

## Deputy Sheriffs Have Right To Bargain

by Jack Ruby, Hearing Officer

On February 16, 2000, the Coastal Florida Police Benevolent Association (PBA) filed a representation-certification petition in Commission case RC-2000-012, seeking to represent a bargaining unit of deputies employed by Phillip B. Williams, Sheriff of Brevard County. On February 18, the Commission issued a notice of sufficiency, stating in applicable part:

The Florida Supreme Court's recent opinion in *Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, et al.*, [752 So. 2d 569 (Fla. 2000)], casts doubt as to the vitality of its prior decision in *Murphy v. Mack*, 358 So. 2d 822 (Fla. 1978), holding that deputy sheriffs are not public employees. Therefore, we find this petition to represent deputy sheriffs for the purpose of collective bargaining sufficient in order to develop a record as to the depu-

ties' duties and responsibilities vis-à-vis the sheriff himself.

The Florida Supreme Court held in *Murphy* that deputy sheriffs are not "employees" within the meaning of Part II, Chapter 447, Florida Statutes, because deputy sheriffs hold their positions by "appointment" rather than "employment." In *SEIU*, the holding in *Murphy* was applied by the Commission in determining that deputy clerks of court are also not employees. The supreme court disagreed and held that deputy clerks were in fact employees within the meaning of Part II, Chapter 447, Florida Statutes. The court also held that whether an employee held a position by appointment or employment appeared to not be determinative. Instead, the court ruled that "where the collective bargaining rights of public employees are in issue, the plain language of Chapter 447 controls and applies across the board to all public employees, re-

gardless of job title." Thus, unless an employee is managerial, confidential or specifically exempted under the definition of "employee" contained in Section 447.203(3), Florida Statutes, the employee has collective bargaining rights under Part II, Chapter 447, Florida Statutes. Although the *Murphy* decision was not overruled, the court called it into question by stating that its prior opinion in deciding that deputy sheriffs have no collective bargaining rights, "exalted form over substance in contravention of the plain language and broad purpose of [Part II, Chapter 447, Florida Statutes, concerning collective bargaining rights of public employees]." *SEIU*, 752 So. 2d 569-70, 573-74, *rev'g* 720 So. 2d 290 (Fla. 5th DCA 1998), *aff'g* 24 FPER ¶ 29028 (Fla. 1997), *aff'g* 23 FPER ¶ 28297 (General Counsel Summary Dismissal 1997).

(Continued on page 2)

In this Issue:	Deputy Sheriffs Have Right to Bargain.....1	Career Service Cases..... 5
	Commission's No-Show Standard Modified.....3	Unfair Labor Practice Cases..... 7
	Of Equitable Tolling and Collateral Estoppel.....4	Representation Cases..... 7
		Elections Verified.....11

(Continued from page 1)

After the issuance of the notice of sufficiency in *Williams*, Sheriff Williams filed a petition for a writ of prohibition with the Fifth District Court of Appeal. Williams contended that the Florida Supreme Court's opinion in *Murphy* controlled, as the opinion directly concerned deputy sheriffs, and the supreme court's subsequent opinion in *SEIU* was inapposite because that case dealt with deputy clerks. The Fifth DCA denied the writ of prohibition. However, although it stated that the supreme court's decision in *SEIU* had substantially eroded the supreme court's prior decision in *Murphy*, the Fifth DCA certified the following question to the supreme court: "Are deputy sheriffs categorically excluded from having collective bargaining rights under Chapter 447?" *Williams v. Coastal Florida Police Benevolent Association*, 765 So. 2d 908 (Fla. 5th DCA 2000).

Both Sheriff Williams and the PBA sought review by the supreme court. The supreme court granted review and granted amicus status to the sheriffs of Palm Beach and Hillsborough Counties and the Florida Sheriffs' Association. The court issued its opinion on January 30, 2003. *Coastal Florida Police Benevolent Association v. Williams*, 28 Fla. L. Weekly S91a (Fla. Jan. 30, 2003). In its opinion, the court recast the certified question as: "Are deputy sheriffs categorically excluded from having collective bargaining rights under the Florida Constitution." In sum, the court held that, while it could appear that *Murphy* may have been correct based upon a statutory interpretation, the *Murphy* opinion did not decide the issue of whether deputy sheriffs have a constitutional right to collectively bargain.

