

Jared Blanton

From: Jared Blanton
Sent: Thursday, March 18, 2021 11:04 AM
To: Susan P. Haines (levylegalsph@bellsouth.net)
Subject: FW: Clerk & Comptroller's Discretion over Constitutional Duties, Union Agreements, and False Vocabulary Conflation Attempts
Attachments: RE: Half cent hourly rate

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From: Jared Blanton
Sent: Thursday, March 18, 2021 11:02 AM
To: Wilbur Dean <dean-wilbur@levycounty.org>; Levy County Commission District 1 <district1@levycounty.org>; Levy County Commission District 2 <district2@levycounty.org>; Levy County Commission District 3 <district3@levycounty.org>; Levy County Commission District 4 <district4@levycounty.org>; Levy County Commission District 5 <district5@levycounty.org>
Cc: Danny J. Shipp <levyclerk@levyclerk.com>; Chief Mitch Harrell <mharrell@levydps.com>; Anne Brown <annebrownlevy@bellsouth.net>; levyfinance@levyclerk.com; Jacqueline Martin <martin-jacqueline@levycounty.org>
Subject: Clerk & Comptroller's Discretion over Constitutional Duties, Union Agreements, and False Vocabulary Conflation Attempts

Dear Commissioners & Wilbur,

I'm writing this in response to Ms. Graves email to all of you on Wednesday sent at 3:08 pm. While talking about Finance, she didn't copy me or Mr. Shipp, and so I don't at this stage see a need to involve her. But, I am not shy to send to her whatever you'd like in what I've written below. Out of respect for the Board, and for BOCC Management, I'm going to let you all choose how to respond to her, or whether you'd like me to send parts of the below to her directly.

Let me preface this by stating clearly: I have no argument with Wilbur in this matter. I was in fact up most of the night partly for his sake, because I understand he is caught between a rock and a hard place. Or in this case, between a frivolous complaint and a honey badger. I very much wanted to help him in this situation, but we (myself in consultation with Mr. Shipp) have determined that we cannot start sliding down the slippery slope of allowing the Board's unions to dictate specifically **how** our Constitutional Office will perform its job duties.

This is particularly true given that the signed agreement contains no such requirement as those being demanded by Ms. Graves. It's amusing to me when union reps turn into scholars and omit basic vocabulary understanding. I'll get to that.

This union's representation, in particular, has been conditioned to think everyone must be Pavlov's dog and start quaking and quivering when the term "grievance" is thrown out. They've been conditioned that way because we've taken the weak position unnecessarily so many times, and it's only making them worse in their bullying. I can prove that to you by comparing benefits with a dozen or so other governments around, the vast majority of which think we're crazy, and many of whom don't have an employee grossing within 15-20% of our higher paid employees last time I checked 2 years ago. And since then our wages at the top have only skyrocketed. They've gotten their way, a lot. But it's never enough. It never will be. 19 times of 20 isn't enough. Given them 20/21. They'll be back complaining tomorrow. Their problem here in pushing the grievance button and expecting everyone to roll over again is that they don't understand the ramifications of our Constitutional separation of powers. Nor do they realize that more nuclear options exist that I have never seriously considered employing, but we will, before we will allow the IAFF to dictate payroll cycles to us.

To the specifics of the matter at hand:

When we originally structured the pay type code and prepared to pay for these incentives, it never crossed our minds that a separate check would be desired nor warranted by the MOU/agreement, given the fact that is not "**current practice regarding preparation and distribution of paychecks**" (this terminology exists in their Master Collective Bargaining Agreement, more on that later) and since the term "separate", nor any synonym thereof, appears anywhere in the agreement section for this MOU. I'd previously read it a few weeks ago and saw nothing noticeable about distinct or separate payments at that time. We asked for a list of personnel so we could deal with helping DPS do the Budget Amendment for the funding, and we also researched the FRS applicability, and set up new codes and GL lines.

No verbal mention was made of separate payments prior to this week's payroll. Yesterday afternoon Wilbur came in our office and it was asked, nicely, if they could get their payments separately. That's much different than stating "this is required by the contract – you have to". Interesting. The "imperative" nature of this seems to have surfaced later.

