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March 1, 2016

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Via email tony.gentile@floridaea.org

Tony Gentile, Service Unit Director
Central Panhandle Service Unit
Florida Education Association
2655 Capital Circle NE, Suite 7
Tallahassee, FL 32308

Re: Representation of Santa Rosa County Employees by
Santa Rosa Education Association

Dear Tony,

You have requested that I give you an opinion on the rules governing the representation of employees in the two certified bargaining units in Santa Rosa County School District in disciplinary matters by Santa Rosa Education Association representatives. My opinion is that bargaining unit members can be represented in disciplinary investigations by a Santa Rosa Education Association "qualified representative" or attorney and by Santa Rosa Education Association representatives in grievances where the certified bargaining agent declines to represent a unit member because of non-membership.

As you know, a unit employee who reasonably believes that an investigative interview could lead to disciplinary action has the right to have a union representative present, commonly referred to as a Weingarten right. This is ordinarily limited to representatives of the certified bargaining agent. However, Section 120.62(2), Florida Statutes (the Administrative Procedures Act) provides an exception for agency investigations and agency proceedings:

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Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representative.

A School District is an agency covered by the APA and union representatives like yourself and your colleagues trained and skilled at representing employees in disciplinary matters that require investigation are, in my opinion, qualified representatives.

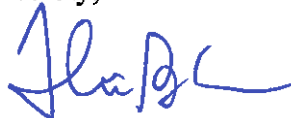
School district investigations for possible misconduct conducted by its agents are covered by Section 120.62(2). *See Raven v. Manatee County School Board*, 32 So.3d 126 (Fla. 2d DCA 2009). Therefore, Santa Rosa County employees have the right to elect representation by a qualified Santa Rosa Education Association representative in an investigation to which the Weingarten right also applies.

Section 447.401, Florida Statutes permits a certified bargaining agent to decline representation of an employee who is not a member of that organization in the processing of grievances arising under a collective bargaining agreement. If a certified bargaining agent does so, the employee has the right to representation by anyone he or she chooses, including a representative from a non-certified organization such as the Santa Rosa Education Association. *See In re the Petition for Declaratory Statement of the Palm Beach County Classroom Teachers Association and the School District of Palm Beach County*, 31 FPER ¶ 54, (2005).

Further, Section 447.301(4), Florida Statutes permits an employee to have a lawyer represent him or her in the adjustments of grievances "without the intervention of the bargaining agent" as long as the bargaining agent is afforded an opportunity to be present. This means that, where warranted, an attorney assigned by the Santa Rosa Education Association can represent a member of one of the bargaining units in the grievance procedure.

I trust that this letter is responsive to your request.

Sincerely,



Thomas W. Brooks

TWB/dma