



September 7, 2021

To: Florida Board of Governors
State University System
325 West Gaines Street, Suite 1614
Tallahassee, FL 32399-0400

Chancellor Criser and Chair Kitson,

As of September 3, statewide positivity rates remain above 15%.¹ Faculty, staff, and students across the state university system remain rightly concerned for their safety, concerns shared by United Faculty of Florida (UFF) and, presumably, the Board of Governors. We must all do whatever we can do to reduce infection rates within the SUS, both for our campuses' sake and for the sake of the communities in which these campuses reside. It is thus alarming that UFF has received multiple reports that the Board of Governors is interfering with collective bargaining negotiations across the state university system with respect to proposals regarding COVID safety at individual institutions and with the decision to engage in bargaining over COVID at all.

Florida's State Constitution, article 1, section 6 reads:

The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.

Faculty at all SUS member institutions, along with graduate employees at four universities, are represented by a certified employee organization for purposes of collective bargaining, as well as the right to negotiate terms and conditions of employment under Section 447.309, Florida Statutes:

[T]he bargaining agent for the organization and the chief executive officer of the appropriate public employer...shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.

The certifications issued by the Florida Public Employee Relations Commission (PERC) show, in each instance, that the member institution's Board of Trustees is the public employer for purposes of collective bargaining². The Board of Governors is not a party to these local negotiations, as it has itself acknowledged, which provides:

*Each board of trustees shall act as the **sole** public employer with regard to all public employees of the university for the purposes of collective bargaining..."³*

Moreover, attempting to direct negotiations outside of duly noticed bargaining sessions is contrary to the spirit of the statutory requirement that collective bargaining must take place "in the Sunshine,"⁴ ensuring that the process is transparent to the broader public these bodies and public employees serve. Across the SUS, faculty and graduate employees seek provisions that will keep students and faculty safer as rocketing COVID-19 rates

¹ <https://www.local10.com/news/local/2021/09/03/florida-covid-update-new-cases-positivity-rate-data>

² Prior to 2002, there actually was one statewide employer who did collectively bargain with all unionized SUS employees: the Board of Regents. That power unequivocally was delegated to local, separate Boards of Trustees at each institution when the Board of Governors was created.

³ See BOG regulation 1.001(5)(b)

⁴ FS 447.605 (2).

imperil campuses and surrounding communities. Instead of discussions about the merits of such proposals, teams have been informed that the Board of Governors has instructed the Board of Trustees teams not to agree to proposals around terms and conditions of employment during this pandemic, even when a university desires to continue or implement policies for the safety of staff and students. If these reports are inaccurate, the Board of Governors must issue a memorandum to each Board of Trustees clarifying that they have the latitude to bargain reasonable local safety measures while there is still time to do so.

On the other hand, if the reports of obstruction are substantiated, they may be causing Boards of Trustees to commit violations of Florida law. Local Boards of Trustees are more fit than the Board of Governors to determine whether universal indoor masking requirements, vaccination access and policies, engaging in social distancing, and/or a greater reliance on virtual course modalities are appropriate measures to protect the lives of those on their campuses and in the surrounding community. In fact, the Boards of Trustees, and *not* the Board of Governors, have been uniquely empowered to make these local decisions at their respective universities, pursuant to Article IX, § 7(b) of the Florida Constitution, as well as your own BOG Regulation 1.001 at subsections (3)(a), (3)(j), (3)(l), (4)(a), (5)(a), (5)(b) and (8)(e). BOG Regulation 1.001(3)(l), which specifically authorizes each Board of Trustees to create its own campus health and safety rules unambiguously states as much:

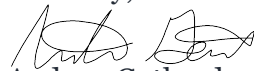
Each board of trustees shall be responsible for campus safety . . . to include safety and security measures for university personnel, students and campus visitors.

Thus, by virtue of its own regulations and the Florida Constitution, the Board of Governors is powerless to interfere with authority already held by the Boards of Trustees in matters of student and employee safety.

UFF demands that the Board of Governors cease and desist from obstructing collective bargaining at universities around the state. Moreover, UFF demands that the Board of Governors stop demanding conformity to its obsolete re-opening plan that has seen no substantial revision since Florida became a hotspot for the SARS-CoV-2 Delta variant.⁵ The BOG's last statement of COVID-19 mitigation policies systemwide was on August 6th and merely shares recommendations without empowering campuses to take more aggressive action to contain the virus's spread.

The stakes for our campuses and their surrounding communities are high. As of September 2, Florida has 94.25% of ICU beds in use, half of which are occupied by COVID-19 patients.⁶ Overall, 84.49% of hospital beds statewide are occupied.⁷ University students and faculty engage not only with each other, but with other members of their community in their daily lives. As infection rates increase, we must ask ourselves what we can all do to mitigate the risks of hospitals running out of space to treat COVID-19, let alone other illnesses and life-threatening emergencies. At a minimum, faculty and students deserve safety at their workplaces and learning environments. The Board of Governors should not interfere with local Boards of Trustees keeping their campuses safe.

Sincerely,



Andrew Gothard

President, United Faculty of Florida

⁵ The date at the top of the Board of Governor's "University Information on COVID-19" is March 26th. The Blueprint has no last revision date. The plan can be accessed here: <https://www.flbog.edu/the-state-university-system-of-florida-blueprint-for-reopening-campus-fall-semester-2020/>.

⁶ <https://protect-public.hhs.gov/pages/hospital-utilization>

⁷ <https://protect-public.hhs.gov/pages/hospital-utilization>