



PERC NEWS

Florida Public Employees Relations Commission

April 1 – June 30, 2003

City of Jacksonville Put Through its Paces: Flurry of Unfair Labor Practice Charges Filed by City and Union

by William D. Salmon, Hearing Officer

In *Professional Association of City Employees (PACE) v. City of Jacksonville (City)*, 28 FPER ¶ 33224 (2002), PACE alleged that the City was refusing to bargain in good faith by unilaterally changing the manner in which it processed contractually based grievances. The Commission agreed with the hearing officer that: 1) the City had not violated the law when it refused to process PACE’s grievances that were filed after the contract between the predecessor union and the City ceased to exist; and 2) the City did not commit an unfair labor practice by refusing to permit PACE officials to investigate contractually based grievances and by refusing to allow PACE officials to call witnesses at grievance meetings. The hearing officer did not award the City attorney’s fees because she concluded that these issues were novel; the City excepted to this recommendation.

Applying fundamental principles of contract law, the Commission reasoned that an entity or individual that was not a party to a contract, i.e., a stranger to the contract, could not seek to enforce

its provisions. In the absence of a mutual agreement, the stranger had no right to enforce the contract negotiated between the previous parties. The Commission concluded that the unfair labor practice charges were groundless when filed; thus, the City was entitled to an award of attorney’s fees as a prevailing respondent. PACE appealed the Commission’s final order. *Professional Association of City Employees v. City of Jacksonville, appeal filed*, No. 1D02-3096 (Fla. 1st DCA July 31, 2002). Both parties have briefed the issues to the court, including the City’s entitlement to attorney’s fees, and are awaiting the court’s ruling.

In *City of Jacksonville v. Professional Association of City Employees*, 28 FPER ¶ 33229 (2002), the City alleged that PACE was refusing to bargain in good faith. The hearing officer found that PACE, through its president, attempted to force the City to remove its chief negotiator as a precondition to PACE continuing collective bargaining for the professional unit. The hearing officer also found that PACE engaged

in bad faith bargaining by refusing to commence bargaining with the City for the non-professional unit until the City removed its chief negotiator. In addition, the hearing officer found that PACE unlawfully refused to commence bargaining until the City granted PACE’s twelve local presidents paid time off from work to prepare for negotiations. However, the hearing officer did not recommend an award of attorney’s fees to the City; the City excepted to this recommendation.

The Commission concluded that such purposeful violations of the law warranted an award of fees to the City. PACE appealed the Commission’s final order. *Professional Association of City Employees v. City of Jacksonville, appeal filed*, No. 1D02-3102 (Fla. 1st DCA July 31, 2002). Both parties have briefed the issues to the court, including the City’s entitlement to attorney’s fees, and are awaiting the court’s ruling.

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Deputy Sheriffs Exercise Bargaining Right

by H. Lee Cohee II, Hearing Officer

In the aftermath of the Florida Supreme Court's decision in *Coastal Florida Police Benevolent Association, Inc. v. Williams*, 838 So. 2d 543 (Fla. 2003), holding that deputy sheriffs are public employees with the right to engage in collective bargaining, the Police Benevolent Association and the Fraternal Order of Police have been busily organizing deputies around the state. As of July 2, thirty petitions have been filed to represent deputy sheriffs in eighteen counties.

The vast majority of the petitions filed seek to represent the sworn law enforcement classifications. In the larger counties, the unions have sought to represent both rank-and-file and supervisory law enforcement bargaining units. The balance of the petitions have requested units of correctional and detention deputies. The unions are not pursuing mixed units of law enforcement and correctional officers.

Consent election agreements have been filed in nearly all the pending cases. Commission orders directing elections among the deputies in the Palm Beach, Pinellas, and Gadsden County sheriff's departments have already issued. With more than two-thirds of the state's counties yet to be organized, this will indeed be a busy year for the police unions, sheriff's departments, and the Commission.



PERC Presentation to Firefighters

On May 30, 2003, PERC General Counsel Steve Meck and Commissioner Charlie Kossuth traveled to Altamonte Springs, Florida, to present a seminar at the 59th Annual Convention of the Florida Professional Fire Fighters. Attorney Paul Donnelly of Gainesville assisted Meck and Commissioner Kossuth. In two three-hour workshops, the trio addressed over one hundred young fire fighters in attendance. Donnelly covered the subject of unilateral changes. Meck and Commissioner Kossuth covered the topics of collective bargaining history, the law prior to and after the formation of PERC, and PERC's future. Discussion ranged over contracts, specific cases, and many questions from the spirited audience. Commissioner Kossuth observed that Meck and Donnelly "are great together," and "bring a lot of intelligence to the young minds." As Vice President Emeritus of the FPF, Commissioner Kossuth stayed on to attend the convention's business sessions. Friends of the Fire Fighters who addressed the convention included Congressman Tom Feeney, Lt. Governor Toni Jennings, State Senator Dave Aronberg, State Representative Sandy Adams, Orlando Mayor Buddy Dyer, Chair of the Florida Republican Party Carol Jean Jordan, Chair of the Florida Democratic Party Scott Maddox, and State Fire Marshall Randy Napoli.

If your organization is interested in receiving a presentation about PERC, please call (850) 488-8641.

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University Cases Flood the Commission

by John Showalter, Hearing Officer

For approximately the last seven months, the Commission has been processing numerous representation cases resulting from the reorganization of the State University System. The reorganization began in 2002 when the legislature mandated that local university boards of trustees be substituted for the Florida Board of Education as the public employer of the employees at each university effective January 7, 2003. In conformity with this mandate, Section 447.203(2), Florida Statutes, was amended to designate each local board of trustees as the public employer of its employees.

