



Ep. 7: The Transformation of Education in Florida

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Host: Welcome to RumbergerKirk's Legally Qualified podcast, where we answer important questions facing businesses today and discuss hot topics in the legal industry, from employment law to commercial litigation, product liability, and everything in between. We've got it covered.

Leonard Dietzen: Hello everyone. Welcome to Legally Qualified. I'm Leonard Dietzen, a partner at RumbergerKirk in Tallahassee. I represent public and private sector employers in all aspects of labor employment law. And I've spent more than 20 years working with Florida school districts. I'm pleased to have Bill Graham here with me today. Bill is the former executive director of the Florida Education Negotiators and also was a school board member in Palm Beach County for 20 years.

Bill has a unique additional perspective because he taught at the community college for 35 years, where he encountered dual enrolled students and experienced the end product of the K-12 system. So Bill, welcome today and we look forward to this conversation.

Bill Graham: Good morning to you Leonard, and thanks for inviting me to participate in this podcast on K-12 education in the state of Florida.

Leonard Dietzen: What we're going to look at is how the K-12 education system in Florida has undergone a transformation over the last 50 years. We'll also discuss the transformation and how it's altered the relationship between our school board management and our unions. Particularly the role the Legislature has played in this transformation. And finally we'll share what educators and administrators can do to help lead their district successfully in the face of what is continuing change. And Bill, to start out with, take us back to what the system looked like when you started out and the various roles you had with the changes you've seen along the way.

Bill Graham: We're going to quickly go back to 50 years ago Leonard. I was a senior in our of our South Florida public school district high schools in 1968. And in the spring we had a state-wide teacher strike, and it was probably the culmination of built up frustration. That was followed by an approval of a brand new constitution for the state of Florida, about the sixth one that we've had since Florida was a territory pre-statehood. And the significant reason for mentioning that constitution is that Article 1, Section 6 provided for public sector employee collective bargaining.

Florida was the very first state in the south to do that. And as you know, all of the 11 states that once upon a time were the Confederacy after seceding have always been right to work states. And at the present time about half of our 50 states are right to work states. So that history of not giving much acknowledgement to unionization and related issues was longstanding in Florida before the new 1968 Constitution.

The followed by Governor Askew signing a bill in 1974 called the Public Employee Relations Act, and it created the Public Employee Relations Commission, which became our state agency that did the intake and processing of applications for union certification. As you and I have talked about on many times, our Petri dish for all kinds of public sector union activity was Dade County. And the United Teachers of Dade have certification number one from the PERK. That's important because we only have one recognized agent for each union, and probably eight out of ten of the

first certification certificates were issued to school district related employee groups. We later got some city and county employees involved.

Leonard Dietzen: How did the unionization change the interaction between what was once complete management rights and now having to bargain basic terms and conditions of employment?

Bill Graham: Once everyone got used to the idea that we had the Public Employee Relations Commission, we had part two of Florida Statute 447 that exclusively focused on the relationship between management and certified bargaining units, we had a level playing field. And I'll even use the word "tranquility." Peace and harmony to the greatest degree possible. Acknowledging that the different sides do have their own issues and positions at the bargaining table.

And then I think zenith of what I'm going to call the "milk and honey" period was during my first term on the school board. I was elected in 1986 in Palm Beach County, and the following year a selective services sales tax was repealed. And it was replaced by raising the statewide general sales tax from 5 to 6%. And imagine, just visualize waterfalls of dollars, and there was money galore, which makes everybody happy. All the union and management organizations which in our particular instance are teachers unions and other employee unions, like bus drivers, maintenance, cafeteria workers and the school district superintendents and boards got along beautifully when everybody had plenty of money.

And that took us through the end of the 1980s. We had payroll deduction for dues patterned after a Michigan law. And there were mandatory topics for bargaining, including a grievance procedure. So we really had a comprehensive level field, and everybody learned the rules of the game. And with rare exceptions played nice with each other for quite some time.

