

By Senator Cowin

11-1463-00

See HB 1453

1 A bill to be entitled
2 An act relating to excluding school
3 administrative personnel from collective
4 bargaining; providing legislative findings;
5 providing a statement of compelling state
6 interest; amending s. 228.041, F.S.; revising
7 definitions; amending s. 236.685, F.S.;
8 revising a definition; amending s. 447.203,
9 F.S.; revising definitions; clarifying an
10 application to school administrative personnel
11 of an exclusion from collective bargaining;
12 providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Legislative findings and statement of
17 compelling state interest.--

18 (1) The Legislature finds that:

19 (a) At the time the reference to section 228.041(10),
20 Florida Statutes, was placed in section 447.203(4), Florida
21 Statutes, as one of the managerial employees' exclusions from
22 collective bargaining, the Florida School Code's definition of
23 administrative personnel consisted of a listing of several job
24 titles, including superintendents and principals, together
25 with the job descriptions of such personnel.

26 (b) In chapter 96-269, Laws of Florida, the Florida
27 School Code's definition of administrative personnel in s.
28 228.041(10), Florida Statutes, was substantially lengthened
29 and revised, without reenacting the cross-reference in section
30 447.203(4)(a)6., Florida Statutes, to refer to the revised
31 definition, and the same term was defined differently in

1 section 236.685(2)(a), Florida Statutes. In addition, in
2 chapter 96-269, Laws of Florida, the definition of managers in
3 section 228.041(39), Florida Statutes, was substantially
4 lengthened and revised, and the same term was defined
5 differently in section 236.685(2)(f), Florida Statutes.

6 (c) As a result of the amendments in chapter 96-269,
7 Laws of Florida, the Florida School Code now contains
8 different definitions of administrative personnel and
9 different definitions of managers.

10 (d) Due to the revisions made to definitions in
11 chapter 96-269, Laws of Florida, without incorporating
12 specific cross references as required by the law of this
13 state, as provided in the preface to the Florida Statutes, and
14 due to the multiple definitions of identical terms that now
15 create conflict within the Florida School Code itself, it is
16 no longer clear what the reference in section
17 447.203(4)(a)6., Florida Statutes, means and whether the
18 reference meets the heavy burden of vindicating a compelling
19 state interest in the most minimally necessary manner.

20 (e) Public employees generally have the right to
21 bargain collectively, under section 6, Article I of the State
22 Constitution, and the courts of this state have found that
23 this right to collective bargaining is a fundamental right.

24 (f) Despite the right of public employees to
25 collective bargaining, an exclusion from collective bargaining
26 for managerial employees has long been justified under basic
27 tenets of labor law as a method of ensuring that an employer
28 has the undivided loyalty of the employer's representatives.
29 Recently the Florida Supreme Court affirmed the exclusion from
30 collective bargaining for managerial employees in Service
31 Employees International Union, Local 16, AFL-CIO v. Public

1 Employees Relations Commission, et al., No. SC 94427, 2000 WL
2 31835 (Fla.), (Decided January 13, 2000).

3 (g) The Legislature has historically itemized the
4 criteria for the managerial employees' exclusion from
5 collective bargaining in section 447.203, Florida Statutes, as
6 part of the Public Employees Relations Act.

7 (h) Section 447.203(4)(a)6., Florida Statutes,
8 specifically lists as managerial employees excluded from
9 collective bargaining administrative personnel under the
10 definition in the Florida School Code, section 228.041(10),
11 Florida Statutes.

12 (i) There is a heavy burden on the state to justify
13 the applicability of any provision in section 447.203, Florida
14 Statutes, that is part of the managerial employees' exclusion
15 from the constitutional right to collective bargaining. Any
16 such exclusion must vindicate a compelling state interest by
17 minimally necessary means.

18 (j) Consequently, the Legislature finds it essential
19 to conform and clarify the definitions in the Florida School
20 Code to clarify and incorporate the specific cross reference
21 in the Public Employees Relations Act and to restipulate that
22 the managerial employees' exclusion in section
23 447.203(4)(a)6., Florida Statutes, must include the specified
24 classes of administrative personnel that are minimally
25 necessary for effective management from the school district
26 through the school level.

27 (2) It is a matter of compelling state interest that
28 the specified classes of administrative personnel remain
29 within the managerial exclusion from collective bargaining due
30 to the many managerial duties such personnel perform. The
31 process of school improvement and accountability is a

1 continuous process and, in order to realize the fundamental
2 value of education, requires a flexible, cohesive management
3 structure from the district through the school levels which is
4 not subject to the conflicting, fluctuating interests inherent
5 in the realities of collective bargaining.