The vitality of these laws was called into question, however, by the passage of Amendment XI on November 5, 2002. This amendment created, effective January 7, 2003, the Board of Governors (BOG), a new statewide governing board with oversight authority over the entire State University System.

In December 2002 and January 2003, the United Faculty of Florida (UFF), Police Benevolent Association (PBA), and Fraternal Order of Police (FOP) filed representation petitions seeking to represent various groups of employees at the eleven state universities. Because of the confusion created by the passage of Amendment XI, the Commission consolidated these cases before one hearing officer and directed that a hearing be held solely on the issue of the identity of the public employer at each university. On January 15, the UFF, PBA, and BOG filed stipulations agreeing that the boards of trustees were the public employers of their respective universities. The stipulations were based on a resolution passed by the BOG on January 7, 2003, granting each board of trustees the authority to act as the sole public em-

ployer for the purpose of collective bargaining. The parties to these cases who did not sign the stipulations were given an opportunity to respond, and those parties either agreed with the stipulations or asserted that the boards of trustees were the public employers based upon the express wording of Section 447.203(2), Florida Statutes. No parties asserted that the BOG was the public employer.

On February 7 and 14, the hearing officer issued recommended orders concluding that the boards of trustees were the public employers of the employees at their universities. The hearing officer also recommended that the BOG be dismissed as a party in each case. No exceptions were filed to the recommended orders and on March 14 the Commission issued an order agreeing that each board of trustees was the public employer of the employees at its university. The cases were then remanded to hearing officers to continue processing the petitions.

At approximately the same time as these representation petitions were being processed, the American Federation of State, County and Municipal Employees (AFSCME) filed four amendment to certification petitions requesting that certifications 730, 731, 732, and 733 be amended to substitute the BOG for the Board of Education as the public employer of various support personnel. The BOG filed a motion to dismiss these cases alleging that the board of trustees at each university was the public employer of its employees.

On February 20, the hearing officer issued a recommended order concluding that the board of trustees of each university was the public employer of the employees at its institution by virtue of Section 447.203(2), Florida Stat-

utes, and the BOG's January 7, 2003, resolution. AFSCME filed exceptions challenging the hearing officer's recommendation that the petitions be dismissed.

On March 14, the Commission issued a final order dismissing AFSCME's petitions. The Commission rejected AFSCME's assertion that Section 447.203(2), Florida Statutes, was not controlling. The Commission determined that this statutory provision was clear and unambiguous on its face, and that recourse to legislative and constitutional history was unnecessary. By the plain wording of the statute, the boards of trustees were designated as the public employers for the purpose of collective bargaining. Therefore, until the statute is repealed by the legislature or invalidated by a court of competent jurisdiction, the Commission is bound to recognize the boards of trustees as the public employers of the personnel at their universities. AFSCME has appealed the Commission's final order dismissing its petitions to the First District Court of Appeal. *In re Petition of Florida Public Employees Council 79, AFSCME to Amend Certification Nos. 730-733*, 29 FPER 75 (2003), *appeal filed*, 1D03-1190 (Fla. 1st DCA Mar. 21, 2003). Subsequently, AFSCME filed several representation petitions seeking to represent support personnel at the universities.

As of June 26, forty-two representation petitions have been filed by various unions seeking to represent the faculty, law enforcement, and support personnel at the eleven universities. Several universities have voluntarily recognized the unions while in other cases elections have been ordered to determine whether the employees desire to be represented.

DCA Reverses Commission's Remedy In "Bland Final Order"

by Carlos R. Lopez, Hearing Officer

On June 28, 2001, the International Union of Police Associations, AFL-CIO (IUPA), filed an unfair labor practice charge alleging that the Florida Fish and Wildlife Conservation Commission (FFWCC) violated Section 447.501(1)(a) and (c), Florida Statutes. The FFWCC was created through the merger of the Florida Marine Patrol and the Game and Fresh Water Fish Commission pursuant to a constitutional amendment approved by the citizens of Florida. IUPA specifically alleged that the State enacted scheduling changes for FFWCC's law enforcement officers without bargaining and implemented work assignment changes affecting workload and safety procedures without bargaining over the impact of those changes.

The hearing officer concluded that the State's unilateral change of its past practice regarding FFWCC law enforcement officers' work schedules and its failure to provide IUPA a reasonable opportunity to bargain over the impact of new work assignments were unfair labor practices. As a remedy, she recommended that the State rescind the unilateral change in work schedules and return to the status quo ante until bargaining was completed, return to the bargaining table and negotiate in good faith the impact of the change in the law enforcement officer's work assignments, and pay IUPA reasonable attorney's fees and costs. Both parties filed exceptions to the recommended order.

On March 20, 2002, the Commission issued a final order [28 FPER ¶ 33137 (2002)] concluding that the State's unilateral change of its prior work schedules affecting FFWCC officers without negotiating this change was an unfair labor practice. However, the Commission determined that IUPA failed to meet its burden of proving that the State did not provide it with a rea-

sonable opportunity to negotiate the impact of the work assignment changes.