The court noted that Article I, Section 6, of the Florida Constitution gives an express right to employees to collectively bargain and that the court had previously held that this right could not be legislatively abridged for public employees absent a compelling state interest, citing *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999) (striking statutory attempt to expressly exclude a category of public employee from the right of collective bargaining without a compelling state interest). The court then found that any interest that a sheriff had did not meet the high standard of strict scrutiny and compelling state interest necessary to jus-

tify the infringement of the deputy sheriffs' rights to collectively bargain. Accordingly, the court receded from its prior opinion in *Murphy* to the extent that it implied that deputy sheriffs had no constitutional right to bargain and held that deputy sheriffs, like all other employees, have the right to collectively bargain. Mandate has issued in *Williams*.

The Commission currently has twenty-one representation-certification cases pending before it involving proposed rank-and-file and supervisory bargaining units in sheriff departments across the state, including proceedings on the original petition at issue in *Williams*, which were stayed when appellate review was sought.

## PERC NEWS

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

Donna Maggert Poole	Chair
Charles H. Kossuth, Jr.	Commissioner
Jessica E. Varn	Commissioner
Stephen A. Meck	General Counsel
Suzanne M. Choppin	Editor
Christi Gray Sundberg	Case Summaries
Barbara Kirkland	Designer

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

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

## Commission's No-Show Standard Modified

by William D. Salmon, Hearing Officer

The Commission recently reviewed and modified the standard by which it determines whether to excuse a party's failure to appear at a scheduled evidentiary hearing. See *Davis v. Department of Children and Families*, Case No. CS-2003-018 (Fla. PERC March 11, 2003). The Commission's prior standard required resolution of the case contrary to the nonappearing party's interest unless the failure to appear was attributable to an emergency. Thus, a truant employee would have his appeal dismissed unless able to demonstrate that his attendance was prevented by an emergency. Likewise, the Commission would sustain the appeal against an absent agency unless the absence was due to an emergency, although it has never had occasion to do so.

In revisiting this standard, the Commission noted that it evolved from the Commission's treatment of an exception to a recommendation to dismiss an appeal for nonappearance as an untimely request for continuance of the hearing. The uniform rules of procedure require motions for continuance to be made at least five days before hearing, except in the case of emergency. Fla. Admin. Code R. 28-106.210. However, the Commission has now concluded that a litigant's exception to an order recommending dismissal for failure to appear at hearing is more analogous to a request for relief from a default judgment in a court of law than to an untimely-filed request for continuance. Therefore, the Commission

will resolve such exceptions through consideration of the requirements for setting aside a default judgment. Under this modified standard, the Commission will consider whether the litigant has demonstrated due diligence in seeking to explain his absence and request a new hearing, whether the litigant's case has some apparent merit, and whether the failure to appear was due to excusable neglect.

In *Davis*, the Department of Children and Families dismissed Davis for allegedly failing to satisfactorily complete her probationary period in a career service position. The DCF notified Davis that she could not appeal the dismissal to the Commission because she had not attained permanent status in the career service system. Davis appealed to the Commission disputing the DCF's contention that she had not attained permanent status.

The DCF filed a motion to dismiss Davis' appeal. According to the motion, Davis was transferred from a career service position to a selected exempt position pursuant to the "Service First" legislation and was then voluntarily demoted into a career service position. DCF argues that Davis was a probationary employee upon reentering the career service system.

The hearing officer issued an order directing Davis to respond to the motion to dismiss. Davis was notified that if she did not respond, an order would issue based upon the pleadings, and the hearing would be

cancelled. Davis filed a response reiterating her prior claim that she had been a permanent member of the state career service system for approximately fourteen years.

Between the date of Davis' response and the date of the hearing, the hearing officer did not rule on DCF's motion. The hearing was convened, but Davis did not appear at the hearing site. That same day, the hearing officer issued an order recommending dismissal of Davis' appeal for failure to appear at the hearing. Davis filed a timely exception to the hearing officer's recommended order asserting that she had not appeared at the hearing because she thought that her case had been dismissed.

