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# the checkoff

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**49<sup>th</sup> Annual  
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Employment  
Labor Relations  
Forum  
(PELRF)  
Oct. 19-20, 2023  
Rosen Centre  
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## Senate Bill 256: Legislature Enacts BIG Changes Affecting Public Sector Unions

By Christopher Shulman, Tampa

The Florida Legislature recently enacted, and the Governor approved, substantial changes to the way most public employee unions—including those representing teachers—will have to do business, at least with regard to public-sector employees (other than firefighters, law enforcement officers, correctional officers, and probation officers).<sup>1</sup> In Senate Bill (SB) 256 (Chapter 2023-35, Laws of Florida), the Legislature modified or did away with several well-established fea-

tures of Chapter 447, Florida Statutes. These changes include prohibiting dues deduction by public employers; requiring a particular form designating union membership; changing significantly the process of union registration renewal and recertification with the Public Employees Relations Commission (PERC); and requiring greater disclosure of certain financial information by unions to their members.

See "Senate Bill 256," page 7

## The Service Contract Act: A Refresher and Practical Considerations for Representing Clients Holding Federal Service Contracts

By Jonathan E. O'Connell, Reston, Virginia

The Service Contract Act (SCA or the Act) can be a tricky statute, even for those labor and employment lawyers who regularly represent federal contractors performing under service contracts with the federal government. In this regard, there is frequent overlap between the SCA and its implementing regulations and the Federal Acquisition Regulation (FAR), which governs the federal government's acquisition of supplies and services. The following provides a brief refresher for labor and employment practitioners who may encounter the Act in the course of represent-

ing clients who hold or seek to hold federal service contracts.

### Historical Background and Application of the Act

In 1931, in response to the economic challenges resulting from the Great Depression, Congress passed the Davis-Bacon Act (the DBA), which created a prevailing wage minimum in connection with federal construction projects on a location-by-location or "locality" basis.<sup>1</sup> The prevailing wage requirements of

See "Service Contract Act," page 10

### Dues Checkoffs<sup>2</sup> Prohibited

As of July 1, 2023, public employers of bargaining units that are not otherwise exempt may no longer collect union dues and uniform assessments from their employees' pay. Instead, unions must collect such monies directly from public employees who choose to pay dues. There is speculation, but no express legislative history,<sup>3</sup> that this change was intended to bring about, or at least will have the effect of, a diminishment in regular dues collections by public sector unions.<sup>4</sup>

Implementation may raise some thorny issues where collective bargaining agreements are in place, since, at least as argued by certain instructional personnel unions and others, the revision to Section 447.303, Florida Statutes, constitutes an unconstitutional impairment of contract. Moreover, public employers' discontinuation of checkoff dues deduction may trigger bargaining ob-

ligations, over either the substance of the change or its impact.

### New Membership Authorization Forms Required

Also effective July 1, 2023, any member of a non-excluded bargaining unit<sup>5</sup> who wishes to be a member of a union (including, presumably, the union that is the certified bargaining agent of the bargaining unit), is required to complete and sign a new membership card, which must be in a PERC-authorized format.<sup>6</sup> The new card must contain "the name of the bargaining agent, the name of the employee, the class code and class title of the employee, the name of the public employer and employing agency, if applicable, the amount of the initiation fee and of the monthly dues which the member must pay, and the name and total amount of salary, allowances, and other direct or indirect disbursements, including reimbursements, paid to each of the five highest compensated officers

and employees of the employee organization . . . ." Further, the new card must also contain the following "in 14-point type":

The State of Florida is a right-to-work state. Membership or nonmembership in a labor union is not required as a condition of employment, and union membership and payment of union dues and assessments are voluntary. Each person has the right to join and pay dues to a labor union or to refrain from joining and paying dues to a labor union. No employee may be discriminated against in any manner for joining and financially supporting a labor union or for refusing to join or financially support a labor union.<sup>7</sup>

This part of the new law also makes clear a member's right to revoke union membership, placing limitations and