In fashioning a remedy, the Commission relied on its broad powers found in Section 447.503(6)(a), Florida Statutes (2002), and stated, in pertinent part:

Having found an unfair labor practice regarding the State's implementation of the new work schedule, we would normally return the parties to the status quo ante. While not condoning the State's violation of its statutory bargaining obligation, we recognize the disruptive effect a return to the status quo ante would produce here. For example, requiring the FFWCC to reinstate the prior thirteen different work shifts would dismantle the integrated schedules of supervisors and their subordinates and of officers within the same squad, and increase the time for responding to citizen complaints. Such results are contrary to the legislative intent in proposing the constitutional amendment which the citizens of Florida voted to approve.

We conclude that the appropriate remedy is for the parties to return to the bargaining table to negotiate the issue of work schedules. Thus, the State's sixteenth exception is denied to this extent. However, the sixteenth exception is granted to the extent that the State will not be required to rescind the new work assignments.

28 FPER at 219. The Commission also awarded IUPA attorney's fees and costs for that part of the case on which it prevailed. *Id.*

IUPA appealed the Commission's final order to the First District Court of Appeal. Specifically, IUPA alleged that the Commission committed reversible

error when it failed to order restoration to the status quo ante as to work schedules until bargaining was completed between the parties. In a two to one decision, the district court agreed with IUPA. The court stated, in pertinent part, that:

Not to require a return to the status quo ante would be akin to rewarding Appellee for an unlawful act and would leave Appellant impotent under PERC's rather bland final order. Simply put, PERC abused its discretion by not following the ALJ's recommendation that the parties be returned to the status quo ante on the facts present in this appeal.

28 Fla. L. Weekly D1278a. (emphasis added and citation omitted)

However, mindful that a return to the status quo ante might be detrimental to the public interest, the court further stated:

Accordingly, we conclude that under section 447.504, Florida Statutes, the parties shall have 60 days from the issuance of this court's mandate in which to negotiate a settlement. During such 60-day period, the parties shall negotiate pursuant to Chapter 447.403, Florida Statutes, and PERC shall supervise the negotiation process to insure that the parties' dispute is settled by negotiations or by implementation of impasse procedures. If a settlement is not reached within such 60-day period, the status quo ante between the parties shall exist effective May 10, 2001, as provided in the recommended order.

The court also awarded IUPA appellate attorney's fees. Motions for rehearing or certification are pending before the district court as of this writing.



Hall v. Department of Corrections, 18 FCSR 95b (2003).

Appeal dismissed due to the lack of a remedy. The employee was convicted of a felony and sentenced to three years and eleven months in the state prison system.

Hoffman v. Department of Health, 18 FCSR 96 (2003).

Dismissal of a distributed computer system specialist for erasing or hiding his computer audit trail affirmed.

Shoemo v. Department of Juvenile Justice, 18 FCSR 99b (2003).

Dismissal of a senior juvenile detention officer for disruptive conduct and using offensive and profane language with a subordinate in the presence of juvenile residents affirmed.

Cartwright v. Department of Corrections, 18 FCSR 99a (2003); Rivera v. Department of Corrections, Case No. CS-2003-114 (June 6, 2003).

Appeal dismissed because employees failed to appear at hearing.

Duggan v. Department of Children and Families, 18 FCSR 104 (2003).

Appeal dismissed for lack of jurisdiction where employee did not attain permanent status in her position.

Davis v. Department of Children and Families, 18 FCSR 105 (2003).

Appeal dismissed for lack of jurisdiction where employee was dismissed during the probationary period of a demotional position. An employee demoted into the career service system is given probationary status unless the demotion is to a position in which the employee has previously held permanent status.

Hicks v. Agency for Workforce Innovation, 18 FCSR 109 (2003).

Five-day suspension of an employment security specialist I for poor performance and negligence affirmed. Employee was responsible for any required tasks on the day she was permitted to leave work early and failed to perform tasks due to her early departure.

Rimpel v. Agency for Workforce Innovation, 18 FCSR 112 (2003).

Dismissal of a customer service specialist for poor performance affirmed. Employee failed to obtain permission before missing several days of work for vacation.

Goodson v. Department of Environmental Protection, 18 FCSR 110 (2003).

Dismissal of a park ranger for physical inability to perform the essential duties of his position affirmed.

Rudolph v. Department of Highway Safety and Motor Vehicles, 18 FCSR 114 (2003).

Dismissal of a driver's license examiner for making a driver feel unsafe, making unwelcome comments of a sexual nature to customers, and conduct unbecoming a public employee affirmed.

Dashiells v. Department of Environmental Protection, 18 FCSR 117 (2003).

Dismissal of a marine mechanic for poor performance and failure to comply with his work schedule affirmed.

Houston v. Department of Corrections, Case No. CS-2003-032 (May 2, 2003).

Dismissal of correctional officer for placing several three-way telephone calls for his inmate brother affirmed. Mitigation not warranted.

Fortner v. Department of Corrections, Case No. CS-2003-035 (May 6, 2003).

Dismissal of correctional officer for failure to comply with the agency's use of force reporting procedure affirmed. Mitigation not warranted.

Howard v. Department of Children and Families, Case No. CS-2003-046 (May 13, 2003).

Dismissal of adult protective investigator for insubordination and submitting a travel voucher that contained false claims for reimbursement affirmed.

Beals v. Department of Corrections, Case No. CS-2003-050 (May 13, 2003).

Five-day suspension of correctional officer for excessive absenteeism mitigated to a three-day suspension. The employee's illness was an extraordinary circumstance and considered a mitigating factor. Her illness was temporary and remedied by surgery. Back pay awarded.