Applying the new standard to this case, the Commission concluded that Davis had demonstrated due diligence in seeking relief from the recommendation to dismiss her appeal by filing exceptions to the recommended order within the prescribed five-day period. Davis' allegations raised questions of material fact as to whether she had attained permanent career service status. In addition, the Commission took administrative notice of *Walker v. Department of Children and Families*, 16 FCSR 161 (2001), and the changes regarding "probationary status" set forth in rule 60L-33.003 (2)(d), Florida Administrative Code (formerly rule 60K-4.007(2)(b)). The Commission concluded that Davis might have a meritorious defense to the motion.

(Continued on page 10)

## Of Equitable Tolling and Collateral Estoppel

by Jerry W. Chatham, Hearing Officer

*Chesnut v. Department of Corrections*, CS-2002-321 (Fla. PERC March 5, 2003), presented an assortment of thorny legal issues for Commission resolution. In May 1999, Assistant Warden Benny Chesnut was proposed for discipline by the Department of Corrections for alleged sexual harassment. At that time, he had career service system appeal rights. About two weeks later, Chesnut's job class was transferred from the career service system to the selected exempt system. DOC then dismissed Chesnut and informed him that he had no right to appeal the decision because of his selected exempt status.

A little over a year later, Chesnut learned that DOC had informed the Criminal Justice Standards and Training Commission that he was fired for sexual harassment of subordinates. The CJSTC has licensing authority over law enforcement officers. Chesnut then demanded that DOC give him a "name clearing hearing," which is a constitutionally required process when a public employee is dismissed for alleged egregious misconduct such as sexual harassment.

DOC referred Chesnut's request to the Division of Administrative Hearings. The assigned DOAH Administrative Law Judge denied a motion to dismiss the case and held an evidentiary hearing at which over twenty witnesses testified. The DOAH Judge ruled in Chesnut's favor and did not believe DOC's witnesses' claims that he had sexually harassed them.

However, DOC issued a final order accepting the DOAH judge's findings of fact, but declining to clear Chesnut's name. Nothing further transpired until Chesnut learned of the First District Court of Appeal decision in *Dickens v. Department of Corrections*, 830 So. 2d 135 (Fla. 1st DCA 2002), holding that an employee disciplined for misconduct that allegedly occurred while he was in the career service system could appeal to the Com-

mission even though he was in the selected exempt system at the time the discipline was actually imposed. The court reversed a Commission order dismissing Dickens' appeal for want of jurisdiction and directed that the Commission consider Dickens' appeal.

Upon learning of *Dickens*, Chesnut appealed to the Commission. In a March 5, 2003, order, the Commission decided that it had jurisdiction to consider the appeal. It also decided that the doctrine of equitable tolling prevented dismissal of Chesnut's late appeal because DOC had expressly told him that he could not appeal his dismissal, and because DOC's active participation in the name clearing hearing diminished any prejudice to DOC from the passage of time since it investigated and dismissed Chesnut. The Commission agreed with the recommendation of the hearing officer that it adopt the findings of the DOAH Judge because DOC was collaterally estopped from re-litigating the same facts previously tried by it before DOAH. Thus, the Commission adopted the hearing officer's recommendation to order Chesnut's reinstatement with back pay, noting that DOC's back pay liability is limited by the requirement for a good-faith work search to mitigate damages and appropriate set-off for unemployment benefits. Finally, the Commission considered whether to award attorney's fees and costs, inasmuch as its authority to award fees and costs in career service appeals was deleted effective May 14, 2001, over a year prior to the initiation of Chesnut's appeal. After analysis of several appellate cases, the Commission concluded that it must apply the career service statute as it existed at the time Chesnut was dismissed in 1999. Therefore, the Commission awarded Chesnut attorney's fees and costs. DOC has appealed the Commission's decision to the First District Court of Appeal. *Department of Corrections v. Chesnut*, Case No. 1D3-1192 (Fla. 1st DCA Appeal filed March 25, 2003).



## Career Service Cases

### ***Casella v. Department of Corrections, 18 FCSR 1 (2003).***

Commission affirmed dismissal where employee left hearing after his motion to stay was denied.

