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**Collective Bargaining and Labor Representation for Higher Education
in a “Right to Work” Environment**

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(Abstract)

“Right to work” states are generally considered to be hostile environments for public employees to secure labor representation and maintain rights to fair treatment and just compensation through collective bargaining over an extended period of time. However, in one “right to work” state, Florida, we find examples of unions that have managed to survive and develop over decades. Some of them even managed to negotiate comprehensive contracts protecting the rights of public employees in all domains affecting “terms and conditions of employment,” including “shared governance” in decision-making about the work environment.

To understand the significance of this phenomenon, we need to ask several questions. What conditions make this possible? What kinds of unions are favored by these conditions? What goals can unions realistically expect to set? What would it take for public employee unions in other “right to work” states to replicate these results?

We also need some histories of such unions to show how the development of a strong and effective union can occur in a right to work state. One example of such a union is United Faculty of Florida (UFF), which was formed in 1976. From the beginning it represented faculty at all the public universities in Florida. As it developed, it also came to represent roughly half of the public colleges, and one independent university.

An examination of the organizing history of United Faculty of Florida reveals how it is possible to address issues of concern for faculty and professional employees who live in a “right to work” environment. Attention to the structure, challenges, struggles, and achievements of UFF, within the legal framework for collective bargaining in the state, shows both how other types of public employees in Florida can organize for representation, and to some extent and under some conditions, how employees in other states might expect similar results.

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I.

In the Florida Constitution public employees have the right to union representation. There is a "right to work," with representation by a labor organization, affecting terms and conditions of employment. It is defined as follows:

"Right to Work. - The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." *Florida Constitution, Article I, Section 6.*

Thus public employees in Florida have a constitutional right to form unions. To implement this provision it takes a majority vote of those members of a bargaining unit (defined by the Public Employees Relations Commission) who choose to cast a ballot in a certification election.

However, there is no legal requirement that bargaining unit members join the union. This means that the union does not automatically have the right to collect dues from all employees in the bargaining unit after certification. The union must have express permission from individual employees to withhold dues from paychecks or to expect collection of dues to occur in other ways.

How does membership in a union affect the filing of grievances? In a statute on labor organization the law specifies the conditions under which grievances may be filed:

“All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership (*sic*) in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization.” *Florida Statutes, Chapter 447.401, line 12.*

In other words, the protections of rights contained in a collective bargaining contract are equally available to union members and non-members. The law guarantees that the language in the contract specifying protections confers rights on all employees in the unit.

However, if a non-member decides to file, there is no obligation on the part of the union to incur expenses for, or devote time to, moving the process forward, i.e., “to process grievances for employees.” The cost of enforcing legal protections under the contract is covered for union members but not necessarily for non-members. Non-members may be required to provide their own legal counsel or otherwise take responsibility for the processing of cases; it depends on the policy of the union, not the individual choice of the non-member.

The advantage of this arrangement for union members is that they do not see their dues money siphoned off to fight the legal battles of non-members. Today this seems fair to union members who now appreciate how many activities and projects they can afford to finance – building a stronger and more effective union -- if only there is no need to subsidize the legal defenses of non-members.

This was not always the way the issue was framed by and for union members. It was more than two decades after the first contract was signed in 1976 when United Faculty of Florida changed its policy on how to handle these cases. For the first two decades UFF processed grievances for free for all non-members.

Originally the reasoning was that UFF should maintain control over all aspects of all grievances in order to make sure that the outcome of cases did not set precedents unacceptable to other faculty in the future. We also believed that non-members would join anyway once they saw how the contract protected rights, how hard grievance representatives worked, and how dedicated everyone in the union was to defending faculty rights.

However, the experience of handling grievances for some non-members during this time was enough to convince most union members that the policy needed to be changed. A vote in the governing body of the statewide union, the UFF Senate, changed the policy to make non-members responsible for

covering their own legal expenses.¹ (At that time the UFF Senate consisted of roughly a hundred members elected from every region and constituency in the state. It met twice a year to make policy decisions for the union.)