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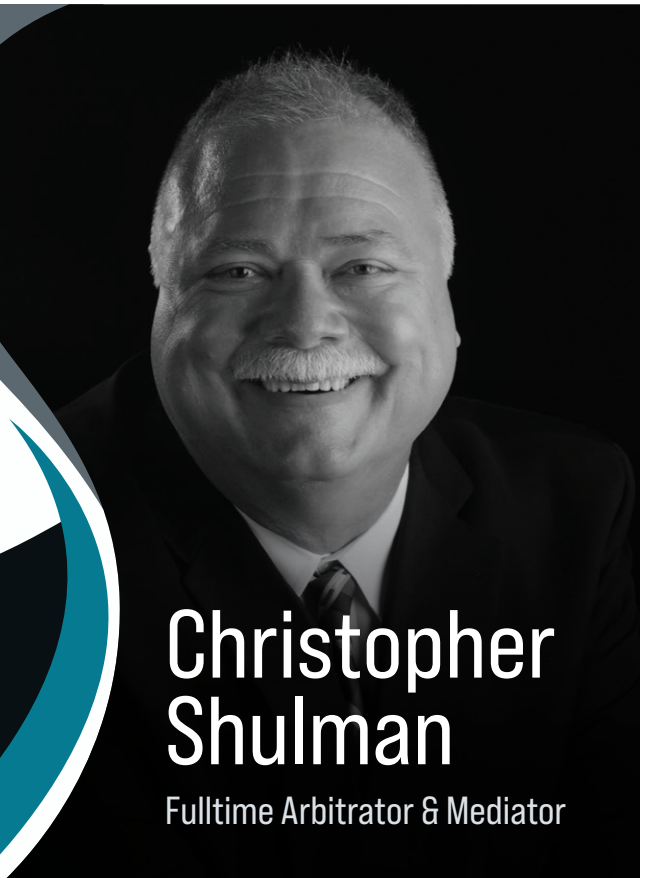
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requirements on the unions regarding such revocation. For example, unions must revoke membership effective immediately upon receipt of a member's written revocation and may not limit revocation to any specific time period (e.g., a particular month or amount of time after initially joining). If a union requires a specific written revocation form, the form may not require the member to identify the reason for the revocation.<sup>8</sup> Finally, the union is required to retain membership revocation forms for PERC inspection; the law does not specify the period of time the union must keep these documents.<sup>9</sup>

PERC has issued a Notice of Proposed Rule 60CC-1.101, "Employee Organization Membership Authorization Form" (the text of which is available on PERC's website),<sup>10</sup> which was subject to technical revisions following hearings and a workshop on June 7, 2023. Unless changed significantly prior to final promulgation, proposed Rule 60CC-1.101 adopts a specific form for use under Section 447.301(1)(b), Florida Statutes; defines several of the terms related to the form; specifies that dues listed on the form may be listed either in monthly amounts or—if the period for collection thereof is different—then in those amounts with the frequency indicated (i.e., a certain amount each week); and indicates that the employee organization, registration number, date of latest registration renewal, and employee organization compensation information data to be listed on the form should be whatever was listed on the union's "most recent registration or renewal application. If that application does not list the compensation information for five or more officers and employees, only those listed, if any, should be included."<sup>11</sup>

### Changes to Union Registration Renewal Process

Changes regarding what information unions must submit with initial or annual renewal registration take effect on October 1, 2023.<sup>12</sup> Such reg-

istrations already required submission of the union's current financial statement, but the new law requires a financial statement audited by a certified public accountant (CPA).<sup>13</sup> Moreover, as to registration renewals after that effective date, unions must also provide certain information and supporting documentation—verified by a CPA—regarding the number of employees in the bargaining unit eligible for representation; the number who have submitted membership authorizations but have not revoked same; and the number of bargaining unit members who have and have not paid dues to the union. Unions must submit this information and documentation both to PERC and, simultaneously, to the bargaining unit's public employer.<sup>14</sup>

After submission, either the public employer or any bargaining unit employee may challenge the accuracy of the information and documentation submitted with the renewal application, and PERC shall then investigate the accuracy thereof. PERC is *required* to revoke the registration and certification if it "finds that the application is inaccurate or does not comply with [Florida Statute Section 447.305 (2023)]." Indeed, PERC has the authority to investigate the accuracy of the information and documentation *sua sponte* and *may* revoke or deny registration or certification if it finds the union has failed to cooperate with PERC's investigation or has "[i]ntentionally misrepresented the information it submitted . . . ."<sup>15</sup>

### Automatic Revocation if Fewer Than 60% of Bargaining Unit Are Members

Another significant provision of SB 256 is that if the newly required renewal application documents show that fewer than sixty percent of the bargaining unit are dues-paying members of the union at the time of renewal (i.e., each year), the union "must petition . . . for recertification as the exclusive representative of all employees in the bargaining unit

within 1 month after the date [of application]." Thereafter, an election will take place (in which, as usual, the union must merely show at least fifty percent support for certification). Failure to petition for recertification will automatically lead to revocation of such certification.<sup>16</sup> This provision does not apply to firefighters and law enforcement officers, correctional officers, and probation officers.<sup>17</sup> In an action challenging the new law,

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several plaintiffs' unions argue that these exempted unions are "favored unions"—excluded from the new requirements because of their political support for the Governor, which the plaintiffs assert violates Equal Protection principles and the like.<sup>18</sup>

### New Requirements for Reporting to Members

The new law also requires increased reporting of information to members. Not only must unions keep accurate books and make them reasonably available for inspection by members or PERC, but also, effective October 1, 2023, unions must provide their members with "an annual audited financial report that includes a detailed breakdown of revenues and expenditures, and an accounting of membership dues and assessments." Further, unions are also required to notify members "annually of all costs of membership."<sup>19</sup> As noted by legislative staff analysis of the bill, compliance with these requirements, especially for CPA-audited financials and CPA-audited documentation that unions will have to submit with renewal registration applications, will impose substantial additional costs on unions, but the changes will impose essentially no expense on public employers.<sup>20</sup>

