



# PERC NEWS

Florida Public Employees Relations Commission

April—June 2002

## Commissioner Kossuth's Excellent Adventure

Commissioner Charles H. Kossuth, Jr., provided this report of the Florida Professional Firefighters Convention:

*Steve Meck, our General Counsel, and I traveled to Altamonte Springs on Friday, May 31, 2002, to conduct a seminar for the delegates to the Florida Professional Firefighters' Convention. We were assisted by Attorney Paul Donnelly of Gainesville, Florida (352) 374-4001. The subject was PERC, Labor Law and Related Issues. The class was for three hours on Saturday morning and repeated in the afternoon. There were three other seminars, and that allowed participants to peruse several different topics. Steve and Paul are both excellent attorneys and, with many questions from the floor, the time went by quickly. As an old-timer, I reminded the participants of what it was like in Florida before 1967, without collective bargaining. That's the year Firefighters in Dade, Duval, and Hillsborough Counties attained the right to negotiate labor contracts, the first collective bargaining law in Florida. In 1972 Firefighters throughout the State attained collective bargaining rights and, of course, in 1974 the current PERA was passed for all public employees. Steve and Paul left on Sunday and I stayed on to attend the Convention.*

*Sunday was typical business, except for Sunday night. I was a guest chef for the MDA Ice Cream Sundae bash. I was joined by IAFF General President Harold Schaitberger, General Sec/Treas Vinnie Bollon, IAFF 12th Dist VP Dominick Barbera, IAFF 12th Dist MDA Chairman Leroy Nottingham and other significant people. We happily served wonderful vanilla, chocolate and strawberry sundaes*

*smothered with pineapple, strawberries, chocolate sprinkles, whipped cream and chocolate syrup to a large number of people and MDA kids. The Florida Chair, Ms. Pat McNichols of Jacksonville (866) 861-1454 (Toll free), has done a wonderful job at MDA and would be happy to talk to you concerning donations or estate planning.*

*Monday was just a great day. Jerry Polk of Orange County and I had the honor of escorting Governor Jeb Bush and the former Mayor of New York City, Rudy Guliani, from their arriving motorcade to the convention floor. Governor Bush was greeted by over five hundred fire fighters donning red tee shirts with the logos, "Fire Fighters for Jeb". The convention unanimously endorsed his candidacy for reelection and named him a "Honorary Member" of the FPF Association, the first politician ever so honored. He was followed by Mayor Guliani, who was greeted by cheers of "Rudy, Rudy, Rudy!" The Governor and Mayor both thanked the firefighters and EMS Personnel in Florida for raising over 15 Million dollars for the widows and children of the firefighters killed on 9/11/02. The Governor also thanked PERC for doing a good job. After speaking, the Mayor and Governor sat at the table for lunch with my wife Judi and I. (The Governor did not actually eat, he just circulated in the room greeting attendees). After lunch Judi and I left and I returned to work in Tallahassee.*

*Steve and I would be happy to talk to you about a workshop or seminar. You can contact Steve at (850) 488-8641.*

### In this Issue:

Practice Pointers .....	2	Representation Cases.....	8-10
Reopening the Record.....	3	Elections Verified.....	11
Termination of Local PERC.....	3	Election Procedures Addressed.....	11
Career Service Cases.....	4-7	We Have Moved.....	12
Unfair Labor Practice Cases.....	7-8		

## Practice Pointers: Exceptions and Transcripts in Career Service Appeals

The advent of Service First markedly shortened the time for disposition of career service appeals. The Commission is now required to issue a final order within thirty days of hearing if no exceptions are filed. If exceptions are filed, the Commission's final order must issue within thirty days of that filing. The time for filing exceptions was shortened to five business days. However, in most cases a court reporter will not be able to produce a transcript in less than seven working days. As a result, the parties to career service appeals are increasingly requesting extensions of time in which to file exceptions on the ground that they will not be able to obtain a transcript within the allotted five working days.

As a practical matter, this circumstance should indicate to all parties that it is risky to wait until receipt of the hearing officer's recommended order before ordering a transcript. It is well-settled that the Commission cannot reject or modify a hearing officer's findings of fact, credibility determinations, or recommended penalty without first reviewing a transcript of the evidentiary record. § 120.57(1)(l), Fla. Stat. (2001); Roberts v. Department of Corrections, 690 So. 2d 1383 (Fla. 1st DCA 1997); Brown v. Department of Corrections, 691 So. 2d 47 (Fla. 1st DCA 1997). Moreover, as the Commission's recent holding in Stotts v. Department of Transportation, Case No. CS-2002-004 (Fla. PERC June 10, 2002), makes clear, the transcript must be a complete transcript of the entire evidentiary hearing, not merely a transcript of the testimony, or of one day of a multi-day hearing.

However, even where the parties have delayed ordering a transcript until receipt of the recommended order, the Commission will grant a limited extension of time for exceptions. Because the Commission has only thirty days from the hearing (about two weeks after it receives a recommended order) to issue the final order if no exceptions are filed, it is not possible to grant lengthy extensions. When a party has waited until receipt of the recommended order to decide whether to order a transcript, it is almost certain that the Commission will not be able to grant a sufficient extension to allow that party to prepare exceptions after receipt of the transcript while still preserving sufficient time for issuance of the final order in the event no exceptions are filed. However, the Commission has long recognized that for parties and counsel who were present at the evidentiary hearing access to a transcript is not essential for preparation of exceptions. Thus, the Commission will grant the longest extension for filing exceptions possible while still allowing itself adequate time to issue a final order within thirty days of the hearing if no exceptions are filed. Once exceptions are filed, the Commission begins a new thirty-day period, calculated from the date the exceptions were filed, for issuance of its final order. Therefore, the Commission will allow a party filing exceptions before receipt of a transcript to supplement those exceptions with transcript citations and a copy of the transcript during that new thirty-day period.

