

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

UNITED FACULTY OF FLORIDA,

Charging Party,

v.

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES,

Respondent.

Case No. CA-2008-023

GENERAL COUNSEL'S  
SUMMARY DISMISSAL

Order Number: 08GC-068

Date Issued: March 18, 2008

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Joan Stewart, Tallahassee, attorney for charging party.

Michael Mattimore and Jason E. Vail, Tallahassee, attorneys for respondent.

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On March 6, 2008, the United Faculty of Florida (UFF) filed an unfair labor practice charge alleging that the Florida Atlantic University Board of Trustees (FAUBOT), violated Section 447.501(1)(a) and (c), Florida Statutes (2007).<sup>1</sup> Upon review of the charge pursuant to Section 447.503(2), Florida Statutes, and Florida Administrative Code Rule 60CC-5.002, I conclude that it fails to state a prima facie violation of the applicable unfair labor practice provisions.

According to the charge, the UFF was certified in 2004 to represent a unit of faculty, administrative, and professional employees employed by the FAUBOT. This unit included faculty members teaching, researching, and counseling in the College of Biomedical Science, the Student Counseling Center, and the Florida Atlantic University Schools. The UFF and the FAUBOT negotiated a collective bargaining agreement which is in effect from 2006 through 2009.

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<sup>1</sup> All statutory citations are to the 2007 edition of the Florida Statutes.

In August 2006, the FAUBOT approved the creation of the Charles E. Schmidt College of Biomedical Science, which had previously been a part of the College of Science. Dr. Michael Friedland was appointed Dean of the College of Biomedical Science. Friedland informed the Associate Professors and other faculty that they were excluded from the bargaining unit, but assured them that everything would remain the same and that they would retain all the rights they had as members of the bargaining unit. These employees were given new contracts to sign which stated that they were out of the bargaining unit, although they continued to perform the same duties and responsibilities as before and in the same locations.

In a faculty meeting on January 18, 2007, Friedland told faculty members that an agreement had been reached with the UFF for a wage increase for bargaining unit members, but because they were out of the bargaining unit, Friedland had decided to raise the pool by twenty percent. Friedland also indicated that if it was decided that the College of Biomedical Science's faculty were in the bargaining unit, the money would be taken back.

The faculty were also notified that new administrative policies and procedures would soon be distributed. At some point the faculty were given the new administrative policies in a packet. These policies and procedures replaced the terms and conditions of employment in the collective bargaining agreement. The UFF objected to the FAUBOT removing twenty seven faculty members from the bargaining unit and ceasing dues deduction from these faculty based on nothing more than a name change in the biomedical sciences facility. The UFF repeatedly told the FAUBOT that the UFF still

represented these employees unless and until the Commission removed them from the bargaining unit.

An undated question and answer handout from Friedland stated that the FAUBOT was in the process of filing a unit clarification petition with the Commission regarding the UFF bargaining unit. The handout was designed to answer questions regarding that process. In that handout the UFF learned that the faculty of the College of Biomedical Science were not the only bargaining unit positions which the FAUBOT had removed from the bargaining unit. The other positions included Specialist, Computer Research; Psychologist, Student Counseling Center; Physician, Student Health Services; Specialist Student Counseling, Student Counseling Center; and faculty of the Florida Atlantic University Schools. The FAUBOT never filed a unit clarification petition.

The UFF filed a unit clarification petition on December 19, 2007. In the petition, the UFF made it clear that the FAUBOT's purported removal of faculty was not effected through any of the Commission's procedures, and that the Commission had not amended or clarified the certification. On January 14, 2008, a Commission hearing officer recommended that the UFF's unit clarification petition be dismissed because the threshold requirements for such a petition had not been met. On January 28, the UFF filed exceptions asserting that it needs to be able to file a unit clarification petition to determine the proper placement of unilaterally removed bargaining unit members or it will be left without a remedy. On February 22, the Commission issued a final order agreeing

with the hearing officer that the UFF's unit clarification petition should be dismissed. The Commission opined that if the UFF believed the FAUBOT had committed improper acts, it should file an unfair labor practice charge.

In a January 2008, newsletter of the FAU Chapter of the UFF, faculty were informed of the steps that the UFF had taken to resolve the issue regarding the faculty at the College of Biomedical Sciences. On February 6, Associate Provost Diane Alperin distributed a memorandum entitled "Personnel Matters Update" to employees that the FAUBOT considered to be removed from the bargaining unit. In this memorandum, the FAUBOT indicated that several positions had been removed from the unit because they were new job classes with new class titles. Alperin also stated that much of what was said in the UFF's January 2008, newsletter was incorrect and she specifically rebutted several points in the newsletter.