Wiggs v. Department of Corrections, Case No. CS-2003-070 (May 13, 2003).

Ten-workday suspension of correctional officer for alleged verbal confrontation with sergeant vacated. Sergeant's uncorroborated testimony regarding confrontation was contradicted by testimony of officer and three inmates. Back pay awarded.

Webster and Walker v. Department of Corrections, Case No. CS-2003-039 (May 16, 2003).

Dismissals of two correctional officers for an alleged illegal application of chemical agents to an inmate and false report of the incident vacated. Employees' testimonies were credited. Back pay awarded.

Howard v. Department of Corrections, Case No. CS-2003-068 (May 22, 2003).

Ten-workday suspension of correctional officer sergeant for alleged unauthorized absence vacated. Employee acted reasonably in assuming there was no objection to his going home ill.

Days v. Department of Corrections, Case No. CS-2003-101 (June 3, 2003).

Appeal dismissed as untimely filed. It was the employee's fault the appeal was filed in wrong forum.

(Continued from page 5)

Mosley v. Department of Children and Families, Case No. CS-2003-054 (June 6, 2003).

Dismissal of security guard for conduct unbecoming a public employee affirmed. Employee made false statements regarding his work-related activities to a detective who was investigating an alleged crime. The agency properly dismissed the employee pursuant to the extraordinary situations procedure.

Snelling v. Department of Juvenile Justice, Case No. CS-2003-106 (June 6, 2003).

Dismissal of senior juvenile probation officer for failure to follow instructions, absence without authorized leave, sleeping or inattentiveness on duty, and failure or inability to perform assigned duties affirmed. Employee's use of medication did not affect the charges against him. Employee's excessive workload defense found unpersuasive.

Pinate v. Department of Children and Families, Case No. CS-2003-095 (June 11, 2003).

Dismissal of fiscal assistant II for poor performance related to absences from work affirmed.

Cedeno v. Department of Children and Families, Case No. CS-2003-100 (June 11, 2003).

Dismissal of clerk typist specialist for poor performance affirmed. Employee disclosed information to a client that she was not authorized to provide, was unable to complete her timesheet on the computer by herself, and was rude to a client.

O'Connor v. Department of Corrections, Case No. CS-2003-105 (June 13, 2003).

Five-workday suspension of correctional officer for sleeping on duty and for failing to follow oral and written instructions affirmed. The issue of mitigation was waived by employee.

Walker v. Department of Veterans' Affairs, Case No. CS-2003-137 (June 13, 2003); Brown v. Department of Highway Safety and Motor Vehicles, Case No. CS-2003-139 (June 23, 2003).

Appeal dismissed because employee was a probationary employee.

Nichols v. Department of State, Case No. CS-2003-152 (June 13, 2003).

Appeal dismissed and case was re-docketed as a whistle-blower complaint.

Morrison v. Department of Corrections, Case No. CS-2003-075 (June 16, 2003).

Ten-workday suspension of correctional officer sergeant for willfully violating the Agency's policy on staff/inmate relations affirmed. Employee assisted inmate with grievance of alleged abuse by other correctional officers. Mitigation not warranted.

Cooper v. Department of Corrections, Case No. CS-2003-093 (June 20, 2003).

Appeal filed twenty-six months after employee's dismissal dismissed as untimely filed.

Webster v. Department of Corrections, Case No. BP-2003-002 (June 25, 2003).

Agency ordered to pay the employee \$3,874.16 in back pay.

Long v. Department of Corrections, Case No. CS-2003-130 (June 25, 2003).

Appeal of demotion dismissed because employee was a probationary employee. The twelve-month probationary period is calculated by counting twelve months from the month and day on which the employee commenced working.

Umbu v. Department of Children and Families, Case No. CS-2003-108 (June 26, 2003).

Dismissal of family services counselor for poor performance affirmed. Employee failed to properly place child in a foster care home.

Ovenshire v. Department of Corrections, Case No. CS-2003-112 (June 26, 2003).

Dismissal of chaplain for allowing

materials considered contraband around chapel and for falsification of records affirmed.

Young v. Development Service Providers of Marion, Inc., Case No. CS-2003-143 (June 26, 2003).

Appeal dismissed because the Commission has no jurisdiction over employees of private company serving agency clients.

Vinson v. Department of Corrections, Case No. CS-2003-131 (June 27, 2003).

Five-workday suspension of correctional probation specialist for threatening harm to her supervisor affirmed. Mitigation not warranted.



Professional Association of City Employees, Inc. v. City of Jacksonville, Case No. CA-2002-083 (Apr. 3, 2003).

City did not commit an unfair labor practice when it sent a letter to the union's lead negotiator stating that it would consider returning to the bargaining table when the lead negotiator was prepared to represent the employees in "a professional and business-like manner." No attorney's fees awarded.

Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union No. 173 v. City of Sarasota, Case No. CA-2002-081 (Apr. 8, 2003).

Union awarded attorney's fees and costs as the prevailing party because the city unilaterally changed medical insurance benefits. The parties' past practices were not referred to because the status quo was controlled by the parties' clear and unequivocal contractual language. Misinterpretation of prior precedent in light of clear contractual language and Commission case law prohibiting unilateral changes does not

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constitute a defense to the unlawful conduct. Moreover, the city's erroneous belief that it would prevail on its other defenses does not allow it to raise the affirmative defense of contractual waiver at a later date.