### PERC NEWS

Published quarterly by the  
Public Employees Relations Commission  
4050 Esplanade Way  
Tallahassee, Florida 32399-0950  
(850) 488-8641  
FAX (850) 488-9704

PERC News does not contain official expressions  
of Commission or court decisions and  
should not be cited as authority.

To be placed on the PERC News mailing list,  
please call (850) 488-8641 or email  
suzanne.choppin@perc.state.fl.us

Donna M. Poole  
Charles H. Kossuth, Jr.  
Jessica Enciso Varn  
Stephen A. Meck  
Suzanne M. Choppin  
William D. Salmon  
Carlos R. Lopez  
Barbara J. Kirkland

Chair  
Commissioner  
Commissioner  
General Counsel  
Editor  
Career Service Case Summaries  
Labor Case Summaries  
Designer

## Reopening The Record: Pre and Post-Final Order

By: William D. Salmon, Hearing Officer

The Commission applies different standards to evaluate requests to reopen the record depending on whether the request comes before or after issuance of the final order. Seay v. Department of Corrections, 16 FCSR 294 (2001), presented the Commission with an opportunity to consider the circumstances under which it would reopen the record to receive additional evidence after the final order issued. In Seay, the employee had not attained permanent status in the career service system prior to his dismissal, and the Commission dismissed his appeal for lack of jurisdiction. The Commission's final order issued in June 2001, and in March 2002, the employee sought to reopen the record alleging that the agency had intentionally defrauded him during the May 2001 hearing.

In considering Seay's motion, the Commission relied on State Employees Attorneys Guild, FPD, NUHHCE, AFSCME, AFL-CIO v. State of Florida, 27 FPER ¶ 32200 at 476 (2001). There, the Commission concluded that it can only reissue a final order under the following circumstances:

- (1) When it is necessary to correct clerical errors arising from mistake or inadvertence;
- (2) When there are "egregious circumstances" warranting the issuance of a superceding final order to permit a belated appeal; or
- (3) When a party "had not received a copy of the final order and had been unaware of its issuance until after the time for appeal had expired.

The Commission determined that Seay's assertion of intentional fraud during an evidentiary hearing constituted an allegation of "egregious circumstances" but declined to reopen the record because the motion failed to present facts that supported this assertion. On May 23, the Commission denied Seay's third motion to reopen the record because it lacked jurisdiction to consider the motion. Seay was provided an opportunity to appeal that order to the District Court.

Had Seay filed his motion to reopen the record prior to the issuance of the final order, the Commission would have considered a different set of factors. In determining whether to reopen the evidentiary record prior to the issuance of the final order, the Commission considers:

- (1) Whether the evidence is newly discovered and was not available or discoverable with due diligence prior to the hearing;
- (2) Whether the motion is opposed;
- (3) Whether delay would result from granting the motion and
- (4) What impact, if any, the admission of such evidence will have on the material factual determinations made by the hearing officer.

See Brunn v. Department of Revenue, 3 FCSR ¶ 150 at 492 (1988), aff'd, 545 So. 2d 1370 (Fla. 1st DCA 1989).

## Termination of Local PERC

In response to a city's inquiry, the Commission explained in In Re City of Pensacola Local Option Commission, Case No. LO-2002-001 (May 13, 2002), the procedure for the termination of a city's local public employees relations commission adopted pursuant to a local option ordinance provided for by Section 447.603, Florida Statutes (2001). The Commission clarified that as soon as a local option commission has been dissolved, the city may file a copy of the relevant ordinance of dissolution and the Commission will assume jurisdiction. Upon assumption of jurisdiction by the Commission, any employee organization that was previously certified by that city's local option commission should file a petition with the Commission requesting that it now be certified by the Commission as the representative of a bargaining unit of city employees. The union should include with its petition copies of all records from the city's local option commission regarding the certification and any clarification or amendments to the certification. The union should also be registered with the Commission pursuant to Section 447.305, Florida Statutes (2001).



***Rivera v. Department of Corrections, Case No. CS-2002-026 (April 1, 2002).***

Health support technician's five-day suspension affirmed. Employee's failure to check her posted work schedule and failure to work a scheduled shift constituted a second occurrence of failure to follow oral or written instructions and a first occurrence of absence without authorized leave. Employee's use of 209 hours of approved sick leave in 30 workweeks constituted excessive absenteeism.

***Zappi v. Department of Children and Families, Case No. CS-2002-059 (April 1, 2002).***

Employee's appeal dismissed because she had not attained permanent status in the state career service system.

***White v. Public Service Commission, Case No. CS-2002-083 (April 11, 2002).***

Employee's appeal of her notice of predetermination conference was dismissed as premature because the agency had not taken final disciplinary action.

***Coney v. Department of Children and Families, Case No. CS-2002-036 (April 16, 2002).***

Human services worker, who was not authorized to drive, transported a severely or profoundly retarded client who was injured and having seizures to receive medical aid. Agency did not present evidence that the employee violated any provision of law, and the agency failed to introduce its rules into evidence at hearing. Further, based on nurse's and supervisor's instructions, employee had reasonable belief, during a medical emergency, that she was authorized to transport the client a short distance to the clinic. Thus, the hearing officer's finding that the agency did not have cause to dismiss employee for violation of provision of law or agency rules affirmed. Hearing officer's finding that, if cause had been proven dismissal is beyond the range of discipline authorized for the offense charged, also affirmed.

***Koon v. Department of Children and Families, Case No. CS-2001-417 (April 19, 2002).***

Remainder of transcript filed with request for Commission to reconsider final order. Employee's request for reconsideration denied because the Commission lacks the authority to reconsider a case after issuance of the final order. Even if the Commission had the authority to reconsider the final order, the filing of a transcript to allow review of previously filed exceptions to the hearing officer's facts and mitigation analysis is not a basis upon which reconsideration could be granted.