So, given that I hadn't reread the contract recently, my biggest concern about separating payments when Wilbur first approached me was that it is additional workload for our office, particularly when staff informed me the only way to separate checks is to run separate payrolls. So, this will mean dual payrolls multiplied by many pay periods over, and more importantly, creates additional opportunities for mistakes in our reporting to the Internal Revenue Service and Florida Retirement, multiplied many times over (these payments are not FRS eligible, but nonetheless must be tracked). These payments are a manual input process that require a little more work as it is, even when we pay them as part of a normal payroll. That part isn't a huge burden, and we don't mind it. But to do separate checks, we'll be doing essentially 2 payrolls every period – one for all of the normal pay for the BOCC, and an additional entire payroll process just for these payments. Resulting in approximately 39 payrolls in a normal 26-cycle. That means the whole process. And that's where the potential aggregation errors lie. It does not seem warranted to create additional workload and open up the possibility of more errors in regulatory reporting to simply assist various employees receiving an incentive in their tax planning. They are always welcome to adjust their withholding via updating their W-4's if they think they're overpaying their taxes. That's between them and the IRS, but we have a payroll process to run that, believe it or not, involves more than one department (although I'll admit, probably 75% of our trouble/errors/special treatment comes from one department - **CONSISTENTLY**). There are many technical steps involved in these things, but of course, as we've seen with some recent Spotlight on Levy County Government public records requests, the number of steps involved in technical work, nor the time burden, is not often appreciated by those not performing or understanding the work. Every single payroll process

involves 2,000 – 3,000 sub-transactions (maybe 1600-1700 up front, and then a few hundred on the backend as we pay out taxes and benefits). There are lots of opportunities for errors even with them all summed up as one. The system will do a lot of the work for us so long as we set everything, and I mean everything, up properly to start with, and don't do a ton of manual overrides. Start dividing pieces off of them, and our reporting of taxes withheld and remitted, etc, as well as bank transfer amounts and accounting entries on the backend, start getting more complicated and risky.

We've had people working on Holidays near hurricanes and have stayed late at times to make sure BOCC employees get paid on time, and still generally managed to avoid most Overtime. Mr. Shipp, nor I, want a single employee needing their paycheck to get delayed or paid late. We're committed to make it happen, or try our best to do so. But this isn't about that. Of the few that we had this first round whose incentive was combined with payroll, one grossed \$98,721 last year, and the other grossed \$90,731. Neither of them is the department's highest paid. The highest paid employee made \$111,617 last year, and this year may not exceed, but this year is on track to at least give a good run for the money to Bobby McCallum's statutory amount of \$124,438. These people need \$4K incentives to stay. And then some are upset because we didn't split the check to help them avoid a little bit in taxes, when it will all shake out in the end of the year, and, as I've said, they could adjust their W-4 at any time to change their withholding.

In her defense, I'm not sure the IAFF Rep even realizes this has happened with these at the top, as some of them at the top have gotten 20%, 31%, or 51% raises in a 4-year period, effectively, and not all of that is from additional hours WORKED, but also from leave hours counting toward OT. But I doubt she knows this, because her own wages haven't accelerated like these others, and she "only" made \$53K last year (still better than a lot of your other high ranking long-time department heads, including one who works smart and hard in the central office and never gets paid to sleep), but only up a little from \$49K a few years ago. But she's useful to the folks at the front of the train. As should be expected, the IAFF rep's immediate reaction to not getting her way is to pull the extortive "grievance" (insert scary sounds and red neon lights here) card when they don't get what they want in exactly the manner they want it, down to the most microscopic detail. (I've attached an email from October wherein Ms. Graves was questioning my office about our system rounding wages to full pennies, and she went away when I explained to her that since the system tracks monies to 4th decimal place the max rounding error she could be looking at could be \$0.24 for the YEAR, and that's if the system did it wrong every single payroll, which there's no evidence it did it any. Just an example of the kind of time these people have on their hands to dream up a way to "grieve" about minutia). Anyway, so, the contract angle was not originally played, because I don't honestly think the IAFF reps read it that way until they tried really hard, but here we are. Never mind that, out of the BOCC's generosity, existing employees are being given a retention incentive for staying when, given a little time, I can show you in explicit detail that many of them are in *no considerable danger* of leaving given how richly they've availed themselves of their OT on leave benefits here, but I digress. So, anyway, Ms. Graves emails County management as well as all of the Commissioners complaining about "Levy County finance department".