Why did this happen? What were the results?

On most campuses there were some “free riders” who used the process to file grievances to defend their rights and either refused to join the union or joined temporarily until the process was concluded and then resigned. In fact there were some “free riders” who did this repeatedly.

When UFF changed the policy (more than two decades after the 1976 certification election), we created a different result for non-members and thereby also changed the attitude of non-members toward joining the union. This happened in part because non-members came to realize how burdensome it would be to cover the expenses themselves. They also discovered that lawyers they knew, or could afford, in the local area did not know much about labor law. Indeed, the attorneys available locally at the time seemed less skillful and efficient in handling cases than faculty grievance representatives who understood the contract thoroughly and regularly won cases. In other words, even if expense were not a consideration, the quality of the defense in a case suffered without union help in processing it.

However, the importance of these legal issues was overshadowed by political events and issues occurring during the same period. As it happened, faculty were entering a larger theater of action that would determine whether there would be any legal protections whatsoever.

II.

The election in November 1998 changed how everyone looked at the need for a union. The composition and agenda of the new Legislature directly challenged faculty and created a growing belief that faculty would need a union to defend the profession. Suddenly all the protections in the collective bargaining contract were at risk. Faculty realized they would need to engage much more aggressively in government relations and legislative action in order to defend their rights.

In this election a governor and legislators came into power who had a decidedly anti-union agenda in mind. They immediately proposed to “reduce taxes” by abolishing the statewide faculty union contract and announced that they would thereby eliminate much of “the burden” of paying for university instruction, which they claimed could be delivered to the taxpayer much less expensively.

For example, the new Governor, Jeb Bush, took the position that tenure should be abolished at the universities so that PhDs could be hired, and retained temporarily, at the lowest possible price -- until other PhDs could be found to work for even less at the same jobs. Indeed, his position on the faculty collective bargaining contract was folded into an even more comprehensive anti-union position: Governor Bush encouraged legislators to push through legislation that had the effect of abolishing *all* existing statewide union contracts for public employees – including the UFF contract.

Faculty union members responded by actively organizing to recertify UFF at the local level of universities and colleges. UFF also by filed a lawsuit to restore the rights lost through legislative action, but just as we expected, this would not be settled in our favor for years.

UFF immediately launched a card-signing campaign which soon yielded overwhelming majorities on all campuses. The effect was to recertify the union within six months. In some cases UFF subsequently had to hold elections on a campus to become certified locally, but the results of these elections were in the range of 95 to 96% in favor of the union. On other university campuses, the administrations and boards of trustees decided to have voluntary recognition of the union instead of going through an election battle over certification, which they came to see as pointless and divisive.

The very existence of UFF was continually at risk during the eight years Jeb Bush and his allies were in office. Various maneuvers were foiled by an ever-vigilant unionized faculty intent on protecting their rights.

During the same decade, union membership more than doubled -- from roughly 3000 to 7000. Activism multiplied on every level. Indeed, during this decade we had 600-800 member activists and organizers statewide at all times making sure everyone in each bargaining unit was contacted in face-to-face meetings to get cards signed, to prepare for campus certification elections if necessary, to build teams of members covering each union activity, etc.

Faculty now had many incentives to join the union and to pay dues. Everyone's rights were at risk without the union, and the defense of those rights in a grievance, among other things, was calculated to be worth the cost of membership by a much larger proportion of faculty.

The threat to our very existence during the Bush years was certainly a result of living in a right-to-work state. For UFF it was a constant incentive to grow larger and stronger in order to fight back and defend faculty rights.

As we have seen, this threat first took the form of abolishing by legislative action all statewide contracts for public employees. The anti-union forces had mistakenly assumed that unions would be too weak to recover from the statewide abolition of their operations and would not be able to rebuild unions at the local level (after certification had shifted to local areas).