***Johnson v. Department of Children and Families, Case No. CS-2002-021 (April 23, 2002).***

Contract manager's dismissal for poor performance and negligence affirmed. Employee failed to adhere to contract processing times, failed to properly maintain a contract file, failed to diligently pursue and process corrective action plans for three service providers, and she was tardy four times in three months. In the absence of an assertion that the hearing officer incorrectly applied the applicable standard of proof or that she made incorrect evidentiary rulings affecting her analysis or resulting in an erroneous conclusion of law, the agency's exception to one instance of using the term "just" cause was denied as an unnecessary technical adjustment.

***Morales v. Department of Health, Case No. CS-2002-062 (April 23, 2002).***

Commission dismissed an appeal for lack of jurisdiction where the employee voluntarily resigned, her oral offer to resign was accepted before it was withdrawn, and the agency did not withdraw its acceptance of the resignation.

***Abad v. Department of Corrections, Case No. CS-2002-047 (April 24, 2002).***

Clinical associate's five-day suspension for insubordination, failure to follow instructions, and willful violation of rules, regulations, directives or policy statements affirmed. Employee deliberately ignored a supervisor's instructions not to contact a medical authority to change a scheduled inspection, and he left a coffee mug in an examination room, which resulted in the correctional institution being cited for violating a health safety regulation. Hearing officer concluded that a clinical associate is

a professional health care provider but mitigation was unwarranted because the seriousness of his conduct outweighed his employment record.

***Ajayi v. Department of Environmental Protection, Case No. CS-2002-018 (April 26, 2002).***

Engineer's dismissal for failing to possess an INS work authorization affirmed. Employee, a foreign national, failed to maintain the proper employment authorization documents at all times and could not remain employed even though the INS was processing his application. Award of ten-days back pay affirmed because the agency failed to provide the employee with written or oral notice of his dismissal in contravention of the extraordinary dismissal procedures.

***Jean-Pierre v. Department of Children and Families, Case No. CS-2002-049 (April 26, 2002).***

Unit treatment and rehabilitation specialist's appeal of dismissal for poor performance sustained. Agency did not have cause to dismiss the employee because he followed the agency's procedure when he was unable to remain and work the next shift because of family responsibilities.

***King v. Department of Children and Families, Case No. CS-2002-064 (April 29, 2002).***

Human services worker's job required a driver's license and his license was suspended for six months after pleading nolo contendere to driving under the influence. Commission declined to adopt that portion of the recommended order finding a willful violation of rules because the agency had not charged the employee with that offense, but merely with violating rules. In the absence of a finding defining the agency's rule regarding inability to perform assigned duties, employee's dismissal affirmed based on Section 110.227, Florida Statutes (2001), which permits dismissal when this charge is proven.

***Garland v. Department of Business and Professional Regulation, Case No. CS-2002-075 (April 29, 2002).***

Real estate development specialist's dismissal for insubordination and absence without authorized leave affirmed.

(Continued from page 4)

Employee refused to comply with lawful, job-related order to transfer from Tampa to Tallahassee.

***Chester v. Department of Highway Safety and Motor Vehicles, Case No. CS-2002-095 (April 29, 2002).***

Premature appeal filed before final agency action dismissed without prejudice to filing a new appeal if the agency takes final disciplinary action.

***Bruton v. Department of Corrections, Case No. CS-2002-421 (April 30, 2002).***

Correctional officer's dismissal for conduct unbecoming a public employee and giving false testimony under oath during an agency internal investigation affirmed. Employee attempted to interfere with the arrest of a relative, failed to provide assistance to an injured law enforcement officer, and gave false testimony under oath to Agency investigators during an internal investigation with the intent to absolve himself from liability. Case remanded to the hearing officer to consider allegations of disparate treatment. Transcript of original, but not supplementary hearing was filed. Because the portion of the transcript not provided related to mitigation, the Commission only considered the exceptions relating to cause. Mitigation was unwarranted because the seriousness of the conduct outweighed the employment record, and there was no evidence of disparate treatment or extraordinary circumstances beyond the employee's control.

***Bennett v. Department of Children and Families, Case No. CS-2002-073 (May 2, 2002).***

Interviewing clerk's dismissal for conduct unbecoming a public employee affirmed. Employee removed a client's application for food stamps from the agency's computer system because the client owed her money. Employee also used vulgar language toward the client and threatened the client with using her position to prevent him from obtaining benefits unless he paid the money he owed her.

***Warren v. Lake County Board of County Commissioners, Case No. CS-2002-119 (May 2, 2002).***

County employee's career service

appeal and complaint of age discrimination dismissed for lack of jurisdiction because he was not a state career service system employee.

***Moore v. Department of Corrections, Case No. CS-2001-210 (May 2, 2002).***

Commission vacated its final order approving a settlement agreement and issued a new final order approving an amended settlement agreement that corrected a clerical error.

***Peagler v. Department of Children and Families, Case No. BP-2002-002 (Relates to CS-2001-373) (May 8, 2002).***

A back pay award does not include postal expenses, photocopying expenses, and the cost of the transcript incurred in litigating the appeal. Employee was not entitled to an attorney consultation fee incurred in litigating the back pay case. A credit interest expense incurred on cash advances for daily living expenses and car insurance is not compensable. Commission rejected the employee's request to repay unemployment compensation rather than having it set-off against her gross earnings. Set-off for annual and sick leave reimbursements is calculated on the gross amount paid to the employee rather than the net amount received by the employee.

***Wilson v. Department of Children and Families, Case No. CS-2002-039 (May 8, 2002).***

Hearing officer denied employee's motion for summary judgment alleging due process violations by the agency in the pre-determination and final action notices, and the employee filed an interlocutory appeal with the First District Court of Appeal. Hearing officer granted, in part, employee's request for a stay pending review of the interlocutory appeal and rescheduled the hearing. Employee then filed suit in the U. S. District Court for the Middle District of Florida alleging various civil rights violations by agency officials. Based on the federal suit, the employee requested a stay of the evidentiary hearing, which the hearing officer denied. Employee failed to appear at the hearing and the hearing officer recommended dismissing the appeal. In dismissing the appeal, the Commission stated that an employee was not free to not attend a hearing when a requested continuance had been denied, and there was no evidence that the employee was prevented from attending

the hearing due to circumstances beyond his control.