### ***Glidden v. Department of Juvenile Justice, 18 FCSR 2 (2003).***

Dismissal of juvenile detention officer for insubordination in failing to complete room inspection reports, failing to make five-minute room checks, and failing to report to a post affirmed.

***Dorman v. Department of Children and Families, 18 FCSR 5 (2003); Lopez v. Department of Health, 18 FCSR 8 (2003); Watts v. Department of Children and Families, 18 FCSR 19 (2003); Harrington v. Department of Corrections, 18 FCSR 20 (2003); Holland v. Department of Health, Case No. CS-2003-030 (Mar. 26, 2003); Crews v. Department of Military Affairs, Case No. CS-2003-033 (Mar. 28, 2003).***

Appeals dismissed because employees failed to appear at hearings.

### ***DeCandis v. St. Johns County, 18 FCSR 6 (2003).***

Appeal dismissed for lack of jurisdiction where employee was not a state career service employee.

### ***Robinson v. Department of Environmental Protection, 18 FCSR 7 (2003).***

Appeal dismissed for lack of

jurisdiction where park ranger was a probationary employee in the career service system. When an employee with permanent career service status receives a promotion out of career service and becomes a selected exempt employee that employee does not reclaim permanent status when the employee is subsequently removed from the selected exempt classification and returned to the career service system.

### ***Newborn v. Department of Revenue, 18 FCSR 9 (2003).***

Dismissal of tax specialist II for unbecoming conduct by making accusations against a sheriff using information she obtained as an agency employee, attempting to force the sheriff to provide her with information which was not within the purview of her authority, making false and misleading statements, interfering with an agency investigation, and insubordination affirmed. No procedural error was involved in the agency's taking final action to dismiss fewer than ten days after the date of the final action letter. Further, there is no allegation or showing of prejudice in the denial of a motion for continuance to engage in discovery regarding a non-issue.

### ***Banks v. Department of Juvenile Justice, 18 FCSR 21 (2003).***

Dismissal of juvenile detention officer for failing to respond or provide truthful information during the course of an internal investigation affirmed.

### ***Laffin v. Department of Corrections, 18 FCSR 25 (2003).***

Five-day suspension of correctional officer for engaging in conduct that violated state statute, rule, directive, or policy statement; negli-

gence; willful violation of rules, regulations, directives, or policy statements; careless and unsafe weapons handling; and failure to follow oral or written instructions affirmed. Correctional officer was negligent in discharging his handgun during a weapons inspection. Mitigation not warranted.

### ***Morgan v. Department of Corrections, 18 FCSR 26 (2003).***

Correctional probation senior officer's appeal of five-day suspension dismissed as untimely where appeal was filed more than fourteen days after receipt of final action letter, and employee failed to demonstrate equitable reason to excuse late filing.

### ***Griffin v. Department of Corrections, 18 FCSR 28 (2003).***

Dismissal of correctional officer for a variety of rule violations related to her absences from work in 2002 affirmed. The seriousness of the correctional officer's inability to perform the essential duties of her job weighed heavily against reinstatement in the absence of proof that her condition was under control at the time of the hearing.

### ***Payne v. Department of Agriculture and Consumer Services, 18 FCSR 30 (2003).***

Dismissal of data entry operator for failing to perform his duties and responsibilities during his absence from work because he was in jail affirmed.

### ***Brunson v. Department of Corrections, 18 FCSR 32 (2003).***

Dismissal of correctional officer sergeant for excessive absenteeism affirmed. Sergeant was absent on

(Continued on page 6)

(Continued from page 5)

nine separate occasions on unscheduled leave during a five-month period. Mitigation not warranted.

***Jones v. Department of Corrections, 18 FCSR 36 (2003).***

Dismissal of correctional officer for tardiness, failing to follow oral and/or written instructions, and abuse of sick leave privileges affirmed. Mitigation not warranted.

***Onabanjo v. Department of Juvenile Justice, Case No. CS-2002-366 (Mar. 3, 2003).***

Dismissal of juvenile probation officer for negligence in supervising three youths affirmed.

***Watson v. Department of Health, Case No. CS-2003-003 (Mar. 6, 2003).***

Appeal filed by selected exempt employee dismissed for lack of jurisdiction.