Section 447.503(6), Florida Statutes, provides that an unfair labor practice charge is untimely if it is based on events which occurred more than six months prior to the filing of the charge, unless the filing was delayed by service in the armed forces. See Local 1464, ATU v. City of Tampa, 17 FPER ¶ 22012 (1990) (holding that the six-month period is initiated when a charging party "knew or should have known of the complained of actions". The UFF filed its charge on March 6, 2008. Thus, any conduct which occurred before September 6, 2007, is untimely. It appears that the FAUBOT's alleged removal of positions from the bargaining unit, failure to deduct union dues, and threats to rescind a

pay increase occurred in late 2006 or early 2007, and that the UFF was aware of this conduct at that time. Therefore, these alleged actions by the FAUBOT, and any other conduct which occurred prior to September 6, 2007, are untimely and must be dismissed.

The only conduct alleged in the charge which appears to have occurred after September 6, 2007, is Associate Provost Alperin's February 6, 2008, memorandum.<sup>2</sup> The UFF asserts that this memorandum held the UFF up to ridicule for the alleged inaccuracies in the newsletter and that it was direct communication with bargaining unit members. A public employer violates Section 447.501(1)(a) and (c), Florida Statutes, if it negotiates and deals directly with bargaining unit employees rather than the certified bargaining agent. See Fort Walton Beach Firefighters Association v. City of Fort Walton Beach, 11 FPER ¶ 16240 (1985); Gadsden Classroom Teachers' Association v. School Board of Gadsden County, 9 FPER ¶ 14202 (1983). An employer is prohibited from negotiating or dealing directly with employees because it can undermine the exclusive status of the employee organization. An employer is, however, allowed to communicate with employees so long as "such expression contains no promise of benefit or threat of reprisal or force." § 447.501(3), Fla. Stat. In addition, a communication transmitted directly from a public employer to employees represented by a certified bargaining agent is not unlawful if it is informational only. Gadsden Classroom Teachers' Association v. School Board of Gadsden County, 9 FPER ¶ 14202 (1983). To ascertain whether a communication concerning terms and conditions of employment is informational or

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<sup>2</sup>The UFF failed to provide the dates on which several events occurred. For example, the UFF did not explain when its members received the question and answer handout from Friedland. Without this information, I cannot conclude that these events are timely.

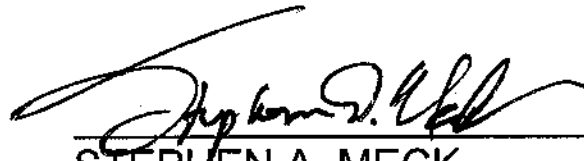
unlawful, it must be determined whether the communication “has the effect of enlisting unit employees to withdraw or abandon their support of the certified bargaining agent through coercive statements.” Id. at 372.

My review of Alperin’s memorandum reveals that it is not unlawful. While Alperin does assert that some of the statements in the UFF newsletter were inaccurate, she is entitled to state her opinion as long as it contains no threats or promises of benefits. Although the UFF suggests that Alperin’s statements were threatening and intimidating to those affected faculty members because she mentions “non-reappointment”, it is evident that Alperin was merely responding to the issues raised by the UFF in its newsletter and setting forth the FAUBOT’s position on the issues. In addition, Alperin’s memorandum did not seek a response or faculty input, and there is no allegation or evidence that the memorandum caused employees to withdraw or abandon their support of the UFF. Thus, pursuant to Section 447.501(3), Florida Statutes, this memorandum cannot constitute, or be evidence of, an unfair labor practice.

Accordingly, the UFF’s unfair labor practice charge is **SUMMARILY DISMISSED**. The UFF may amend the charge or appeal this summary dismissal to the Commission. An amended charge or appeal must be received by the Clerk of the Commission within twenty days from the date of this summary dismissal. § 447.503(2)(a), Fla. Stat.; Fla. Admin. Code Rule 60CC-5.002(3). An appeal to the Commission should briefly and concisely set forth the points of fact and law which the UFF claims are sufficient to establish a prima facie violation of the applicable unfair labor practice provision.

CA-2008-023

ISSUED and SERVED on all parties this 14<sup>th</sup> day of March, 2008.



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STEPHEN A. MECK  
GENERAL COUNSEL

SAM/pap

MODE = MEMORY TRANSMISSION

START=MAR-18 13:26

END=MAR-18 13:30

FILE NO.=188

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002	OK	<16>	ALLEN*TALLAHASS	008/008	00:02:30

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