Arena, Shelly, Cullen, and Tafuto v. Collier Support Personnel – NEA, Case Nos. CB-2003-031, CB-2003-032, CB-2003-033, and CB-2003-034 (Apr. 15, 2003).

Employer committed an unfair labor practice by failing to permit the inspection of its income and expense accounts.

Azoy v. AFSCME, Local 121, Case No. CB-2002-026 (Apr. 28, 2003).

Employee's charge alleging the union breached its duty of fair representation by the manner in which it settled the employee's grievance dismissed because the grievance was not covered by the collective bargaining agreement.

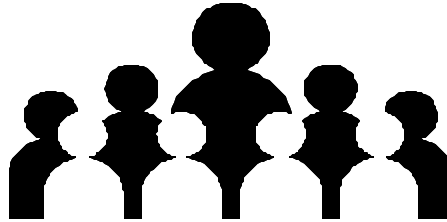
Solomon v. Hartline, Case No. CA-2003-018 (June 6, 2003); Solomon v. Amalgamated Transit Union, Local 1593, Case No. CB-2003-007 (June 6, 2003).

General Counsel's summary dismissal affirmed. The long-time contractual practice of compensating operators of big and small busses with slightly different pay schedules did not demonstrate a prima facie case of arbitrary or discriminatory representation by the union or bad faith bargaining by the employer. Furthermore, the allegations concerning whether small and big bus operators' seniority lists should be merged and which employees should have the right to first bid on routes under the contract are appropriate for the collective bargaining grievance, not unfair labor practice charges.

Professional Association of City Employees, Inc. v. City of Jacksonville, Case No. CA-2003-010 (June 26, 2003).

City did not commit an unfair labor practice. The city treated two competing unions equally in posting materials on its bulletin boards.

Representation Cases



Manatee County and Municipal Employees, Local 1584 of AFSCME v. Manatee County School Board, Case No. RC-2003-033 (Apr. 3, 2003).

Representation-certification petition dismissed because union is not currently registered with the Commission.

Florida Public Employees Council 79, AFSCME v. Manatee County School Board, Case No. RC-2003-034 (Apr. 3, 2003).

Petition to represent a bargaining unit of food service managers dismissed for proposing an overly-fragmented unit.

Coastal Florida PBA, Inc. v. City of Lake Mary, Case No. RC-2003-005 (Apr. 9, 2003).

Non-supervisory bargaining unit of corporal, police officer first class, police officer II, and police officer I approved.

International Union of Painters and Allied Trades, Local Union 1010 v. Orange County Board of County Commissioners v. Laborers International Union of North America, Local Union No. 517, Case No. RC-2002-066 (Apr. 15, 2003).

Petition seeking to represent a bargaining unit of riggers at the Orange County Convention Center dismissed. Union failed to establish an independent community of interest warranting a bargaining unit limited only to riggers.

Orange City Professional Firefighters, Local 4261, IAFF v. City of Orange City, Case No. RC-2003-037 (Apr. 15, 2003).

Petition seeking to represent a bargaining unit of firefighters and lieutenants dismissed because the employee organization

is not registered with the Commission. Additionally, copies rather than original authorization cards were submitted.

In re Petition of FOP, Clearwater Lodge #10, Inc. to Amend Certification No. 239, Case No. AC-2003-008 (Apr. 16, 2003).

Petition to substitute local for state union as certified bargaining agent granted. There was substantial continuity in the representation of the members of the bargaining unit.

Kissimmee Professional Firefighters, Local 4208 v. City of Kissimmee, Case No. RC-2002-065 (Apr. 24, 2003).

Non-supervisory bargaining unit of engineer, firefighter/EMT, and firefighter/paramedic approved. Supervisory bargaining unit of EMS supervisor and lieutenant approved.

UFF v. University of West Florida Board of Trustees, Case No. RC-2002-079 (Apr. 24, 2003).

Consent election agreement to represent a bargaining unit of faculty and other professional employees approved.

West Central Florida PBA v. Hillsborough County Sheriff's Office, Case No. RC-2003-035 (Apr. 24, 2003).

Representation-certification petition dismissed because it is not supported by a 30% showing of interest. There were two separate sets of authorization cards identifying different employee organizations.

Scherry v. Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union #173 v. City of Sarasota, Case No. RD-2003-001 (Apr. 24, 2003).

Petition to revoke certification of bargaining agent dismissed because the showing of interest was improper. The petition was ambiguous regarding the intent of the signatories. The city's exceptions were dismissed because they were filed one day late without any explanation for the delay.

Teamsters Local Union 385 v. Osce-

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Osceola County School District v. Osceola Classroom Teachers Association, Case No. RC-2002-082 (Apr. 25, 2003).

Bargaining unit of rank-and-file blue-collar employees approved. The Commission noted that the prior determinations do not establish res judicata because they were the product of consent election agreements. Res judicata also did not apply because the union had no control over the unit sought by the petitioner in the prior cases.

UFF v. University of Central Florida Board of Trustees, Case No. RA-2003-0001 (Apr. 28, 2003).

Recognition-acknowledgment petition seeking to represent a bargaining unit of faculty and other professional employees granted.

In re Petition of the City of Dania Beach, Florida, to Amend Certification No. 196, Case No. AC-2003-011 (Apr. 29, 2003).

Petition to reflect the change of the employer's name from City of Dania to City of Dania Beach granted.

Florida PBA, Inc. v. Florida State University Board of Trustees, Case No. RC-2002-084 (Apr. 29, 2003).

Consent election agreement to represent a bargaining unit of rank-and-file law enforcement personnel approved.