Leonard Dietzen: And then we get into the '80s and the unions started to grow, and they started to become, in my experience, pretty powerful in Tallahassee. And so they started to get folks elected with their agenda, and I believe they had an easier way and a clear path to bargaining terms and conditions of employment. And of course all of that started to change around the '90s and the early 2000s. Explain how that shift happened.

Bill Graham: That's correct. You're right. The majority of the 1990s saw a growth in union membership in Florida's public sector, and we're talking particularly our K-12. And the teacher's unions and other local unions set up political action committees and endorsed and funded candidates for two positions that they were concerned about. Members of the state Legislature and members of the 67 school boards in Florida.

As we know, but maybe not everyone does, in the state of Florida school board members are constitutional officers, just as your local sheriff or tax collector. So they're elected for a four year term, and there was funding and endorsement by local teachers unions. And the FEA was the state headquarters, and they're affiliated with NEA, which became the largest union in the United States of America probably during that time just before we got to the 21st century. And as you mentioned, all of that began to change starting with the 1999 Legislature, when a plan called the A-Plus plan was passed, recommended by Governor Jeb Bush that included creation of charter schools. And that's where we began to see a chipping away of home rule by school districts over our K-12 educational system.

Leonard Dietzen: And along with the growth of charter schools, became I believe an anti-union view to where we got to the point where the Legislature realized unions did have meaningful power with tenure. And so they started to pick away at how to deal with legislatively the union's rights that they'd acquired over the years under the statutes. Under the Republican governor and Legislature, explain how the passage, it's affectionately referred to as "Senate Bill 736," how this revolutionizing, changing

and eliminating tenure for again, kindergarten through high school teachers, not universities, but K-12, that's what we refer to, how that impact is still felt today.

Bill Graham:

Well, of course with teachers in our K-12 system, and there's a similar track for universities, but we're focusing on K-12, teachers achieve tenure after being on annual contract for three years and complying with a few other local requirements that were in their collective bargaining agreement. Some of the general public was always concerned about the fact and some of the Legislature bought into the idea that you can't fire teachers because they have this lifelong guarantee of a job called tenure. And we both know that there was always a pattern, a track of things that you had to do.

I experienced that from the school board member perspective during my very first term. If we needed to get rid of a bad teacher, the key word for the takeaway is "documentation." And so many times I saw a recommendation come for termination, and you knew within 15 minutes in the presentation that the teacher probably should be fired. And you also knew that the documentation was grossly inadequate.

So that's going to be one of our takeaways. We're going to recommend that if you need to terminate employees, you document, document, document. But the Senate Bill 736, as you mentioned, did eliminate tenure and all teachers, unless they were tenured prior to 2011, became annual contract teachers. And that led to the creation of a new approach to salaries for teachers where there was a performance schedule, and there was also a schedule for those who were grandfathered, previously tenured, that didn't want to participate in this. And my view at that time, the idea of performance pay kind of replaced the old labor of merit pay that had been beaten to death. Sort of like continuing to ride a dead horse.

And that sort of took us to a path of superseding and replacing the old traditional automatic step of teacher salary schedules where I used to sometimes say, the teachers are going to get a pay raise just because they show up again next year.

Leonard Dietzen: Let's talk a little bit about the automatic step, because it was a big component of teacher pay. You typically had a 30-year schedule. If a first year teacher becomes a second year teacher, they get an automatic raise come July 1 and a third year and so on and so on. And it was a guarantee that – there really wasn't collective bargaining. It was a guarantee of a raise, and then they would ask for extra. I know you were in Palm Beach at the time. Your automatic step amounted to something in the neighborhood of \$14 million for teacher raises. And it really wasn't collective bargaining over that.

And this new bill created a methodology where nothing was for granted, and your teachers now are going to be paid based on performance. That obviously changed the relationship between the employer and the unions because they wanted everyone to make the same. And now we divided those annual contract teachers who are now the newer teachers, they're going to be paid based on evaluations. So if you're highly effective, you get a higher amount of money, ineffective, you get a lower amount of money. And you also – they devised a scheme to where the younger teachers would make greater than the veteran teachers. That was the beginning of the divide of trying to address how to eliminate some of the bargaining at the table and some of the automatic money spending.

