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**VIA ELECTRONIC MAIL
AND FACSIMILE AND
U.S. MAIL**

Mr. John Tarka
AFT Administrator
Broward Teachers Union
6000 N. University Drive
Tamarac, Florida 33321

Dear Mr. Tarka:

You previously directed our law firm to render a legal opinion related to (a) the accrued BTU sick and vacation leave balance of Mr. Santeramo; and (b) the money owed by him to the union (for previous salary and pension overpayments; for current salary overpayments caused by the distribution schedule of payment; and for union credit card expenditures that lack backup slips that still cannot be explained as BTU business expenditures). You have asked us to memorialize that opinion.

Based on our initial legal research, the information rendered to us by AFT financial staff, and a review of BTU records, we conclude (as did the AFT accountants) that each party legally owes money to the other. Given the legal procedures and the costs needed to collect these funds, as well as issues of future collectability, we strongly recommend that the BTU deduct all monies owed to the union prior to any payment. The basis of our opinion is as follows:

1. Sick and Vacation Accrual Balances Owed by BTU

The AFT accountants report that they have calculated the accurate amount associated with this long standing employment benefit. The legal question is whether BTU owes it. The short answer is yes.

First, the accrual has been on the BTU books and in financial records for a substantial period. Financial documents and minutes reflect that this benefit was known by board members



and the BTU accountants. Second, no official governance action was ever taken to halt this benefit. Retroactive remorse is insufficient to serve as a denial of an employee's accrued fringe benefit package, though of course action can be taken prospectively.

Finally, there is a question as to the interplay of these balances with school board benefits. (This question only applies to sick leave accrual since there is no corresponding vacation benefit.) BTU staff receive 20 days of sick accrual versus the 10 days accrued by bargaining unit employees in the District. This is established in BTU documentation, contracts, employee balances, and financial records. As such the BTU employees, who still receive board benefits, accrue 10 days from each entity. In other words, they receive only half of the BTU benefit. We concur that there is legal basis for the AFT accountant's finding that the sick leave balance was properly calculated and carried on the financial books.

2. Money Owed To BTU

The AFT accountants are confident that the union is owed money arising out of the salary/pension overpayments and for unexplained credit card expenditures. (We now understand that the card transactions have been mostly explained as business expenditures despite the sloppy paperwork.) Our legal research is that these monies are owed to the union and should be vigorously and quickly pursued as we cannot be certain of collectability.

3. Your Proposed Offset

You have discussed a transaction of offset of the sums owed between the parties. While there is a question as to whether under the law BTU has the unilateral right to do so, we believe that such an approach is fair and reasonable under the circumstances. Given the situation at hand, we believe your acceptance of this risk is a defensible business position.

4. Recommendations by Counsel

A. BTU pay the leave balances, but offset that payment by all money owed to the union. Such a transaction closes the issue, properly honors each party's obligations, and saves the union significant legal fees.

B. Do not provide (or exchange) a release to the other side. Given this fluid situation and our reliance on business explanations, the BTU must maintain recourse options. Of course this means BTU would not get a release as well. While such a release may be prudent given our offset, it is far outweighed by the union's needs to preserve options. (While it is still unclear as to the union's institutional and board member liability in certain matters, the bona fides of AFT actions are sufficient to move forward without release). There are risks on both sides of the release issue but we believe the more prudent approach is not to issue a release at this time

C. Review the current BTU employee benefits schedule. Note that some of these benefits are provided by contract, policy and practice and any changes must be made in accordance with the law and with the constitution and bylaws.

D. Provide governance and fiduciary training to the board. Duties attendant to the fiscal oversight of the organization are duties that must be affirmatively exerted by each board member and should not be raised in hindsight.

Please feel free to seek further explanation from us.

Very truly yours,



Kathleen M. Phillips
On Behalf of the Firm

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