Pinellas County PBA, Inc. v. Pinellas County Sheriff's Office, Case No. RC-2003-046 (Apr. 29, 2003).

Petition dismissed because it was not supported by the requisite 30% showing of interest. Several cards were dated more than one year prior to the filing of the petition.

UFF v. University of North Florida Board of Trustees, Case No. RA-2003-003 (May 2, 2003).

Recognition-acknowledgment petition seeking to represent a unit of faculty, administrative, and other professional employees approved.

Florida Nurses Association v. School Board of Pinellas County, Case No. RC-2003-006 (May 2, 2003).

Petition seeking to represent unit of registered nurses dismissed because single classification bargaining units are usually considered overly-fragmented.

Mary Esther Professional Fire Fighters Association, IAFF, Local 4247 v. City of Mary Esther, Case No. RC-2003-031 (May 2, 2003).

Consent election agreement seeking to represent a unit of firefighter personnel approved.

Gorny v. Florida State Lodge, FOP v. City of Stuart, Case No. RD-2003-002 (May 2, 2003).

Petition to revoke union as certified bargaining agent approved.

In Re Petition of Coastal Florida PBA, Inc., to Amend Certification No. 550, Case No. AC-2003-009 (May 6, 2003).

Petition seeking to amend the name of the certified bargaining agent approved.

Florida PBA, Inc. v. University of Central Florida Board of Trustees, Case No. RC-2003-001 (May 6, 2003).

Consent election agreement seeking to represent a unit of rank-and-file law enforcement personnel approved.

Florida PBA, Inc. v. City of Leesburg, Case No. RC-2003-013 (May 12, 2003).

Consent election agreement seeking to represent a unit of non-supervisory, sworn law enforcement approved.

State Employees Attorneys Guild v. Jeb Bush, as Governor of the State of Florida, Case No. CR-2002-001 (May 13, 2003).

Bargaining unit of attorneys, senior attorneys, data base coordinators – DOE, economic analysts – DEP, and fisheries management analysts – FWC approved.

UFF v. Florida Gulf Coast University Board of Trustees, Case No. RA-2003-004 (May 13, 2003).

Recognition-acknowledgment petition seeking to represent a unit of faculty, administrative, and other professional em-

ployees approved.

UFF v. University of South Florida Board of Trustees, Case No. RA-2003-005 (May 13, 2003).

Recognition-acknowledgment petition seeking to represent a unit of faculty, administrative, and other professional employees approved.

Florida PBA, Inc. v. State of Florida, Department of Management Services v. International Union of Police Associations, Case No. RC-2003-032 (May 13, 2003).

Consent election agreement seeking to represent a unit of law enforcement officers approved.

Dade County PBA, Inc. v. Florida International University Board of Trustees, Case No. RC-2002-081 (May 13, 2003).

Consent election agreement seeking to represent a unit of rank-and-file law enforcement personnel approved.

Florida Regional Council of Industrial and Public Employees, United Brotherhood of Carpenters and Joiners of America v. St. Johns County, Case No. RC-2003-059 (May 20, 2003) and Case No. RC-2003-052 (May 20, 2003).

Petition seeking to represent employees in the county's recreation facilities dismissed because single department bargaining units are usually considered overly-fragmented.

Government Supervisors Association of Florida, Office and Professional Employees International Union, Local 100 v. City of South Miami, Case No. RC-2003-026 (May 22, 2003).

Consent election agreement seeking to represent a unit of white-collar employees approved.

Palm Beach County PBA, Inc. v. Sheriff of Palm Beach County, Case No. RC-2000-010 (May 27, 2003).

Consent election agreement seeking to represent a unit of sworn law enforcement officers below the rank of sergeant approved.

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(Continued from page 8)

Palm Beach County PBA, Inc. v. Sheriff of Palm Beach County, Case No. RC-2000-015 (May 27, 2003).

Consent election agreement seeking to represent a unit of sergeants and lieutenants approved.

Winter Springs Professional Firefighters, Local 3296, IAFF v. City of Winter Springs, Case No. RC-2003-009 (May 27, 2003).

Bargaining unit of battalion chief, EMS division chief, fire marshal, and training chief approved.

Oviedo Professional Firefighters, Local 3476 v. City of Oviedo, Case No. RA-2003-002 (May 28, 2003).

Recognition-acknowledgment petition seeking to represent a unit of supervisory fire suppression employees dismissed because the city did not recognize the union as the representative of a bargaining unit composed of battalion chiefs and lieutenants.

Miami-Dade County, Florida and Public Health Trust v. SEIU, Local 1991, Case No. UC-2003-006 (May 28, 2003).

Unit clarification petition seeking to include newly-created classification of healthcare infection control specialist in health related professional bargaining unit granted.

In Re Petition of the City of Dania Beach, Florida, to Amend Certification No. 590, Case No. AC-2003-010 (May 29, 2003).

Petition to reflect the change of the employer's name from the City of Dania to the City of Dania Beach granted.

Pinellas Lodge No. 43, Inc. v. Pinellas County Sheriff's Office, Case No. RC-2003-014 (May 29, 2003).

Consent election agreement seeking to represent a rank-and-file unit composed of deputy, corporal, bailiff-deputy, and bailiff-corporal approved.

Pinellas Lodge No. 43, Inc. v. Pinellas County Sheriff's Office v. Pinellas County PBA, Inc., Case No. RC-2003-015 (May 29, 2003).