Bill Graham: Yes, as you said earlier, in Palm Beach the automatic step was 2%. And at that point in time a 1% raise for our teachers cost \$7 million. And that's what I – I call that the "out the door" cost, and that's the teacher's W-2 money plus FICA, Medicare. One of the things we want people to understand from the perspective of the school district management, if you sign the back of the check, you only care about take home pay. But when you're the school board or the superintendent, you have to have your name on the front of the check.

So total cost is an important component. So we were in a situation where our teachers, classroom teachers association would tell us they were entitled, that was

the word they used, to that automatic step. That cost us \$14 million before you sat down at the bargaining table. They also reminded us that there was a past practice of absorbing all health insurance increases. So therefore there was the expectation of continuance.

And then it was in their minds time to talk about a raise. As money got tighter and tighter year after year, that was just untenable. So we did go into executive session, and we discussed this. And we agreed that we were at impasse over this automatic step, and on a four to three vote we took it away. And I might add as a footnote, earlier in our presentation when we were talking about the embryo of the public sector collective bargaining, the Sunshine law in Florida that requires all governmental entities to have their meetings in public. The very first exception to that for the K-12 that we're talking about was to allow the school district management to have an executive session, which is a closed door meeting, to discuss collective bargaining strategy. And to this day that's one of three allowances for us to meet outside the Sunshine.

Leonard Dietzen: So getting back to the annual contract, many people hear that term and legally what it means is for one year a teacher is guaranteed a job, and during that year, from July 1 to June 30th, you can only get rid of them for just cause. But in May the school board can just decide they're not going to renew them for any reason or no reason. And they are almost like private sector. They are going to be at will at the end of the year. That Senate Bill 736, that's what dramatically changed the tensions I believe at the bargaining table. Because now we have veteran teachers who are, if not guaranteed a job, it was pretty difficult to fire without perfect documentation.

And now we have folks that the Legislature wanted management to have the ability to just non-renew if you felt they weren't doing a good job. And there was no arbitration. There was no recourse. It was completely management right. So on that sense that's one area that helped management to develop a better pathway for their school. But with that came tension. And now teachers are feeling they're under

assault by the Legislature for a series of additional legislation that have happened. But with the annual contract, then the Legislature told us exactly how to pay the teachers, again, with evaluations, complicated evaluation systems. In the old days it was satisfactory, unsatisfactory. Satisfactory, you still get a rise. Unsatisfactory, you still get a raise, but you may have to be on a performance plan.

Now very complicated ten page plus document to evaluate our teachers. And they feel under stress just having to be evaluated to get their normal paycheck. So it caused a lot of tension at the bargaining table. And it's here to stay. And with 80% of our budget being payroll, it's quite an imposition on both management and the unions when the Legislature tells us pretty close how to spend the money that they're allotting us.

Bill Graham: That's true. And when we talk about the Senate Bill 736, the elimination of tenure, I think the carrot/stick analogy is applicable here. The stick was elimination of tenure. But shortly after that the creation of two salary schedules, with the performance pay scale being available and really the intent of the legislature was the antithesis of that union position that you mentioned earlier of all animals are equal, and everybody gets the same raise. They wanted to see effective teachers highly rewarded.

And the way the salary schedules in a lot of our districts that you and I have worked with in the last decade were set up, there was absolutely no ceiling. Which was again, contrary to the old traditional salary schedule that included automatic steps or COLAs or those things where somebody could literally on day one say after twenty-five years I've topped out. Unless I get a graduate degree or some other specialization or supplements for coaching, which we know all the districts have.

It just really completely changed the environment. And then subsequent to the performance pay scale and the elimination of tenure, we saw in this last decade a series of legislative appropriations that were intentionally called bonus with

extensive definition of that word “bonus” and making it clear to anyone that that money was not intended to become base salary. And therefore nobody got credit on their retirement pension for that.