***Joell v. Department of Children and Families, Case No. CS-2002-053 (May 8, 2002).***

Systems programmer's dismissal for insubordination, negligence, and conduct unbecoming a public employee affirmed. Employee refused to install a new computer program three times, and when he installed the program, he negligently failed to load it in the proper test environment. In addition, the employee frustrated the agency's information systems mission by refusing to update a new server unless the agency installed a mode that had been rejected by the supervisory staff.

***Daniels v. Department of Corrections, Case No. CS-2002-149 (May 8, 2002).***

Correctional officer's dismissal for conduct unbecoming a public employee affirmed. Employee brought controlled narcotic substances into the correctional facility. Employee entitled to ten days of pay because the agency failed to follow the procedural requirements for an emergency dismissal of a career service employee.

***Lovett v. Department of Highway Safety and Motor Vehicles, Case No. CS-2002-067 (May 9, 2002).***

Auditor's twenty-four hour suspension for using threatening behavior affirmed. Confrontational manner in which the employee launched an insult at his supervisor was threatening in nature. Given the employee's imposing physical presence, it was reasonable for the supervisor to be apprehensive about a physical attack.

***Hammock v. Department of Children and Families, Case No. CS-2002-081 (May 9, 2002).***

Hearing continued pending receipt of settlement agreement. Case was closed because neither a request to reschedule the hearing nor a settlement agreement was filed.

***Tejeda v. Law Offices of the Public Defender, Eleventh Judicial Circuit of Florida, Case No. CS-2002-136 (May 9, 2002).***

Hearing officer recommended dismissing the appeal for lack of

(Continued on page 6)

(Continued from page 5)

jurisdiction because the employee was not a state career service employee; instead, she was a member of the Public Defender's office, which is in the judicial branch. Commission granted the request to withdraw the appeal.

***Bush v. Department of Corrections, Case No. CS-2002-084 (May 14, 2002).***

Correctional officer's five-day suspension for willful violation of rules affirmed. Employee failed to comply with a supervisor's reasonable request to leave the institution. Serious misconduct, no evidence of disparate treatment or extraordinary circumstances beyond the employee's control, and a five and one-half year employment record with a written reprimand rendered mitigation unwarranted.

***Archie v. Department of Juvenile Justice, Case No. CS-2002-086 (May 14, 2002).***

Juvenile detention officer's dismissal for failure to perform her duties and failure to follow instructions affirmed. Employee failed to conduct ten-minute room checks, failed to complete observation reports, and failed to be attentive when counting juveniles.

***Lynch v. Department of Health, Case No. CS-2002-089 (May 14, 2002).***

Interviewing clerk's dismissal for revealing confidential information affirmed. Employee revealed an agency patient's medical status to private citizens. Employee awarded ten days of pay because the agency did not provide her with written notice of the charges within ten days of the effective dismissal date.

***Dixon v. Department of Children and Families, Case No. BP-2002-005 (Relates to CS-2001-429) (May 15, 2002).***

Employee failed to respond to show cause order, so the hearing officer relied on documentation provided by the agency and Comptroller to resolve back pay case. Hearing officer's recommendation to dismiss back pay case because the employee had apparently received his back pay affirmed.

***Muskelly v. Department of Children and Families, Case No. CS-2002-109 (May 15, 2002).***

Employee's appeal was dismissed for failure to appear at the hearing.

***Shaw v. Department of Corrections, Case No. CS-2002-094 (May 22, 2002).***

Correctional officer's five-day suspension for failing to perform her duties affirmed. Employee read a book while on perimeter post duties instead of remaining observant. Seriousness of the conduct weighed against mitigation.

***Jackson v. Department of Children and Families, Case No. CS-2002-091 (May 23, 2002).***

Interviewing clerk's dismissal for inefficiency or inability to perform job duties affirmed. Employee was unable to perform her duties due to excessive absenteeism (absent 20% of the available work time during the relevant period).

***Dunkley v. Department of Juvenile Justice, Case No. CS-2002-124 (May 23, 2002).***

Employee's appeal filed four days late dismissed as untimely. No equitable reason presented for Commission to accept the untimely appeal.

***White v. Department of Children and Families, Case No. CS-2002-072 (May 24, 2002).***

Food support worker's dismissal for insubordination and conduct unbecoming a public employee affirmed. Employee made loud and profane statements to his supervisor in the presence of other employees and refused to serve food to staff.

***Paliza v. Department of Corrections, Case No. CS-2002-096 (May 24, 2002).***

Correctional officer's dismissal for conduct during a verbal altercation with another officer affirmed. Employee engaged in a shouting match with another correctional officer in a guard tower, used vulgar language, and refused to open a sally port gate during the altercation. In considering mitigation, seriousness of conduct, short marred employment record, and lack of extraordinary circumstances beyond the employee's control outweighed two incidents of disparate treatment.

***Whiting v. Florida Department of Law Enforcement, Case No. CS-2002-108 (May 24, 2002).***

Employee's appeal filed one day late dismissed as untimely. No equitable reason presented for Commission to accept the untimely appeal.

***Bray v. Department of Environmental Protection, Case No. CS-2002-074 (May 30, 2002).***

Environmental specialist's dismissal for violation of the agency's computer policy affirmed. Employee stored pictures of nude women, a picture of a nude man, jokes of a sexual nature, a cartoon video of a character defecating, a video of a donkey attempting to copulate with a man, and personal correspondence of a social and flirtatious nature in folders in his office computer. Commission recognized that employees could not control e-mail sent to them but distinguished between receipt of e-mails and creating folders to store them. Agency properly invoked and implemented the extraordinary situations procedure.

***Jackson v. Department of Children and Families, Case No. CS-2002-078 (June 4, 2002).***

Institutional security specialist's dismissal for negligence affirmed. Employee allowed security door buttons to be jammed open, providing access to civilian employees' work area in a section of a forensic hospital accessible by those adjudicated criminally insane or incompetent to stand trial. Mitigation was not warranted because seriousness of the conduct outweighed a twelve-year employment record with two prior disciplinary actions and no disparate treatment.