Conspicuously absent is a representative from Finance, the County's legal representation, or the guy that signs this wacky Finance Officer's checks, the Clerk & Comptroller, Mr. Shipp. Ms. Graves is perhaps unaware of the fact that she is attempting to force the wrong people to try to force me into doing what she wants. We are a Constitutionally separate office. Not a BOCC Department. The BOCC provides us sufficient funding (thank you), but they don't tell us how to perform our duties. We provide budgetary advice to the BOCC, but the decision on how to allocate resources is ultimately the Board's. The Board can decide it wants to do its own Budget Office at some point in time if it so desires, but the accountant, auditor and fund custodian roles are Constitutional. It's a complementary, but legally separate, relationship. And I'd say, generally, the relationship between Clerk, BOCC, and Board staff, is going great. I respect and appreciate Wilbur and each individual Board member. But, within the scope of what's happening here, the BOCC should not even be asked to answer for my office's actions operating under our separate legal authority. We are like a separate payment vendor service, but we can't be fired except by the people because Mr. Shipp is elected, too. Mr. Shipp can finally decide he's had enough of my lunacy and fire me, but Ms. Graves is unlikely to be the one to persuade him to do so. And he never signed any agreement stating we'd depart from normal payroll processes, and by now I think he sort of already knows what sort of wacko he's got in me and for whatever reason he thinks I'm competent on these sorts of matters.

So after I said, no, that's nonsense, we're not going to disrupt our whole operation to help them plan their taxes, Wilbur politely left. Again, I have no argument with Wilbur. He's in the middle. Wilbur came back over to me with the email and the contract excerpt later yesterday afternoon. Wilbur is in good faith trying to make something happen, here. I saw the language and laughed, because there is nothing in the agreement stating separate, so Ms. Graves has no case, not even against the Board. None. I mean, maybe someone said something to her verbally, but so far as writing goes, she has absolutely nothing. But, she wants to put Wilbur and the County in a bad spot to force Finance to do her bidding. If you don't get it by asking, play the grievance card and threaten and coerce and hold Wilbur as a human shield...that's their M.O. Karl Marx, father of the philosophies that gave much steam to the undergirding of modern labor movement ideology, would be proud. But, nonetheless, for Wilbur's sake, I was leaning toward paying this money until I actually read the agreement excerpt again more closely and considered the meaning of the terminology being used after he left my office, as well as what's in the Master Collective Bargaining Agreement. I was preparing to talk with staff and consider whether we could run ONE additional payroll per month to cover these payments every 30 days or so, even though the language has no "separate" requirement. This would mean roughly 32-33 payrolls instead of 39. I absolutely was *not* going to run an additional payroll every two weeks...so at the very least, Ms. Graves request was going to cause some 2-week payment delays for those submitting shortly after the most recent payroll in each cycle.

Additionally, as we consider the legal authority slippery slope ramifications of allowing a labor union to dictate to the Clerk & Comptroller specific and minute details of how we perform our duties, we cannot abide going down that path.

But I'm glad Ms. Graves has made it a point to draw attention back to the contract language. What she has to hang her hat on is the terminology stating "a lump sum check, minus all normal withholdings."

Contractual agreements should contain English language terminology that can be understood by parties not present during verbal negotiations. The *intent* can be redefined and remembered differently all day long, but what is actually written matters more than what was intended if intent and writing do not exactly align. That's the purpose of making agreements in actual black and white rather than passing them down via some tribal oral traditions. If I talked to my painter over and over that I wanted my house to be green, but I sign a contract that says "orange" or "some vibrant colors", I will have a hard time saying he violated the contract for the paint being orange when the job is done. I can't speak to intent here, beyond what is in the black and white, which is that the BOCC is trying to do something good for IAFF. That's as much intent as I read. But no good deed goes unpunished.