Leonard Dietzen: Before we get into that Bill, I’d like to address how we got to that bonus program. I believe strategically the union made a mistake after Senate Bill 736. They sued the governor. They sued the Department of Education. And this became a pattern. Every time they sued the governor and the Department of Education, when they lost, there was further legislation that was against the union. Part of Senate Bill 736 also was, when there’s a reduction in force, the boards are not allowed to consider seniority.

And seniority was the golden ticket for all unions. The longer you’re there, you’re guaranteed a job. So Legislature said, that’s no longer factored. You now lay people off based on evaluations. So if you have a second year teacher who’s highly effective, you can then get rid of your 28 year teacher who you may believe is no longer effective. That changed the landscape. Of course the Florida Education Association, as we called the FEA earlier, they sued. They lost. And then I believe 10, 15 years’ worth of legislation, additional legislation. Let’s talk briefly about Best and Brightest program. That was a program designed, again, to give bonuses to certain classroom teachers. And bonuses aren’t really what teachers are after. They’re after base pay raises that go into their Florida retirement system.

Bill Graham: That’s true. The bonuses, that was a card that played well to some portions of the general public where the Legislature and governor could take credit for the gross dollar increase in the general Appropriations Act of education funding. But to an individual teacher and sometimes other school site personnel that might have gotten those, assistant principals and others, you got no credit in your long-term plan to have a pension. And I’m also going to hasten to add that I was a realtor before I was a school board member. And I can assure you that I – and I said this many times during those bonuses, you can’t take a teacher with an annual bonus that’s subject

to the political whim of the Legislature and the economy and sit down and try to apply for a mortgage, a 30 year mortgage to buy a home. No credit is given by institutional lenders.

Leonard Dietzen: So basically what we had is, we had districts in the beginning, they called all the shots. Then we had the birth of the unions who grew powerful. They were able to get legislators on their side. They were able to get favorable legislation. And there was more of an even playing field, if not a tilted playing field in Florida. And now we're back to we have, in reality, since 2011 we have about 50% of our teachers who are on annual contracts. So they're pretty much one year employees subject to renewal, just like a principal is subject to renewal.

And so that's where we're at. And then again, not content with just giving them annual status, there's particular ways they have to be evaluated. That's also new, and it's also an additional stress on both management and teachers. Management are in an untenable position of having to do very complicated evaluations, in might add an extreme teacher shortage. All of this culture I would say has led to folks not wanting to go into teaching because 40 years ago when you went into teaching, you looked at your salary schedule. You knew you were going to retire at step 30 at \$65,000.

Today you have no idea what you're going to retire at because you're not guaranteed any raise at all. And with 80% of our budget being payroll, that we're pretty much stuck to very limited means of bargaining in the last 10, 15 years.

Bill Graham: Leonard, in addition to that, there's a myriad of other tangentially related issues that the Legislature has imposed themselves. And then I'll just give as a quick example, because every district has this. In addition to getting your four year degree and your certification to be a teacher, many of our teachers found out early on in their career that if they went back to school and got a master's or a doctorate, their school district had a supplement for the graduate degree. And as long as you got it in

something that was offered by an accredited university, you got those additional supplements to your salary every year. Which was helping your long-term requirement.

And along the way, while we've talked of these other things, the degree has to be in field now what you're certified for, and all the things related to that point have tightened up during the last 10 to 15 years, making it far more challenging. If you're an honors history teacher at a high school, you can't just say that my certification in social studies allows me to teach geography, for example. It's not as easy as when the two of us were in school once upon a time in a previous century.

Leonard Dietzen: And one final element of the path that I believe led to a legal battle between the union and the governor's office was when the governor decided that the employees themselves, teachers and support staff, will have to participate and pay 3% into their Florida retirement system. So if you received a 2% raise that year, you were actually paying into the retirement system. It was 100% funded for decades. And all of a sudden now we had to pay 3% into retirement system.

Bill Graham: Yeah, that's a 2011.