***Fields v. Department of Corrections, Case No. CS-2002-111 (June 6, 2002).***

Agency's unilateral reduction of correctional officer's five-day suspension to a written reprimand divested the Commission of jurisdiction of the appeal.

***Reagan v. Department of Agriculture and Consumer Services, Case No. CS-2002-128 (June 6, 2002).***

Employee's appeal filed nineteen days late dismissed as untimely. No equitable reason presented for the Commission to accept the untimely appeal.

(Continued on page 7)

(Continued from page 6)

***Petit v. Department of Transportation,***  
Case No. CS-2002-147 (June 6, 2002).

Toll collector's dismissal for conduct unbecoming a public employee affirmed. Employee made a false police report claiming that a patron who went through his toll booth threatened to kill a deputy sheriff.

***Reynolds v. Department of Corrections,***  
Case No. CS-2002-170 (June 19, 2002).

Employee's appeal of his layoff was dismissed for lack of jurisdiction.

***Coney v. Department of Children and Families,*** Case No. BP-2002-006 (June 20, 2002); ***Ajayi v. Department of Environmental Protection,*** Case No. BP-2002-008 (June 25, 2002).

Back pay cases closed after employees did not respond to hearing officer's order directing them to file computation of back pay statements.

***Thompson v. Department of Children and Families,*** Case No. CS-2002-085 (June 24, 2002).

Family services counselor's dismissal for negligence, poor performance, and unbecoming conduct affirmed. Employee forgot to appear at a scheduled court hearing, inaccurately indicated arrival times at work on his timesheet, and failed to input complete information into the computer system. In response to an employee exception, the Commission held that in the absence of evidence that an employee is dissatisfied with an attorney's representation before the issuance of a recommended order, the Commission will not review the quality of representation provided to employees who, upon receipt of an adverse recommended order, have second thoughts concerning the effectiveness of that representation.

***Stith v. Department of Management Services,*** Case No. CS-2002-129 (June 25, 2002).

At hearing, the agency rescinded the ten-day suspension and substituted a written reprimand. Commission acknowledged that it was without jurisdiction to review the merits of a written reprimand but retained jurisdiction solely to determine the relief to the employee and ordered agency to award ten days of back pay.

***Mwaura v. Department of Health,***  
Case No. CS-2002-177 (June 25, 2002).

Employee filed a career service grievance challenging an adverse disciplinary action, the agency denied her grievance, and the employee appealed to the Commission. Due to election of remedies, employee's appeal of the agency's denial of her career service grievance was dismissed for lack of jurisdiction.

***Moore v. Department of Highway Safety and Motor Vehicles,*** Case No. CS-2002-149 (June 26, 2002).

Examiner's appeal of one-day suspension for falsification of records and unbecoming conduct sustained. Employee did not have the requisite intent to mislead or deceive when she claimed ten hours of administrative leave on her time sheet. Employee was upfront and open about her request to two supervisors and they failed to follow through in their responsibilities to process her request in a timely manner.

***McCorvey v. Department of Labor and Employment Security,*** Case No. CS-99-321 (June 26, 2002).

Employee sought to vacate a 1999 final order claiming she entered into the settlement agreement based on the statement that she could not appeal a reduction in pay emanating from a reorganization and reduction in force. Commission concluded that a mistaken statement of law does not form the basis of an egregious circumstance warranting vacation of a final order.

***Allen v. Department of Corrections,***  
Case No. CS-2002-167 (June 27, 2002).

Correctional officer's dismissal for physical inability to perform his duties affirmed. Employee injured her back on the job, reached maximum medical improvement with permanent restrictions that rendered her unable to perform her duties.

***Hill v. Department of Children and Families,*** Case No. CS-2002-126 (June 28, 2002).

Research and training specialist's dismissal for poor performance affirmed. Employee's performance was inadequate in a critical and essential area of her duties, that of cooperating with and supporting the efforts of her unit.



## Unfair Labor Practice Cases

***Palm Beach County Police Benevolent Association, Inc. v. City of Riviera Beach,*** 28 FPER ¶ 33143 (2002) (Relates to AF-2001-002, CA-97-099, and RC-97-029).

Commission concluded that the unlawfully discharged employee was entitled to back pay which included holiday and good cause pay, medical reimbursement, and overtime pay, but not pay for off-duty police employment. Furthermore, interest on back pay is calculated using simple interest based on quarterly net back pay.

***Fire Rescue Professionals of Alachua County, Local 3852, IAFF v. Alachua County,*** 28 FPER ¶ 33158 (2002).

Union filed an unfair labor practice charge alleging that the County unilaterally eliminated an adjusted hours leave practice (AHLP) affecting supervisory certified fire fighters without advance notice and bargaining. Commission determined that the charge was timely filed; Section 215.425, Florida Statutes (2001), prohibiting payment of extra compensation to County employees when not done pursuant to properly promulgated policies or ordinances, was inapplicable to the facts here; the AHLP was not prohibited by the Fair Labor Standards Act under the facts here; the actions of the deputy chief were attributable to the county because, within the context of an unfair labor practice charge, he was a managerial employee acting as the county's agent; and bargaining unit employees had a reasonable expectation that the AHLP would continue. Thus, the Commission concluded that the county committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), Florida Statutes (2001). Commission did not award Union attorney's fees and costs because the issue of whether Section 215.425 is violated by an AHLP is novel and, thus, the county neither knew nor should have known that its conduct was unlawful.

(Continued on page 8)

(Continued from page 7)

***Professional Association of City Employees, Inc. v. City of Jacksonville, 28 FPER ¶ 33162 (2002).***

Union's charge that the City had unilaterally changed the employees' absence without pay procedure without offering to bargain with the union was dismissed where the change occurred two days before the union was formally certified. Union had not charged that the City implemented the change after the union won the representation election but before the official certification to avoid bargaining with the union or to interfere with the employees' right to choose their own representative. The City's exceptions were denied where allegedly overlooked facts by the hearing officer would not change the ultimate result of the case. Furthermore, because the hearing officer concluded that the moving party failed to carry its burden of proof, and the moving party did not except to that decision, it was unnecessary to resolve the exceptions. The City's request for an award of attorney's fees and costs was denied.