Consent election agreement seeking to

represent a supervisory unit composed of sergeants, lieutenants, bailiff-sergeants, and bailiff-lieutenants approved.

Florida Public Employees Council 79, AFSCME v. Florida Gulf Coast University Board of Trustees, Case No. RC-2003-039 (June 5, 2003).

Consent election agreement seeking to represent a unit of full and part-time non-professional employees approved.

City of Sunrise v. Metro Broward Professional Firefighters, Local 3080, IAFF, Case No. UC-2003-004 (June 6, 2003).

Unit clarification petition seeking to include the newly-created classification of fire captain in a supervisory bargaining unit of fire suppression employees granted.

Florida Public Employees Council 79, AFSCME v. University of North Florida Board of Trustees, Case No. RA-2003-008 (June 9, 2003).

Recognition-acknowledgment petition seeking to represent a unit of non-professional employees granted.

Truck Drivers, Warehousemen and Helpers, Local Union 512 v. University of North Florida Board of Trustees, Case Nos. RC-2003-004 (June 11, 2003).

Petition seeking to represent a rank-and-file unit of certified law enforcement officers approved.

Florida State Lodge, FOP, Inc. v. Sheriff of Levy County v. Florida PBA, Inc., Case No. RC-2001-028.

Petition seeking to represent a unit of law enforcement deputy sheriffs, corporals, and sergeants approved.

Florida Public Employees Council 79, AFSCME v. Florida A & M University Board of Trustees, Case No. RC-2003-042 (June 17, 2003).

Petition seeking to represent a unit of full and part-time non-professional employees approved.

Okaloosa Island Fire Fighters Association, IAFF, Local 2617 v. Okaloosa Island Fire District, Case No. UC-2003-007 (June 24, 2003).

Unit clarification petition seeking to include the newly-created classification of

lieutenant into a unit of certified fire personnel granted.

United Faculty of Florida v. Florida State University Board of Trustees, Case No. RC-2002-072 (June 25, 2003).

Consent election agreement seeking to represent a unit of faculty and other professional education personnel approved.

Florida PBA, Inc. v. University of Florida Board of Trustees v. Florida State Lodge, FOP, Inc., Case No. RC-2003-002 (June 25, 2003).

Consent election agreement seeking to represent a unit of law enforcement personnel approved.

Florida PBA, Inc. v. Gadsden County Sheriff's Office, Case No. RC-2003-027 (June 25, 2003).

Consent election agreement seeking to represent a unit of law enforcement deputy sheriffs and corporals approved.

Florida Public Employees Council 79, AFSCME v. Florida State University Board of Trustees, Case No. RC-2003-040 (June 25, 2003).

Consent election agreement seeking to represent a unit of operational services employees approved.

Florida State Lodge, FOP, Inc. v. Monroe County Sheriff's Office, Case No. RA-2003-006 (June 26, 2003).

Petition seeking to represent a rank-and-file bargaining unit of law enforcement officers granted.

Florida A & M University Graduate Assistants United v. Florida A & M University Board of Trustees, Case No. RA-2003-012 (June 26, 2003).

Petition seeking to represent graduate assistants approved.

FOP, Florida State Lodge v. City of Orlando, Case No. RC-2003-077 (June 26, 2003).

Petition seeking to represent a bargaining unit of police captains dismissed. Police captains are considered confidential employees and are ineligible for inclusion in a Commission-defined bargaining unit.

(Continued from page 1)

In *Professional Association of City Employees v. City of Jacksonville*, 29 FPER 14 (2003), PACE alleged that the City committed an unfair labor practice by refusing to forward to PACE dues collected from employees pursuant to Section 447.303, Florida Statutes. The City countered that it was entitled to PACE's dues as setoff for the attorney's fees that the Commission had awarded to the City in the aforementioned unfair labor practice cases.

The Commission agreed with the hearing officer that the City was misapplying the concept of setoff. As the City's own exhibits revealed, setoff was available in circumstances involving mutual debt. Contrary to the City's contention, intercepting the employees' dues did not create a debt between the City and PACE. The hearing officer and Commission determined that PACE was entitled to an award of fees as a prevailing party. The City appealed the Commission's final order. *City of Jacksonville v. Professional Association of City Employees*, appeal filed, No. 1D03-388 (Fla. 1st DCA Jan. 30, 2003).

On February 25, the court issued an order to show cause in the dues deduction case. The court was unclear whether it had jurisdiction of the City's appeal because the Commission's final order did not determine the amount of fees owed to PACE by the City, and the amount of employees' dues the City had withheld from PACE.

The City argued that its appeal should be dismissed because the Commission's order was not final, and the case should be remanded to determine the amount of attorney's fees the City owed PACE, and the amount of the dues the City was withholding from PACE. Based on the court's order to show cause, the City also moved to dismiss PACE's other appeals because the Commission's final orders did not determine the amount of attorney's fees owed by PACE to the City. Heretofore, the Commission had not participated in these appeals. Because the court's rulings affected the Commission's procedure, it moved to respond to the court's show cause order and to file responses to the City's motions to dismiss; those motions were granted.

Relying on *McGurn v. Scott*, 596 So. 2d 1042 (Fla. 1992), the district court concluded that it had jurisdiction. In *McGurn*, the Florida Supreme Court held that proof of the amount of attorneys' fees could be presented for the first time after final judgment issued. A trial court's reservation of jurisdiction to award costs or attorneys' fees does not affect the finality of an underlying judgment for the purpose of appeal. The supreme court's rationale is that the amount of an award of attorneys' fees or costs is ancillary to, and does not interfere with, the subject matter of the appeal and, thus, is incidental to the main adjudication. Consequently, the district court denied the City's motions to dismiss those cases involving the City's entitlement to attorney's fees.