Leonard Dietzen: Right, and the FEA again sued on that and lost. And the Legislature in my opinion have a long memory. I tell all my clients, when you sue the Legislature and win, the very next year they will remember and then bad things will happen. And then if you sue the Legislature or governor and lose, same thing. Next year bad things will happen. And I think we're kind of in the middle of that crisis as we are today dealing with COVID. So Bill, looking forward with the current adversarial relationship between the Legislature and the union, and we have teacher low morale that frankly the unions did not create, how do school districts and management in times like this, how do they push forward in the negotiation world? What are the key things you think school districts should be working on?

Bill Graham:

I think that the – and you've used this word before during our conversation, the word "morale" needs greater emphasis. Teacher morale has to be stressed in recruiting, in evaluation, all professional development. And it's enhanced even in financially constrained times in the following manner. And I always shared this when I was a school board member. If we considered school boards have several different budgets. We have an operating budget. We have a capital budget. There's an internal funds budget. There's a budget for running your food service program because it gets some federal money.

And the one area that the Legislature has not intruded upon and as I use the word "micromanaged," is the fringe benefits. Now it's mandatory for those personnel costs to cover federal Medicare and Social Security. And of course FRS you mentioned a few minutes ago, with the mandatory contribution. But beyond that, all of the group benefits that anybody who works in the public sector usually has profound interest in when they choose that career, there's the group health plan, term life insurance, dental plans, vision plans. Extra opportunities like 403Bs for retirement. Because we know and we should really stress that those who plan for retirement must understand early on that Social Security plus an FRS pension and as Leonard said without the guarantee of future raises, will not give anyone that standard of living that they would like to have as a retiree.

So participating in some type of payroll deduction, tax shelter plan is critically essential for all of our school district employees. And I believe it's the job of management, school board superintendents to really stress the value of fringe benefits. And depending on their own resources and what kind of a vendor network you have access to, I know where you and I grew up in the urban South Florida, it's better than it is where we live now.

But create the broadest cafeteria plan that you possibly can because as you know, a starting teacher who's single and healthy might do well with a high deductible health plan. Putting some of that other money aside in a medical savings account or

even directly into a 403B tax sheltered annuity. Whereas a starting teacher who's married and has children needs a dependent coverage portion of the group health plan. And that's an area where I think the public sector has really retained a lot of multiple choice compared to what has happened in the private sector so far during this century.

Leonard Dietzen: What can boards do? What's in their arsenal to try to raise money should the Legislature not give them money? I know the public's aware of all the COVID federal dollars flowing into the districts and counties and cities. But those funds are very prescriptive in how to pay things, and they're not really for salaries. They're not for teacher pay. What are the local options you had as a board member to try to increase your financial position?

Bill Graham: Two things in response to your question. Back in the previous century when the markets were totally different, the year that I was elected to the school board, Palm Beach County passed a \$317 million general obligation bond issue. Dade and Broward did likewise the following year. So that tri-county area had about a \$1 billion of school construction money. And those bonds get paid off with property tax money over a 20 to 30 year period.

The market today doesn't offer that kind of receptivity to that type of program. But just prior to the turn of the century with legislative authorization, school districts could have a referendum for a local option sales tax, the same way some of our counties have done. And in addition, a special millage election, not to exceed four years, where the money could go to expressly disclosed things such as teacher's salaries.

And I believe in one of our recent conversations we said in 2018, well over a dozen of these referenda passed all over the state of Florida. And in 2020 I think only one failed in some small district here in North Florida. So it shows that during this second decade of this century, the general public is well aware of the need and is

very supportive of their own local school district and willing to vote for a local referenda to provide funding.

Leonard Dietzen: So bottom line, if the money is not coming from Tallahassee, we have to be creative. We have to ask our local community to pitch in. And there are ways to do it. I know just in Tallahassee it was millions of dollars for the half cents sales tax, which saved construction on roofs and saved a lot of important issues facing aging school boards.

Let's just talk briefly before we close, teacher morale was always – it was just going downhill in the last couple of years. Now let's discuss the last two years of dealing with teacher morale and extreme anxiety with COVID-19. You and I engaged in several webinars to Florida education negotiators. And one thing was clear, everyone had a serious concern of how to educate the children and how to stay safe.