***Joe Ferrara v. City of West Miami, Case No. CA-2002-018 (May 24, 2002).***

Appeal of General Counsel's summary dismissal of an amended unfair labor practice charge was dismissed where the appeal was untimely filed, no motion to extend the time limit was filed during the twenty-day period for filing the appeal, the existence of an extraordinary circumstance was not shown, and the charging party did not respond to a show cause order asking why the appeal should not be dismissed as untimely.

***Jacksonville Consolidated Lodge No. 5-30, Fraternal Order of Police v. City of Jacksonville, Case No. CA-2001-058 (May 24, 2002).***

Commission concluded that the City did not commit an unfair labor practice by failing to notify the union of, or giving it an opportunity to provide input into, changes to health insurance plan benefits and premiums where the City complied with the applicable collective bargaining agreements, and the union failed to establish that the practice regarding changes in health plan benefits was altered by the changes. Commission also concluded that the City was entitled to an award of attorney's fees and litigation costs.

***Professional Association of City Employees, Inc. v. City of Jacksonville, Case No. CA-2002-005 (June 6, 2002).***

Union alleged that the City committed an unfair labor practice by failing to deduct union dues for five bargaining unit members. Commission found no unfair labor practice where the failure was due to a clerical error that was fixed as soon as the City became aware of it. The City was not awarded attorney's fees because prior to this case the Commission had not expressly declared that intent was a required element to demonstrate a violation involving dues deductions.

***Ronald Shepherd v. Broward Sheriff's Office, Case No. CA-2001-071 (June 21, 2002).***

Unfair labor practice charge was dismissed where employer did not retaliate against employee for soliciting signature cards for a representation election and did not adopt an overly restrictive union solicitation policy. The employer was not awarded attorney's fees and costs.

***Anthony Zitnick v. City of Pembroke Pines, Case No. CA-2002-019 (June 25, 2002); Anthony Zitnick v. International Association of Firefighters, Local 2292, Case No. CB-2002-004 (June 25, 2002).***

Commission affirmed the General Counsel's summary dismissals of the charging party's amended unfair labor practice charges where charges were untimely filed and insufficient on their merits to establish a prima facie violation.

***Ponce Inlet Professional Firefighters, Local 4140 v. Town of Ponce Inlet, 28 FPER ¶ 33152 (2002).***

Hearing officer recommended that a consent election agreement for a rank-and-file bargaining unit of firefighters be approved. The agreement excluded part-time employees. Commission remanded the case to the hearing officer to explain why part-time firefighter personnel were excluded from the proposed bargaining unit.

***Suncoast Professional Firefighters and Paramedics, Local 2546, IAFF v. Charlotte County Fire & EMS, 28 FPER ¶ 33160 (2002).***

Unit clarification petition seeking to include the battalion chief classification in a unit of fire rescue personnel and updating job titles in the unit description was granted.

***Polk Education Association, Inc. v. School Board of Polk County, 28 FPER ¶ 33163 (2002).***

Unit clarification petition seeking to include newly created position of rehabilitation nurse in an instructional personnel bargaining unit was granted.

***South Daytona Professional Firefighters, IAFF, Local 3193, AFL-CIO v. City of South Daytona, Case No. RC-2002-022 (May 2, 2002).***

Representation-certification petition dismissed where the petitioner was not registered with the Commission at time the petition was filed and where petitioner filed copies rather than original authorization cards.

***International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. UC-2002-007 (May 2, 2002).***

Unit clarification petition seeking to clarify a unit of non-professional supervisory employees by including the lead life-guard classification and deleting the administrative secretary classification was granted.

***International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. UC-2002-008 (May 2, 2002).***

Unit clarification petition seeking to clarify or modify a bargaining unit of non-

## Representation Cases



***In re Petition of Suncoast Professional Fire Fighters and Paramedics, IAFF, Local 2546, To Amend Certification No. 740, 28 FPER ¶ 33141 (2002).***

Petition to amend certification by reflecting a change in the name of the certified bargaining agent was granted.

(Continued on page 9)

(Continued from page 8)

supervisory, full-time, part-time, and probationary office, clerical, and administrative personnel was granted.

**Southwest Florida Professional Firefighters & Paramedics, Local 1826, IAFF, Inc. v. Fort Myers Beach Fire Control District, Case No. RC-2002-014 (May 6, 2002).**

Consent election agreement for a unit of certified firefighters in the classification of deputy fire chief was approved.

**Jeffrey Simpkins v. Public Employees Union, A Division of Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees v. City of Inverness, Case No. RD-2002-003 (May 6, 2002).**

Commission directed that an election be conducted to determine whether a majority of unit members desired to revoke the union's certification. Based upon the hearing officer's recommendation and by agreement of the parties, the Commission modified the bargaining unit description for purposes of the decertification election only. The Commission noted that if the union prevailed in the election, it could seek clarification of the unit to reflect changes that have occurred since the union's certification through the unit clarification procedure.

**Amalgamated Transit Union, Local 1596 v. Central Florida Regional Transportation Authority (d/b/a LYNX), Case No. RC-2002-023 (May 9, 2002).**

Representation-certification petition was dismissed because it was filed outside of the statutory window period pursuant to the "contract bar" provision of Section 447.307(3)(d), Florida Statutes (2001).

**Office and Professional Employees International Union v. Volusia County, Case No. RC-2001-062 (May 9, 2002).**

Bargaining unit of professional non-supervisory employees was defined.

**Teamsters Local Union No. 769 v. City of Hialeah Gardens, Case No. UC-2002-015 (May 9, 2002).**

Unit clarification petition was granted where the parties mistakenly omitted the classification of records/communications

clerk from the white-collar bargaining unit description, the parties agreed that the classification should be included in the bargaining unit, and the unit clarification petition was filed less than a year from the date of the representation election in which the affected employee had voted.