***Turner v. Department of Juvenile Justice, Case No. CS-2003-006 (Mar. 6, 2003).***

Dismissal of senior juvenile detention officer for failing to comply with agency's ten-minute check policy, failing to note in log book a detainee's confinement, failing to notify his supervisor in master control that the detainee was in confinement, and failing to perform a head count of the detainees upon return from a break affirmed.

***Tambini v. Department of Health, Case No. CS-2003-008 (Mar. 6, 2003).***

Dismissal of senior public health nutritionist supervisor for refusing order to issue a documented coun-

seling to a subordinate affirmed. Mitigation not warranted.

***Traber v. Department of Corrections, Case No. CS-2003-020 (Mar. 7, 2003).***

Dismissal of correctional officer sergeant for engaging in insurance fraud reversed. The agency presented no independent evidence that the employee submitted a false claim for insurance benefits.

***Valdes v. Department of Children and Families, Case No. CS-2003-005 (Mar. 12, 2003).***

Dismissal of economic self-sufficiency specialist I for poor performance affirmed where employee failed to maintain 90% accuracy rates in food stamps and cash assistance and failed to properly file clients' case records.

***Jones v. Department of Corrections, Case No. CS-2002-382 (Mar. 17, 2003).***

Dismissal of correctional officer lieutenant for authorizing an inmate to talk to ex-inmates through the work camp fence, giving false sworn statements during the investigation into the incident, and submitting a false incident report affirmed. Mitigation not warranted.

***Peagler v. Department of Children and Families, Case No. CS-2003-001 (Mar. 17, 2003).***

Dismissal of public assistance specialist for conduct unbecoming a public employee affirmed where employee treated two clients in a disrespectful manner.

***Bright v. Department of Corrections, Case No. CS-2003-016 (Mar. 17, 2003).***

Dismissal of correctional officer for violating agency's domestic violence policy affirmed. Mitigation not warranted.

***Delevoe v. Department of Health, Case No. CS-2003-021 (Mar. 17, 2003).***

Appeal by radiologic technologist dismissed where employee voluntarily resigned, and her resignation was accepted before she filed her appeal. Having to choose between two unpleasant alternatives, resignation or termination, did not make the decision to resign involuntary.

***Littlejohn v. Department of Revenue, Case No. CS-2003-026 (Mar. 26, 2003).***

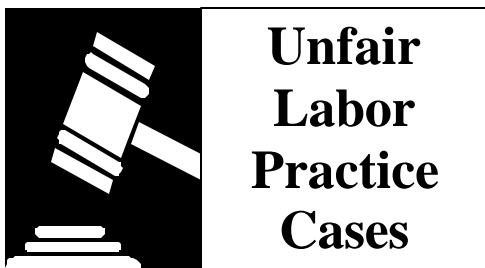
Dismissal of revenue specialist II for unbecoming conduct and violation of rule prohibiting criminal conduct affirmed where employee falsified the amount of his income on home refinancing documents.

***Watts v. Department of Juvenile Justice, Case No. CS-2003-055 (Mar. 28, 2003).***

Appeal filed by employee who had already availed herself of grievance procedure to contest her dismissal, and succeeded in securing reinstatement albeit without back pay for the more than 2 years it took to resolve grievance, dismissed for lack of jurisdiction. Election to pursue grievance precluded career service appeal, and arbitrator's award is final and binding.

(Continued on page 7)

(Continued from page 6)



***Professional Association of City Employees v. City of Jacksonville, 29 FPER ¶ 14 (2003).***

City committed an unfair labor practice by refusing to forward to union dues that it collected from employees. Union's failure to maintain a current registration license is not an impediment to it pursuing an unfair labor practice charge. Attorney's fees and costs awarded to union.

***Dade County School Administrators Association, Local 77, AFSA, AFL-CIO v. School Board of Miami-Dade County, Case No. CA-2002-075 (Feb. 3, 2003).***

General Counsel's partial summary dismissal affirmed. Unfair labor practice charge dismissed in part because union failed to state the facts it relied upon to conclude that school board made changes which affected bargaining unit members' retirement benefits. Additionally, union provided no facts demonstrating it advanced its grievance to arbitration, the school board engaged in an unlawful pattern of prearbitral conduct or the school board refused to participate in arbitration. Union also failed to demonstrate that the school board violated the collective bargaining agreement by scheduling employees to work on Saturdays. A portion of the charge was also dis-

missed because it was vague in alleging three employees were transferred to another department and work site without school board approval, notice, or open posting, and it was vague in its allegation of a unilateral change to the promotions and appointments procedure. Furthermore, the union failed to provide sufficient facts to determine that the school board's demotion of certain employees constitute an unfair labor practice.