So for the first time in my career we started bargaining safety measures. And now the issues are in court. Issues are before the Legislature. That's just a whole new issue of anxiety and morale at the bargaining table that I think administrators would be wise to understand. That this is real and they're going to have to start bargaining new topics, like masks and safety measures and things the school boards are going to do for the teachers to keep them in the profession. Because in my experience they're just dropping out of the profession.

I think going forward we're going to have to understand where we came from, the current conditions we're in and then on top of all that, we have to address salaries in a COVID pandemic. So it's going to be a challenge, but I think if you understand history, where we've been and where we are and we have these candid conversations with the unions, I think management would be better off to understand why the other side of the table is anxious. There's just several reasons, not just – you just can't pinpoint one thing. Tossing in COVID in the middle of all of this has really turned the heat up between the relationships between management

and unions. And fortunately I have seen a much better dialogue because there's true concern on how to get this right. And I know you and I have had several seminars on how to keep our administrators focused on proper management, proper addressing employee's concerns.

Bill Graham:

Let's start with 35 years ago I'm first elected to the school board, and when they mentioned safety in the workplace, the first thing I thought of was OSHA compliance. And then from the childhood days of all of us, we all remember fire drills. Unfortunately as we've moved forward, we also had to start having drills on lockdown. What do you do if you have an active shooter on campus and other terrorist type threats. And then more recently as you just mentioned, the last couple of years we've had the COVID. And it increases and just adds a whole dimension heretofore not dealt with or imaginable of people having – truly being fearful for their life if they have to come on campus and be in a classroom or some other confined space with several dozen other people.

And you're right, everybody has to understand the mindset, the emotions, the fears and we also, as you know, some of our real veteran outstanding teachers had a whole host of personal health issues. Where they're on maintenance medication, diabetes, heart conditions, things of that nature, where they were at greater risk than the rest of us that were so-called of normal health when it came to COVID.

And so that has dominated many bargaining sessions that you've sat in on and rightly so. Because if that's a person's primary concern about whether I want to go to work tomorrow, rather than the paycheck, you know it's being serious. So it has been included in a lot of planning. And I think during the last couple of years when I was working with you before my recent retirement, the fact that there was a lot of collaborative and consensus building approaches, we saw successes. And it gives a calming effect to the workplace. And that needs to be stressed with our school board members, superintendents, administrators, as new ones come on board. And with the general public who are stakeholders. How can they as parents and

taxpayers contribute to calming the waters and showing genuine empathy and concern for people who are teaching during these wars and debates over masks and vaccinations and all of the related items with a deadly virus.

Leonard Dietzen: Yeah, these are definitely frustrating circumstances for both sides, everybody involved. Tensions are high. But I still am optimistic. I think districts can find a creative way to compensate their employees and to listen to what they want. Right now they want security and the belief that they're going to be teaching in a safe environment. And that can be bargained. You don't have to file lawsuits over that. That can be done at the local level. And I think people are doing it well.

I appreciate you Bill coming in today, and it's always a pleasure talking with you. I found our conversation both informational and enjoyable and I look forward to seeing you again soon.

Bill Graham: Thank you again Leonard for this opportunity to have a dialogue about issues that are near and dear to both of us and those that we've labored extensively on here in North Florida and in other parts of the state for the last several decades. You're correct, it's dynamic, it's evolving. It probably always will be. So our job is to point out opportunities and sometimes remind people of the good tools that are already available to them. So thanks once again for allowing me to join you today.

Leonard Dietzen: Well, special thanks to our listeners. We hope we've given you some great ideas to go back to your organizations. In the end, being a teacher and an educator is a calling, and we know there's nothing more important than educating the child. It's always about the child. And right now during the COVID period, there's significant learning losses, and we need to find a way to bring back stability to teaching and to bring back the joy in the profession. And I think it can be done. I'm an optimist. I think if you listen to what your teachers need and respond accordingly, the relationship will grow. And you'll see once again Florida leading the way in learning gain.

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