In simple English: The term "lump" is defined as "aggregate, totality". The term "sum" is defined as "an indefinite or specified amount of money" or "the whole amount", or "the result of adding numbers". In financial matters, the latter definition is often assumed.

So, in actuality, by pointing out that the contract says "lump sum", she has successfully convinced me it's inconsistent, or even a violation of the contract terms, as written, to provide "distinct" or "separate" payments. A lump sum means "things added together". Otherwise, if it's lumping or summing together, what things would be added? You can't add together one item to itself. "The whole amount" definition requires the understanding that there are *parts* of the whole to be aggregated to arrive at a whole. I wouldn't say "I'm going to take the lump sum of this apple home", unless that apple was divided in parts. We don't have such a division of a single incentive pay. Nor would I say, "I'm going to take the lump sum of this single \$5 bill home". Rather, I'd be stating "I'm going to gather up the sum of these apples into a basket" or "I'm going to deposit the lump sum of all these \$5 payments I received today." This lump sum must be added to something else or it wouldn't qualify as a "sum". The way I read the agreement, that would be a lump sum with their normal payroll, minus all normal withholdings. In good faith, without bias, that's how I read it the first time, weeks ago.

Getting down to practical reality: Typically, in financial and contractual terms, the term “lump sum” simply means “at once”, rather than spread out over the course of time. But even in this interpretation, it does not in any way require separation from other forms of compensation.

Now, I will admit that, using the above idea of a one-time payment usage, it is possible to potentially stretch to interpret the terminology of “lump sum” as being self-contained of the incentive pay and to disregard normal financial usage of “sum”, but it is **impossible** to defend that the reading of the contract language as written **requires** that interpretation and for it to mean mutually exclusive from other payments.

But, to be clear, what’s further off the charts: In no case, and in no way, are these terms synonymous with the terms “separate”. In fact, the term “segregate”, which is defined as “to separate or set apart from others” is actually **an antonym** to the term aggregate (or sum).

Oh, but wait, it says “lump sum check”. Ms. Graves might assert that means a physical paper “check” which must be therefore separate. Nope. Not if we’re going to be consistent with the IAFF’s Master Collective Bargaining Agreement signed on August 18, 2020. “**Article 27 Paychecks**” reads:

Section 27.1 The parties agree that the current practice regarding preparation and distribution of paychecks is acceptable. Employees shall be given the option for electronic direct deposit of their checks to all banking institutions.

So, we see two things here: **One** is that the term “check” in this most recent agreement doesn’t mean physical check only, since the broader IAFF Bargaining agreement clearly is, as is customary, defining “checks” as the net payment, regardless of format, since “direct deposit of the checks” is a **physical impossibility** with a paper check. So that argument is DOA.

Secondly, we see that the IAFF has agreed previously they found the current practice of distribution of paychecks acceptable. Which means, opposite of any specific and clear language to the contrary in this agreement (which we’ve established does not exist) they risk invalidating their entire existing Master Collective Bargaining Agreement by now renegeing on their acceptance of “current practice”. For example, “current practice” has been that any additional payments, like longevity bonuses, which are paid in a single lump sum, once a year, combined in the same payment with the employee’s normal hourly wages. So, THAT lump sum has been working. Why not this one?

To prove the County has broken the agreement, the IAFF would be pretty far out on a limb in stating the County needs to redefine common terminology – essentially making antonyms into synonyms. And, as we’ve also seen, determining that the “*current practice of regarding preparation and distribution of paychecks is now UN-acceptable*” could constitute a violation of the Master Collective Bargaining Agreement. As such, Ms. Graves has no argument against the Board she can possibly win to an intelligent arbiter.

However, that said, I recognize that Ms. Graves may want to pull out additional extortive measures and either attempt to find a lawyer to tell me I’m wrong in reading simple English language (and not adding preferential verbal interpretations after the fact), or perhaps she may want to say the agreement is null and void because the Clerk (separate from the Board) failed to follow the additional contradictory terminology she has retroactively sprinkled into the agreement by fiat. It’s not our agreement. The Clerk’s Office is the payment processing center. The Board cannot dictate exactly how we do our jobs. We work cooperatively, and we try to please the Board. I have no interest nor need to try to please a union that wants to coerce the Board and its staff into a twisted misinterpretation of an agreement under threat of grievance to get its way.