**Service Employees International Union, AFL-CIO, Local 1991 v. Jackson Memorial Hospital/Public Health Trust, Case No. UC-2002-004 (May 10, 2002).**

Unit clarification petition seeking to clarify a bargaining unit of registered nurses was dismissed where it failed to provide a factual predicate demonstrating that the classifications, which existed at the time the unit was defined, were excluded through inadvertence or that they shared a community of interest with bargaining unit members. Additionally, the unit clarification procedure was not appropriately invoked because the petitioned-for classifications constituted a fringe group.

**Miami-Dade County, Florida, Employees Local 199 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Miami-Dade County, Case No. RA-2002-002 (May 14, 2002).**

Recognition-acknowledgment petition sought to represent a wall-to-wall bargaining unit of County full-time and regular part-time employees. Union was originally certified to represent a wall-to-wall unit of employees employed by the County and the Public Health Trust. In this petition, the union sought to sever a unit limited to County employees and excluding employees of the Trust. Hearing officer found that the employees to be severed constituted an appropriate bargaining unit. Commission granted the petition. Companion case follows immediately below.

**Dade County Public Employees Local 1363, AFSCME, AFL-CIO v. Miami-Dade County and Public Health Trust of Miami-Dade County, Case No. RA-2002-003 (May 14, 2002).**

Union filed a recognition-acknowledgment petition seeking to represent the remaining employees from its original certification discussed immediately above, that is, a wall-to-wall bargaining unit of full-time and regular part-time non-professional employees employed jointly

by the County and the Trust. Hearing officer found that the inclusions and exclusions for the proposed unit were identical to the previously defined unit except for the removal of the County employees and recommended that the Commission grant the petition. Commission granted the petition, revoked the prior certification number, and issued a new certification number.

**School Board of Pinellas County v. National Conference of Firemen and Oilers, Local 1220, NCFD, SEIU, AFL-CIO, CLC, Case No. UC-2002-013 (May 14, 2002).**

Unit clarification petition was dismissed as unnecessary where generic bargaining unit description of non-instructional employees encompassed petitioned-for classifications.

**Florida Police Benevolent Association, Inc. v. City of Punta Gorda, Case No. RC-2002-005 (May 15, 2002).**

Consent election agreement for a unit of police sergeants was approved.

**Teamsters Local Union No. 385 v. City of Palm Coast, Case No. RC-2002-008 (May 15, 2002).**

Consent election agreement for a unit of operational services employees was approved.

**Orange County Professional Firefighters, Local 2057 v. Orange County Fire Rescue, Case No. RC-2002-009 (May 15, 2002).**

Consent election agreement for a supervisory unit of battalion chiefs was approved.

**Lee County Public Employees Association v. Lee County Board of County Commissioners, Case No. RC-2002-018 (May 15, 2002).**

Consent election agreement for a unit of blue-collar employees was approved.

**Service Employees International Union, AFL-CIO, Local 1991 v. Jackson Memorial Hospital/Public Health Trust, Case No. UC-2002-005 (May 15, 2002).**

Unit clarification petition seeking to clarify a bargaining unit of health-related professional employees was dismissed where it failed to provide a factual predi-

(Continued on page 10)

(Continued from page 9)

cate demonstrating that the classifications, which existed at the time the unit was defined, were excluded through inadvertence or that they shared a community of interest with bargaining unit members. Additionally, the unit clarification procedure was not appropriately invoked because the petitioned-for classifications constituted a fringe group.

***Ponce Inlet Professional Firefighters, Local 4140 v. Town of Ponce Inlet, Case No. RC-2002-003 (May 23, 2002).***

Upon review of the hearing officer's recommended and supplemental recommended orders, and the supporting documentation, the parties' consent election agreement for a rank-and-file bargaining unit of firefighters was approved.

***Laborer's International Union of North America, Local Union No. 800, AFL-CIO v. Miami-Dade Community College District Board of Trustees, Case No. RC-2002-028 (May 23, 2002).***

Representation-certification petition seeking to represent a small group of custodial employees at one specific location was dismissed for being facially inappropriate.

***Laborer's International Union of North America, Local Union No. 800, AFL-CIO v. Miami-Dade Community College District Board of Trustees, Case No. RC-2002-029 (May 23, 2002).***

Representation-certification petition seeking to represent a small group of custodial employees at one specific location was dismissed for being facially inappropriate.

***Office and Professional Employees International Union v. Volusia County, Case No. RC-2001-062 (May 24, 2002).***

Commission defined a bargaining unit of professional non-supervisory employees.

***Florida Regional Council of Industrial and Public Employees, United Brotherhood of Carpenters and Joiners of America v. St. Johns County, Case No. RC-2002-019 (May 24, 2002).***

Representation-certification petition seeking to add additional employee classifications to a bargaining unit of blue-collar employees through an opt-in election was dismissed because it was not filed within the statutory window period (150 days to

90 days immediately preceding the contract's expiration date) of the existing contract.

***School Board of Brevard County v. International Union of Painters & Allied Trades, AFL-CIO, Local Union 1010, An Affiliate of District Council #78, Case No. UC-2002-016 (May 24, 2002).***

Unit clarification petition seeking to clarify a wall-to-wall bargaining unit of non-supervisory, non-professional School Board employees by including one classification, changing the title of another classification, and deleting five classifications, was granted.

***Southwest Florida Professional Firefighters & Paramedics, Local 1826, International Association of Fire Fighters, Inc. v. Lee County Port Authority, Case No. UC-2002-014 (June 4, 2002).***

Unit clarification petition seeking to modify the unit description to reflect the retitling of the crash fire rescue technician classification to the ARFF technician I classification was granted.

***Office and Professional Employees International Union v. Volusia County, Case No. EL-2002-014 (Relates to RC-2001-062) (June 6, 2002).***

Union requested that representation-certification election be conducted by mail ballot election. County requested an on-site election. Upon consideration of the parties' arguments, Commission directed that an on-site election be conducted.