### Conclusion

It is clear, regardless of political affiliation or pro- or anti-union bent, that the changes embodied in SB 256 will have a significant effect on many public-sector unions and that some of the changes may also require additional, unplanned, and out-of-cycle bargaining, placing additional burdens on public sector employers and unions. Thus, it behooves all labor practitioners to follow closely the lawsuits challenging SB 256. Indeed, even PERC, in remarks delivered at the commencement of the June 7, 2023, public meeting regarding Proposed Rule 60CC-1.101, noted the law likely would be subject to judicial scrutiny and that PERC was therefore limiting

its rulemaking solely to the area on which the Legislature required it take action: the member authorization form.<sup>21</sup>



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### Endnotes

- 1 Most of the changes do not apply to these select groups or their unions. See Ch. 2023-35, §§ 1, 3, 4, Laws of Fla., to be codified at FLA. STAT. §§ 447.301(1)(b)(6), 447.303(2)(a), and 447.305(9) (2023). Additionally, public employers may petition PERC for waiver of the dues deduction and registration renewal aspects of the new law, if the public employer "has been notified by the Department of Labor that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. § 5333(b) and would jeopardize the employer's continued eligibility to receive Federal Transit Administration funding . . . ." *Id.* at § 2, to be codified at FLA. STAT. §§ 447.207(12) (2023).
- 2 Reporting this change here is ironic, given this publication's title.
- 3 However, in a federal court filing, several unions state, "[I]n promoting SB 256, Governor DeSantis made clear that the purpose of the ban on disfavored unions' collection of voluntary membership dues via employee-authorized payroll deductions was 'to make sure the school unions are not getting any of that money.'" First Amended Complaint, at 5–6, *Alachua Cnty. Educ. Ass'n. v. Rubottom*, No. 1:23-cv-00111-MW-HTC (N.D. Fla. May 11, 2023), ECF No. 13.
- 4 At least one of the affected unions has implemented a new online bill-pay feature to allow members to have payments automatically withdrawn from members' bank accounts. See <https://feaweb.org/member-center/edues> (last visited June 25, 2023).
- 5 At least those employees who are not otherwise excluded. See *supra*, note 1.
- 6 The law does not make clear whether bargaining unit members who have, prior to July 1, 2023, already submitted union membership authorizations will have to do so again, using the new form. However, in "FAQs" regarding the

law, PERC has stated:

Beginning July 1, 2023, PERC Form 2023-1.101 is mandatory for all public employees who desire to be a member of a registered employee organization that is the certified bargaining agent for the employee's bargaining unit or seeking certification as the bargaining agent. The control over the filings is the retention of the forms by the organizations, which must account for those in its custody each year in its application for renewal of registration. Thus, for practical purposes, the initial date of accountability for forms signed by current organization members is the date at which the organization must apply for registration renewal. For prospective members, the practical deadline is prior to or contemporaneous with joining the organization.

<https://perc.myflorida.com/FAQs%20-%20Ch%202023-35%20LOF%206-6-23.docx.pdf>.

- 7 Ch. 2023-35, § 1, Laws of Fla., to be codified at FLA. STAT. § 447.301(1)(b)1–3 (2023). The prescribed inclusion of the right-to-work language has been specifically challenged in the *Alachua Cty. Educ. Ass'n* action, *supra* note 3, as an infringement on freedom of speech, among other bases.
- 8 Ch. 2023-35, § 1, Laws of Fla., to be codified at FLA. STAT. § 447.301(1)(b)(4) (2023).
- 9 *Id.* at FLA. STAT. § 447.301(1)(b)(5) (2023).
- 10 See <https://perc.myflorida.com/Proposed%20Rule%2060CC-1.101%20Employee%20Organization%20Membership%20Authorization%20Form.pdf>. As of this writing, it is not known when PERC will issue the final version of its Proposed Rule and Form.
- 11 *Id.*
- 12 At least those employees who are not otherwise excluded. See *supra*, note 1.
- 13 Ch. 2023-35, § 4, Laws of Fla., to be codified at FLA. STAT. §§ 447.305(1)(d), (2) (2023).
- 14 *Id.*, to be codified at FLA. STAT. §§ 447.305(3)–(4) (2023).
- 15 *Id.*, to be codified at FLA. STAT. §§ 447.305(7)–(8) (2023).
- 16 *Id.*, to be codified at FLA. STAT. § 447.305(6) (2023).
- 17 *Id.*, to be codified at FLA. STAT. § 447.305(9) (2023).
- 18 *Alachua Cty. Educ. Ass'n*, *supra*, note 3.
- 19 Ch. 2023-35, § 4, Laws of Fla., to be codified at FLA. STAT. § 447.305(11) (2023).
- 20 Staff analyses are available on the Florida Senate's webpage for SB 256; links to the two post-committee meeting analyses are: <https://www.flsenate.gov/Session/Bill/2023/256/Analyses/2023s00256.go.PDF> and <https://www.flsenate.gov/Session/Bill/2023/256/Analyses/2023s00256.fp.PDF>.
- 21 Video of the meeting is available on PERC's website, <https://perc.myflorida.com/PERCRule-making.mp4>.