I can see 3 possible paths, here:

1. We'll continue making incentive payments in a lump sum with normal payroll, just as "current practice regarding preparation and distribution of paychecks" has found acceptable per Master Collective Bargaining Agreement Section 27.1, and just as we've done for the first round of payments, given that no language in the most recent incentive MOA agreement actually contradicts "current practice regarding preparation and distribution of paychecks."
2. The Board can decide they'd like to allow DPS to have their way about this down to the electron level, but I'll require a revision to clarify that payments, for this instance, must be issued separately as current practice has been found not acceptable. The word "distinct", "separate" or something should be in the language. And I'd ask that it be clear that it's no more often than quarterly. If it's more often than that, I will feel compelled to begin moving in the direction of taking our payroll approval process to the letter of the law in order to protect ourselves from the risks of having our duties dictated by union agreements. I will explain that "nuclear option" below. If the Board wants to clarify that and reword the agreement with the union for clarity of language, we'll hold future payments and await the update.
3. Ms. Graves decides that the IAFF is really going to go out on this limb and say the agreement is void. At which point we'll stop paying ANY incentive pays until a new agreement is arrived at. Those employees whom have already received payment would be considered debtors to the County until the new agreement is signed.

Maybe there are other possibilities. Anything other than 1 above will result in Ms. Graves IAFF members getting NO incentives paid in the immediate future, so she can explain to them about how she's yet again found a way to punch a gift horse in the mouth and start a fight where there didn't need to be one.

What won't happen while Mr. Shipp and I are present: We are not going to be pushed into following this forced misinterpretation of an agreement because Ms. Graves wants to take Wilbur as a hostage to get her way. We have no desire to fight with the BOCC nor its Management, nor to cause them trouble, but draw the line in allowing our office to be treated in the same extortive ways that the Union treats the BOCC. These tactics are bullying.

In the future, payment mechanisms and timing should probably be discussed with the Office actually charged with making payments so we can help the BOCC determine, beforehand, what is possible and feasible. But again, in this case, there is nothing happening currently that is in contradiction to the written contract. I see no mistake here on Wilbur's part. But if they had, there may not be much he could do about it. For instance, had the union slipped into this agreement, actually written it in, that we would pay them on a daily or weekly basis, the Clerk's Office simply would not be able to do it.

With regard to a nuclear defense: Before our office would have the frequency of the payroll cycle usurped by a union, forced into something different than what has amicably worked for Board and Clerk for years, we will require every single paycheck to go before the BOCC in a meeting for approval prior to release, just like we have done for years for disbursements. Clerks around the State don't do this, but the law actually provides no distinction between the two types of payments, and we could require BOCC approval of all paychecks prior to release. But we've acted in good faith with the Board and with confidence relied upon the Board's staff in approving those payments, and, for the sake of employees, we want to avoid that sort of situation. However, should we get forced to that to protect ourselves and our processes, I would imagine that the other 200 BOCC employees, as well as 24/7 LEO's working for the Sheriff, would be quite surprised to see the size of the IAFF's net checks, aside from any incentives. Road Department employees who have worked for 35 years with much lower pay, and won't get high risk retirement, despite statistically being more likely to get disabled or killed on the job, would probably be less sympathetic to the IAFF at that juncture.

I hope this properly explains our position and the reason why we feel like we cannot open the flood gates to allow union dictation of our process cycles. Weeping, gnashing, grieving, notwithstanding. If you want to forward all or parts of this email to Ms. Graves, I will leave that to you. If you'd like me to

reply to her either saying more or less than the above, I will do that. Out of respect for the BOCC, and for BOCC Management, I've chosen not to do so before expressing our position to you.

I will say: My 10th wedding anniversary is tomorrow and I promised my wife we'd go out tonight and my phone is off (from work) this weekend. So, I will be leaving maybe around 3-4 pm today. So, if you'd like me to send anything directly to her, it may have to wait until Monday since I imagine no one will have all of this read in a single day. I don't sleep as much as normal people.

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