Because faculty were located on campuses in each large city in Florida, activists could effectively contact other faculty at these same locations and get cards signed in a relatively short period of time. Moreover, given the legislative challenge to what faculty value in academic life, it was not hard to convince people to sign cards. Faculty unions rebounded much faster than other kinds of unions and even provided an example for other unions of how to organize to recertify.

The threat of abolition took new forms once the Bush administration realized that more was required to finish the job. New legislation surfaced in each legislative session that, if passed, would have abolished public employee unions with less than 50% membership.² Public employee unions stood together, lobbied the legislature, and prevented the passage of this anti-union measure.

III.

A series of such measures loomed over Florida's university campuses during this decade. Through intensive legislative action faculty defeated these measures and kept new union contracts in place. As a consequence, faculty became much more effective in this larger theater of action. Successes in the legislature encouraged them to believe they could actually stop destructive bills from passing both

houses of the legislature. These successes also encouraged the belief that the hard work of negotiating strong contracts on campus would be worthwhile in the future. Faculty realized they could actually defend the integrity of the profession in a state where they knew from experience that threats to it were real.

Dramatic increases in membership came with each wave of legislative action throughout the decade. Each spike in membership and organizing activity deepened the belief that faculty had found a way to defend what they cared about.

How were unionized faculty able to engage in enough substantial legislative action to thwart these anti-union cabals and survive and grow throughout the decade? What are the reasons why United Faculty of Florida still exists today? How have unions managed to add provisions to local contracts that have made a significant difference in the quality of academic life for faculty?

There are many details that would have to be included in order to explain how and why this occurred. Here I make only three points that would have to be covered in the course of a longer explanation.

First, UFF came into existence after running a statewide campaign based on identifying issues faculty care about and organizing around those issues. In practice this means explaining to faculty in face-to-face meetings how collective bargaining can be used to write contract language specifying professional rights. (Our first bumper sticker was "Restoring Faculty Rights.") The initial organizing successes were based on what we would much later call "issues-based organizing."

However, by the 1990s, UFF had devolved into a service model of a union, committed primarily to implementation of contract provisions and defending faculty whose rights were violated. The energy for organizing dissipated as the concern for service became the focus of attention. When our existence was threatened by developments after 1998, we returned to our original organizing mission and again began to grow rapidly on every campus. UFF not only survived by this means; the union became more effective in defending every aspect of "terms and conditions of employment" that has a bearing of the quality of academic life.

Second, UFF has a Government Relations Committee at the state level with a member from every campus. The campus representative on the state committee is in turn the chair of a team of faculty on each campus that meets with local senators and representatives. Faculty meet with legislators when they are at home during the fall -- discussing issues and possible legislation that would help fix problems. During the legislative session in the spring, the campus teams encourage faculty to contact legislators through local legislative offices. Then it is clear to legislators, who know and have already met with faculty locally during the fall, that faculty are informed and have strongly-held views about what does and does not work in legislation affecting faculty.

Finally, UFF receives substantial support from all affiliates, and especially the Florida Education Association (FEA), representing 140,000 members, in working to defeat bad legislation. FEA also helps us draft, find sponsors for, and finally get passed legislation that improves conditions for faculty. Both the National Education Association (NEA) and the American Federation of Teachers (AFT) provide assistance for organizing campaigns to increase membership and train activists. We also receive support from the Florida AFL-CIO for our legislative goals.

Endnotes

1. The “UFF Constitution and Bylaws,” which establishes the conditions and rules of operation for the governance of the union by the “UFF Senate,” is posted at www.unitedfacultyofflorida.org. This website also contains links to chapters on campuses that describe activities at universities and colleges with contracts.
2. See D. Bolona, “Lawmakers Take Aim at University Faculty Unions,” *Tampa Tribune*, April 4, 2011.

June 1, 2016