6 Section 2. Subsections (10) and (39) of section
7 228.041, Florida Statutes, are amended to read:

8 228.041 Definitions.--Specific definitions shall be as
9 follows, and wherever such defined words or terms are used in
10 the Florida School Code, they shall be used as follows:

11 (10) ADMINISTRATIVE PERSONNEL.--"Administrative
12 personnel" means deputy superintendents, assistant
13 superintendents, area superintendents, assistant principals,
14 vice principals, and principals ~~includes personnel who perform~~
15 ~~management activities such as developing broad policies for~~
16 ~~the school district and executing those policies through the~~
17 ~~direction of personnel at all levels within the district.~~
18 ~~Administrative personnel are generally high-level, responsible~~
19 ~~personnel who have been assigned the responsibilities of~~
20 ~~systemwide or schoolwide functions, such as superintendents,~~
21 ~~assistant superintendents, deputy superintendents, principals,~~
22 ~~assistant principals, vocational center directors, and others~~
23 ~~who perform management activities. Broad classifications of~~
24 ~~administrative personnel are as follows:~~

25 (a) ~~District-based instructional~~
26 ~~administrators.--Included in this classification are persons~~
27 ~~with district-level administrative or policymaking duties who~~
28 ~~have broad authority for management policies and general~~
29 ~~school district operations related to the instructional~~
30 ~~program. Such personnel often report directly to the~~
31 ~~superintendent and supervise other administrative employees.~~

1 ~~This classification includes assistant, associate, or deputy~~
2 ~~superintendents and directors of major instructional areas,~~
3 ~~such as curriculum, federal programs such as Title I,~~
4 ~~specialized instructional program areas such as exceptional~~
5 ~~student education, career education, and similar areas.~~

6 ~~(b) District-based noninstructional~~
7 ~~administrators.--Included in this classification are persons~~
8 ~~with district-level administrative or policymaking duties who~~
9 ~~have broad authority for management policies and general~~
10 ~~school district operations related to the noninstructional~~
11 ~~program. Such personnel often report directly to the~~
12 ~~superintendent and supervise other administrative employees.~~
13 ~~This classification includes assistant, associate, or deputy~~
14 ~~superintendents and directors of major noninstructional areas,~~
15 ~~such as personnel, construction, facilities, transportation,~~
16 ~~data processing, and finance.~~

17 ~~(c) School administrators.--Included in this~~
18 ~~classification are:~~

19 1. ~~Principals or school directors who are staff~~
20 ~~members performing the assigned activities as the~~
21 ~~administrative head of a school and to whom have been~~
22 ~~delegated responsibility for the coordination and~~
23 ~~administrative direction of the instructional and~~
24 ~~noninstructional activities of the school. This classification~~
25 ~~also includes vocational center directors.~~

26 2. ~~Assistant principals who are staff members~~
27 ~~assisting the administrative head of the school. This~~
28 ~~classification also includes assistant principals for~~
29 ~~curriculum and administration.~~

30 (39) MANAGERS.--"Managers" means instructional and
31 noninstructional employees with some ~~includes those staff~~

1 ~~members who perform~~ managerial and supervisory functions,
2 ~~although primarily responsible for~~ while usually also
3 ~~performing general operations functions.~~ This category
4 includes only district-based employees. ~~Managers may be~~
5 ~~either instructional or noninstructional in their~~
6 ~~responsibility. They may direct employees' work, plan the~~
7 ~~work schedule, control the flow and distribution of work or~~
8 ~~materials, train employees, handle complaints, authorize~~
9 ~~payments, and appraise productivity and efficiency of~~
10 ~~employees. This classification includes coordinators and~~
11 ~~supervisors working under the general direction of those staff~~
12 ~~identified as district-based instructional or noninstructional~~
13 ~~administrators.~~

14 Section 3. Paragraph (a) of subsection (2) of section
15 236.685, Florida Statutes, is amended to read:

16 236.685 Educational funding accountability.--

17 (2) As used in this section, the term:

18 (a) "Administrative personnel" means deputy
19 superintendents, assistant superintendents, area
20 superintendents, assistant principals, vice principals, and
21 principals ~~those employees responsible for management~~
22 ~~functions such as the development of broad policies and~~
23 ~~implementation of those policies through the direction of~~
24 ~~personnel. This classification includes instructional and~~
25 ~~noninstructional employees at the district and school level.~~

26 Section 4. Paragraph (d) of subsection (3), paragraph
27 (a) of subsection (4), and subsection (5) of section 447.203,
28 Florida Statutes, are amended to read:

29 447.203 Definitions.--As used in this part:

30 (3) "Public employee" means any person employed by a
31 public employer except:

1 (d) Those persons who are designated by the commission
2 as managerial or confidential employees pursuant to criteria
3 contained in this section herein.

4 (4) "Managerial employees" are those employees who:

5 (a) Perform jobs that are not of a routine, clerical,
6 or ministerial nature and require the exercise of independent
7 judgment in the performance of such jobs and to whom one or
8 more of the following applies:

9 1. They formulate or assist in formulating policies
10 which are applicable to bargaining unit employees.

11 2. They may reasonably be required on behalf of the
12 employer to assist in the preparation for the conduct of
13 collective bargaining negotiations.

14 3. They have a role in the administration of
15 agreements resulting from collective bargaining negotiations.

16 4. They have a significant role in personnel
17 administration.

18 5. They have a significant role in employee relations.

19 6. They are ~~included in the definition of~~
20 administrative personnel as defined ~~contained in ss.s.~~
21 228.041(10) and 236.685(2)(a).

22 7. They have a significant role in the preparation or
23 administration of budgets for any public agency or institution
24 or subdivision thereof.

25
26 However, in determining whether an individual is a managerial
27 employee pursuant to either paragraph (a) or paragraph (b),
28 above, the commission may consider historic relationships of
29 the employee to the public employer and to coemployees.

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