***Coastal Florida Public Employees Association v. City of Port St. Lucie, Case No. CA-2002-068 (Mar. 7, 2003).***

Unfair labor practice charge alleging that city became directly involved in effort to decertify union dismissed. No attorney's fees awarded.

***Cruise v. International Association of Firefighters, Local 2497, Case No. CB-2002-029 (Mar. 7, 2003).***

General Counsel's Summary Dismissal affirmed. No evidence that union attempted to cause city to commit an unfair labor practice. Commission cannot review the correctness of union's judgment not to process a grievance in the absence of a showing that the judgment was exercised discriminately or in bad faith.

***Manatee County and Municipal Employees, Local 1584, AFSCME, AFL-CIO and Timothy Foor v. School Board of Manatee County, Case No. CA-2002-071 (Mar. 12, 2003).***

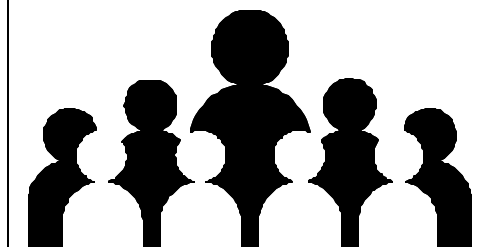
Unfair labor practice charge regarding employee's demotion dismissed as untimely filed. Where an

oral vote was made to demote the employee at the end of school board hearing, delay in receipt of the school board's written decision did not extend the statute of limitations.

***Amalgamated Transit Union Local 1593 v. Hillsborough Area Regional Transit Authority, Case No. CA-2003-004 (Mar. 28, 2003).***

General Counsel's Summary Dismissal finding that union did not demonstrate a prima facie violation of Section 447.501(1)(a) and (c), Florida Statutes, in its charge alleging that transit authority refused to provide all incident and checker reports to union on ongoing basis and allow union to interview checkers during proceeding of grievance. Section 447.203(17)(d), Florida Statutes, does not require a public employer to provide its witnesses to union during the processing of a grievance.

## Representation Cases



***City of St. Petersburg v. National Conference of Firemen and Oilers, Local 1220, NCFE, SEIU, AFL-CIO, CLC, 29 FPER ¶ 19 (2003).***

Unit clarification petition seeking to have several employees designated as managerial or confidential and to have the unit description

(Continued on page 8)

(Continued from page 7)

amended to reflect several title changes and the abolition of a classification granted.

***JEA Supervisors Association, 29 FPER ¶ 16 (2003).***

Motion for reconsideration of order directing an election denied. Commission repealed rule authorizing motions for reconsideration in 2000. Even under former rule, Commission did not reconsider orders directing elections because they are not final orders reviewable by an appellate court. Also motion did not identify any facts or law that the Commission allegedly overlooked or misapprehended. Furthermore, granting motion would effectively stay the election, and the Commission does not stay representation cases when the stay delays the election unless there is a demonstration of extraordinary circumstances.

***JEA Supervisors Association v. St. Johns River Power Park, 29 FPER ¶ 34 (2003).***

Motion to clarify the unit placement of the area leader-business classification granted, and classification is excluded.

***Hale v. Coastal Florida Public Employees Association v. City of South Daytona, 29 FPER ¶ 22 (2003).***

Motion for reconsideration of order directing an election by mail ballot denied. Parties did not meet their burden to show that a mail ballot election is inappropriate but, rather, attempted to demonstrate that an on-site election is more appropriate.

***International Union of Police Associations, AFL-CIO v. City of St. Cloud/Police Department, 29 FPER ¶ 17 (2003).***

Bargaining unit of police officers, police corporals, and police detectives approved.

