shall be subject to limitations of that section.

Clearly, Article 23.12 waives the right of UFF to negotiate employee salaries, which is a mandatory subject of bargaining. It permits UCF to unilaterally determine whether faculty receive a salary stipend and the amount of that stipend, thereby removing Salary Stipends from the scope of negotiations by the certified bargaining agent. PERC (Florida Public Employees Relations Commission) previously identified this type of contract language as a waiver of UFF's right to bargain. See, e.g., United Faculty of Florida v. University of Central Florida, 36 FPER ¶ 60 (2010); United Faculty of Florida v. University of Central Florida, 30 FPER ¶ 229 (2004); United Faculty of Florida v. Florida Board of Education, 28 FPER ¶ 33232 (2002).

Article 23.12 not only authorizes Salary Stipends to be converted to an employee's base salary, but also characterizes them as a "...temporary *salary* increase..." because they are a form of compensation for duties performed. It therefore would be difficult for UCF to argue that Salary Stipends are encompassed within employee salaries or to otherwise not be within the generalized sphere of "wages" under § 447.309, Fla. Stat. § 447.309, Fla. Stat. (2017) ("... shall bargain collectively in the determination of the wages ...") Even if Salary Stipends could be construed as a form of bonus, the latter generally constitutes a mandatory subject of bargaining as well.¹

The courts and PERC often reiterated that a 'waiver' cannot be imposed through the legislative body/impasse process. As you know, when this happens, PERC return the parties to their pre-impasse status quo without the impugned waiver. See Palm Bch. Jr. College Bd. of Trustees v. United Faculty of Palm Bch Jr.

¹ A bonus based exclusively on an exam score, without any connection to actual job performance, is not a mandatory subject of bargaining. See United Teachers of Dade v. Dade County School Board, 500 So.2d 508, 511-514 (Fla. 1986). However, there is authority for the position that hiring bonuses, retention bonus, and other bonuses constitute a mandatory subject of bargaining, depending on their character. See, e.g., Radio Television Technical School v. NLRB, 488 F.2d 457, 460-61 (3rd Cir. 1973) (Christmas bonus should have been bargained; whether bonus is gift or bargainable wage depends on *Wonder* test factors); Wisconsin Aluminum Foundry v. NLRB, 440 F.2d 393, 400-04 (7th Cir. 1971); Crete Education Ass'n v. Saline County School District, 654 N.W.2d 166 (Neb. 2002); Regency House of Wallingford v. Int'l Chemical Workers Union Council, UFCW Local 560C, Case No. 34-CA-9269 (NLRB, February 21, 2001); Hamilton County Education Association v. Hamilton County School District, 30 FPER 180 (Fla. PERC July 6, 2004); United Faculty of Florida v. Florida Board of Education, 28 FPER ¶ 33232 (2002); Metropolitan Alliance of Police, Bensenville Police Chapter No. 165 v. Bensenville, 18 PERI 2076 (Ill. PERI, January 3, 2003); Buena Vista Schools v. Buena Vista Education Ass'n, 16 MPER 25 (Mich. MERC, April 4, 2003); Grosse Pointe Park v. Police Officers Labor Council, 14 MPER 32051 (Mich. MERC, Aug. 9, 2001). If the bonus is in exchange for work duties to be performed, it generally will be deemed a mandatory subject of bargaining.

College, 475 So. 2d 1221 (Fla. 1985) (“*In this case, the bargaining waiver, which should never have been taken to impasse . . . The parties should be returned to the status quo as it existed at the moment impasse was declared*”) (emphasis added); United Faculty of Florida v. University of Central Florida Board of Trustees, 30 FPER ¶ 229 (2004) (“*This waiver by the UFF terminated, however, when the UFF informed the BOT in June 2003 that it would no longer allow the BOT to unilaterally grant these wage increases*”; “*We conclude that the BOT committed an unfair labor practice in violation of Section 447.501 (1)(a) and (c), Florida Statutes, by continuing to grant out-of-cycle wage increases to unit employees after the UFF notified the BOT that it desired to negotiate over these increases*”) (emphasis added).

Since no waiver can be legislatively imposed into a CBA through the impasse process, if UCF takes action to include the above-quoted language in the successor contract, it will not survive PERC.

In addition, a union cannot be required to accept a waiver of its statutory bargaining rights through the bargaining process. This is because the employer’s acceptance of any proposal on mandatory subjects cannot be made contingent on the union’s acceptance of language characterized as permissive subject matter, including waivers. See, e.g. Casselberry v. Orange County Police Benefit Ass’n, 482 So. 2d 336, 340 (Fla. 1986) (“*it is an unfair labor practice to require an adverse party to agree to a nonmandatory bargaining point as a condition to bargaining on mandatory matters.*”); Council 79, AFSCME v. Florida Int’l Univ. Bd. of Trustees, 32 FPER ¶ 26 (2006) (“*Although an employer may propose that a union waive some rights, it may not force a union to bargain over a proposal waiving bargaining rights.*”); Central Florida Professional Fire Fighters, Local 2057 v. Orange County, 9 FPER ¶ 14372 (1983) (“*The duty to bargain in good faith ‘does not entitle a party to insist upon nonmandatory subjects as a precondition to agreement.*”); Florida State Lodge, Fraternal Order of Police v. Lauderdale, 4 FPER ¶ 4209, 380 (1978) (“*...imposing unreasonable conditions upon the other party as a prerequisite to sitting down at the negotiating table. The conditions announced by the City in the instant case represented a direct attempt to force the FOP to forego its statutory right . . .*”). This leaves the parties with no alternative but to remove the impugned waiver from their successor contract once the union has objected during full-book or reopener negotiations. Here, I understand that UFF has objected to the waiver since its second proposal of June 20, 2017. Accordingly, UCF cannot insist that the waiver remain in its bargaining proposals while negotiating with UFF. For UCF to do so would risk an unfair labor practice.

I have been advised that, during the current round of negotiations, UFF has sought to remove the waiver from Article 23.12 since its second proposal of June 20, 2017, and proposed replacing it with a dollar amount (or “floor” amount) for Salary Stipends. I also understand that UFF’s proposal would make payment of

Salary Stipends mandatory, not discretionary, to all faculty who perform the duties described in Article 23.12. I further understand that UFF has placed UCF's bargaining team on notice, repeatedly, that it seeks to remove the Article 23.12 waiver. The legal principles referenced above therefore should apply to these facts.

I also have been advised that UCF's bargaining team, through counterproposals, continues to insist that the waiver in Art. 23.12 must remain in the contract, despite UFF's clear notice to the contrary. If this is accurate, I remind UCF of the foregoing case law, which provides that a party cannot condition contract negotiations on the inclusion of permissive CBA subject matter. By insisting that the successor contract *must* contain this waiver as a condition of agreement to the remainder of the contract, the principles in said case law would be violated.

Please take the foregoing into consideration during the current contract negotiations with UFF. I trust that UCF will not violate Florida law.

Sincerely,



Peter J. Caldwell
FEA Staff Attorney

cc: UFF-UCF Chapter
UFF Statewide Headquarters