***City of Port St. Lucie v. Coastal Florida Public Employees Association, Case No. UC-2002-011 (June 6, 2002).***

Unit clarification petition seeking to modify a comprehensive bargaining unit of City employees by excluding several positions as supervisory or confidential employees was granted.

***Indian River County School Board v. Communications Workers of America, Case No. UC-2001-057 (June 11, 2002).***

School Board's unit clarification petition seeking to clarify a non-instructional blue-collar bargaining unit by removing the reclassified position of food service manager was granted because the evidence showed that these employees possessed a supervisory conflict with unit members.

***St. Cloud Professional Firefighters, Local 4153, IAFF v. City of St. Cloud, Case No. RC-2002-004 (June 13, 2002).***

Union originally filed a representation-certification petition seeking to represent a bargaining unit of rank-and-file firefighter personnel. Thereafter, the union amended its petition seeking to also represent a supervisory unit of firefighter personnel. The parties then executed and filed consent election agreements and supporting documentation for the proposed units. The hearing officer recommended that the bargaining unit be found appropriate. Commission approved the rank-and-file bargaining unit and directed that a secret ballot election be held in that unit. However, because the hearing officer's recommendation for the supervisory unit presented the potential for a second supervisory unit without sufficient record evidence, the Commission remanded the case to the hearing officer to conduct a hearing, develop an evidentiary record, and submit additional findings, analysis, conclusions and recommendation regarding the supervisory unit.

***Bill Clement, Sheriff of Charlotte County v. Florida State Lodge, Fraternal Order of Police, Case No. UC-2002-003 (Apr. 24, 2002).***

Petitioner's notice of voluntary dismissal of the petition was granted without prejudice to re-filing.

***Office and Professional Employees International Union v. Volusia County, Case No. RC-2002-020 (Apr. 29, 2002).***

Representation-certification petition dismissed where the petitioner's registration was expired and showing of interest was deficient. Petitioner's request to have showing of interest previously filed in another case transferred was denied as premature because order directing election in the other case had not yet issued.

***Teamsters Local Union No. 385 v. City of Deland, Case No. RC-2002-035 (June 19, 2002).***

Representation-certification petition limited to two classifications in a single department was dismissed as facially inappropriate.

## Elections Verified April 1—June 30, 2002

*Florida Community College Faculty Federation v. Florida Community College of Jacksonville*, Case No. EL-2002-009; Election conducted 04/03/02 - 04/04/02 (Union won)

*Florida State Fire Service Association v. State of Florida v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees*, Case No. EL-2002-006; Election conducted 03/13/02 - 04/05/02 (Florida State Fire Service won)

*Cocoa Firefighters Association, Local 2416, IAFF v. City of Cocoa*, Case No. EL-2002-010; Election conducted 03/19/02 - 04/09/02 (Union won)

*Walton County Education Association v. Walton County School Board*, Case No. EL-2002-011; Election conducted 05/01/02 thru 05/22/02; (Union won)

*Southwest Florida Professional Firefighters & Paramedics, Local 1826, IAFF, Inc. v. Fort Myers Beach Fire Control District*, Case No. EL-2002-012; Election conducted 05/29/02 - 06/19/2002; (Union won)

*Jeffrey Simpkins v. Public Employees Union, A Division of Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees v. City of Inverness*, Case No. EL-2002-013; Election conducted 06/06/02 - 06/27/02 (Union won)

*Space Coast PBA, Inc. v. Town of Melbourne Village*, Case No. EL-2002-007; Election conducted 05/01/02 - 05/22/02 (Union lost)

## Election Procedures Addressed

In *Florida Police Benevolent Association, Inc. v. City of Clewiston*, Case No. RC-2002-013 (June 28, 2002), the parties stipulated to the composition of a bargaining unit of police officers and filed a joint motion for an on-site election. The hearing officer recommended that the motion be approved. However, while the Commission approved the agreed-upon bargaining unit, it denied the motion for an on-site hearing because there were only twelve eligible voters, the parties sought to schedule the Commission's election agent at shift changes at 10:45 p.m.-11:15 p.m. and 6:45 a.m.-7:30 a.m., the election location was a difficult

travel destination from the Commission's office, and none of the reasons articulated in support of an on-site election were based on any facts unique or specific to the election. The Commission found specious the parties' argument that rejection of their requests would result in "greater expense as parties will have less incentive to stipulate on issues rather than go to a hearing." Stating that while the choice to stipulate or litigate an issue remains entirely within the discretion of the parties, the Commission will not be directed by litigants seeking to dictate through stipulations the Commission's internal case handling proce-

dures. The Commission concluded that a mail ballot election was appropriate. However, because the hearing officer stated that an on-site election was "an integral part of their agreement to the unit composition," the Commission provided the parties an opportunity to withdraw the stipulation as to the unit composition. If this occurs, the Commission will rescind the order directing election and the hearing officer will be directed to expeditiously process the case in order not to unduly burden the employees' constitutional right to decide for themselves whether to unionize.

## **WE HAVE MOVED**

In mid-May the Commission relocated its offices to the State Capital Circle Office Complex in Tallahassee. Our new address is:

Public Employees Relations Commission  
4050 Esplanade Way  
Tallahassee, Florida 32399-0950

Our telephone number and fax number are unchanged.

## **COMING SOON: CAREER SERVICE GUIDE AVAILABLE**

The Commission will soon publish a guide to the career service appeal process, including changes resulting from the Service First legislation. This twenty-eight page document will be available on the Commission's web site, <http://www2.myflorida.com/les/perc/default.html>. A copy of the guide can also be obtained by sending \$2.00 to the Commission Clerk, requesting "Career Service Appeals Under Service First."



STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION  
4050 Esplanade Way  
Tallahassee, Florida 32399-0950

Presort  
Standard  
U.S. Postage  
**PAID**  
Tallahassee, FL  
Permit No. 55