The district court also discharged its order to show cause in the dues deduction case. Citing *Prime Orlando Properties, Inc. v. Department of Business and Professional Regulation, Division of Land Sales, Condominiums and Mobile Homes*, 502 So. 2d 456 (Fla. 1st DCA 1986), the court determined that an administrative order was final even though it reserved judgment on the amount of a penalty. Like the penalty in *Prime Orlando Properties*, the amount of the dues being withheld by the City changed after the final order issued. Thus, the Commission successfully argued that it could not determine the amount the City was unlawfully withholding from PACE until after the court ruled on PACE's entitlement to the dues being withheld by the City.

Elections Verified April 1– June 30, 2003

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Pensacola, Case No. EL-03-008; Election conducted 04/09/2003 (Union won)

Barbara Diallo v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. Jacksonville Housing Authority, Case No. EL-03-009; Election conducted 04/11/2003 (Union won)

Dade County Police Benevolent Association, Inc. v. City of South Miami, Case No. EL-03-010; Election conducted 03/31/2003 thru 04/21/2003 (Union won)

Teamsters Local 385 v. City of Longwood, Case No. EL-03-013; Election conducted 04/10/2003 thru 04/30/2003 (Union won)

Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. Hernando County Board of County Commissioners, Case No. EL-03-012; Election conducted 05/01/2003 (Union lost)

Teamsters Local Union 385 v. Osceola County School District v. Osceola Classroom Teachers Association, Case No. EL-03-018; Election conducted 05/21/2003 thru 05/22/2003; (Union won)

Coastal Florida Police Benevolent Association, Inc. v. City of Lake Mary, Case No. EL-03-014; Election conducted 05/06/2003 thru 05/27/2003 (Union lost)

United Faculty of Florida (UFF) v. University of West Florida Board of Trustees, Case No. EL-03-017; Election conducted 05/14/2003 thru 06/04/2003 (Union won)

Kissimmee Professional Firefighters, Local 4208 v. City of Kissimmee (Rank/File), Case No. EL-03-015; Election conducted 05/15/2003 thru 06/05/2003 (Union won)

Kissimmee Professional Firefighters, Local 4208 v. City of Kissimmee (Supervisory), Case No. EL-03-016; Election conducted 05/15/2003 thru 06/05/2003 (Union won)

Florida Police Benevolent Association, Inc. v. Florida State University Board of Trustees, Case No. EL-03-019; Election conducted 05/20/2003 thru 06/10/2003 (Union won)

Mary Esther Professional Fire Fighters Association, IAFF, Local 4247 v. City of Mary Esther, Case No. EL-03-020; Election conducted 05/21/2003 thru 06/11/2003 (Union won)

Vicki Gorny v. Florida State Lodge, Fraternal Order of Police v. City of Stuart, Case No. EL-03-021; Election conducted 05/21/2003 THRU 06/11/2003 (Union lost)

Dade County Police Benevolent Association, Inc. v. Florida International University Board of Trustees, Case No. EL-03-025; Election conducted 06/05/2003 thru 06/26/2003; (Union won)

Florida Police Benevolent Association, Inc. v. City of Leesburg, Case No. EL-03-023; Election conducted 06/05/2003 thru 06/26/2003 (Union lost)

Florida Police Benevolent Association, Inc. v. University of Central Florida Board of Trustees, Case No. EL-03-022; Election conducted 06/05/2003 thru 06/26/2003 (Union won)

Appellate Cases

Dade County School Administrators Association, Local 77 v. School Board of Miami-Dade County, PERC, and Dade Association of School Administrators, 28 Fla. L. Weekly D733a (Fla. 1st DCA 2003).

The First DCA ruled that the Commission did not err in dismissing a representation-certification petition that sought to represent a bargaining unit of assistant principals and vice-principals employed by county school board because they are precluded from collective bargaining as managerial employees pursuant to Sections 447.203 and 228.041, Florida Statutes. Although the appellate court declined to reach the issue of the constitutionality of the statutes, its dismissal of the appeal was without prejudice to union's right to seek declaratory judgment concerning constitutionality in circuit court.

Department of Corrections v. Chesnut, 28 Fla. L. Weekly D1421d (Fla. 1st DCA 2003).

The First DCA dismissed for lack of jurisdiction the appeal of a Commission order that reversed an employee's dismissal and awarded back pay and attorney's fees, but which did not calculate the amount of back pay due, holding that the order is not a final appealable order.

Reinshuttle v. Agency for Health Care Administration; Watson, Cooper, Jolly, and Barkley v. Department of Children and Families, Nos. 1D02-1505, 1D02-1751, 1D02-2375, 1D02-3504, and 1D02-3511 (Fla. 1st DCA July 14, 2003).

Five employees who, after being reclassified from career service to selected exempt status as a result of "Service First," were dismissed without cause appealed their employing agencies' denial of petitions for hearings to challenge the correctness of their reclassifications. The First DCA held that the agencies should have provided the employees with a point of entry into the administrative process when their positions were reclassified. The court remanded to allow for administrative proceedings to determine whether the employees' positions at the time they were reclassified met the legislature's specific statutory criteria for exemption from the career service system pursuant to Section 110.205(2), Florida Statutes (2001).



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