***In Re Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO, 29 FPER ¶ 40 (2003).***

Petition to amend certification 710 by substituting the Laborers' International Union of North America, Local 1101, as the certified bargaining agent granted.

***In Re Teamsters Local Union No. 769, 29 FPER ¶ 33 (2003); Cabrera v. Teamsters Local Union No. 769 v. City of Hialeah Gardens, 29 FPER ¶ 20 (2003).***

Petitions to disclaim interest in representing blue-collar bargaining units granted.

***National Conference of Firemen and Oilers/SEIU, Local 1227, AFL-CIO v. City of Boynton Beach, 29 FPER ¶ 39 (2002).***

Bargaining unit of supervisory employees approved.

***Local Union 1924, International Brotherhood of Electrical Workers, Fernandina Beach, Florida v. City of Fernandina Beach, 29 FPER ¶ 25 (2003).***

Petition seeking to represent employees in city drinking water department dismissed because single department bargaining units are usually considered overly-fragmented.

***Florida Police Benevolent Association, Inc. v. City of Lake City, 29 FPER ¶ 44 (2003).***

Bargaining unit of police officers, police investigators, and police

sergeants approved.

***Baker County EMS Professionals, Local 4216, IAFF v. Baker County Board of County Commissioners, 29 FPER ¶ 45 (2003).***

Petition seeking to represent a bargaining unit of emergency medical technicians and paramedics approved.

***Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO v. City of Atlantic Beach, 29 FPER ¶ 46 (2003).***

Supervisory white-collar bargaining unit and a rank-and-file white-collar bargaining unit approved.

***Carter v. Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. City of Oakland Park, Case No. RD-2002-012 (Feb. 3, 2003).***

Bargaining unit of operational services employees approved.

***Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO v. City of Atlantic Beach, Case Nos. RC-2002-057 and RC-2002-058 (Feb. 6, 2003).***

Bargaining units of white-collar supervisory employees and white-collar rank-and-file employees approved.

***Southwest Florida Professional Firefighters and Paramedics, Local 1826, IAFF, Inc. v. Sanibel Fire Control District, Case No. RC-2002-060 (Feb. 11, 2003).***

Bargaining unit of firefighter/EMT, firefighter/paramedic, lieutenant, captain, and mechanic classifications approved.

(Continued on page 9)

(Continued from page 8)

Bargaining unit of police officers approved.

**Communications Workers of America, AFL-CIO, CLC v. City of Madeira Beach, Case No. RC-2003-011 (Feb. 14, 2003).**

Representation petition dismissed where petition failed to list all classifications to be included in the proposed units, and union sought to represent two bargaining units while only filing one petition. Union must file separate petitions and separate showings of interest for each unit it seeks to represent.

**Southwest Florida Professional Firefighters and Paramedics, Local 1826, IAFF, Inc. v. City of Fort Myers, Case No. RC-2002-055 (Feb. 18, 2003).**

Bargaining unit of assistant chief-shift commanders in a fire rescue department approved.

**In Re JAX Airport Lodge 85, Fraternal Order of Police, Case No. AC-2002-028 (Feb. 19, 2003).**

Petition seeking to amend certification 723 to substitute the Jacksonville Airport Authority for the Jacksonville Port Authority as the public employer approved.

**City of Cape Canaveral v. International Union of Operating Engineers, Local 673, Case No. UC-2003-003 (Feb. 24, 2003).**

Unit clarification petition which sought to exclude a position that was never included in the bargaining unit dismissed.

**Florida State Lodge, Fraternal Order of Police, Inc. v. City of Pensacola, Case No. RC-2002-051 (Feb. 27, 2003).**

**City of Pinellas Park v. International Association of Firefighters, Local 2193, AFL-CIO, Case No. UC-2003-001 (Mar. 3, 2003).**

Unit clarification petition seeking to include newly-created classification of staff lieutenant (EMS) in supervisory bargaining unit of firefighting personnel granted.

**Diallo v. Florida Public Employees Council 79, AFSCME, AFL-CIO v. Jacksonville Housing Authority, Case No. RD-2002-011 (Mar. 6, 2003).**

Housing authority did not coerce its employees into filing decertification petition or signing showing of interest.

**Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO v. Duval County School District, Case No. RC-2003-018 (Mar. 6, 2003).**

Proposed bargaining unit of computer specialists, senior computer specialists, and computer "systems" operators rejected as overly-fragmented.

**Dade County Police Benevolent Association, Inc. v. City of South Miami, Case No. RC-2002-062 (Mar. 12, 2003).**

Bargaining unit of police lieutenants and police captains approved.

**National Conference of Firemen and Oilers/SEIU, Local 1227, AFL-CIO v. Town of Jupiter, Case No. RC-2002-068 (Mar. 12, 2003).**

Bargaining unit of wall-to-wall nonprofessional, nonsupervisory employees approved.

**In Re Florida Public Employees Council 79, AFSCME, AFL-CIO, Case Nos. AC-2003-001 thru 004 (Mar. 14, 2003).**

Petition seeking to substitute the Board of Governors for the Board of Education as the public employer denied. The boards of trustees of the individual universities are the public employers of employees of those universities. Appeal pending. *In re Florida Public Employees Council 79, AFSCME, Case No. 1D03-1190 (Fla. 1st DCA, Appeal filed Mar. 25, 2003).*

**Florida State Lodge, Fraternal Order of Police, Inc. v. Monroe County Sheriff's Office, Case No. RC-2001-035 (Mar. 17, 2003).**

Motion to intervene in representation proceeding was denied where showing of interest cards filed was numerically insufficient.

**Florida Public Employees Council 79, AFSCME, AFL-CIO v. Hernando County Board of County Commissioners, Case No. RC-2002-061 (Mar. 17, 2003).**

Bargaining unit of nonprofessional, nonsupervisory employees approved.

**Teamsters Local 385 v. City of Longwood, Case No. RC-2002-080 (Mar. 20, 2003).**

Consent election agreement seeking to represent a supervisory bargaining unit composed of police department lieutenants (commanders) approved.

(Continued on page 10)

(Continued from page 9)

***Southwest Florida Professional Firefighters and Paramedics, Local 1826, IAFF, Inc. v. Tice Fire and Rescue District, Case No. UC-2003-002 (Mar. 20, 2003).***

Petition seeking to add classification of captain and delete classification of lieutenant from a bargaining unit of rank-and-file fire suppression personnel granted.

***Pinellas County Police Benevolent Association, Inc. v. Pinellas County Sheriff's Office, Case No. RC-2003-029 (Mar. 28, 2003).***

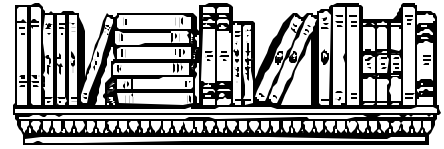
Petition seeking to represent a bargaining unit of correctional officers in the classifications of detention deputy and corporal dismissed where showing of interest was numerically insufficient.

***Support Personnel Association of Lee County v. School District of Lee County, Case No. UC-2002-032 (Mar. 28, 2003).***

Joint petition seeking to include thirteen classifications and exclude one classification in a non-instructional bargaining unit granted.

(Continued from page 3)

In considering whether Davis' nonappearance was attributable to excusable neglect, the Commission noted that Davis is a nonlawyer representing herself and judged the reasonableness of her misunderstanding in relation to the understanding of a person lacking the advantages of legal training and experience. The Commission cautioned that the same circumstances would be unlikely to be viewed as excusable neglect if advanced by an attorney or seasoned lay representative. After considering the absence of a ruling on the motion to dismiss, the substance of the parties' pleadings, and a plain reading of the hearing officer's order stating that she would rule on the motion based on the pleadings, the Commission concluded that a pro se litigant could reasonably believe that the hearing had been canceled. This conclusion was supported by Davis' exception to the recommended order, stating that the only reason she did not attend the hearing was because she thought her case had been dismissed. Thus, the Commission rejected the hearing officer's recommendation to dismiss the case, and instead, remanded the case for a hearing on DCF's motion to dismiss. The non-final remand order will be published in the *Florida Career Service Reporter* in conjunction with the final order when the case is concluded.



## From the Commission's Bookshelf

### Appellate Decisions in Career Service Cases

The Commission has published a digest of appellate decisions in career service cases from 1970 to the present. A copy of *Appellate Decisions in Career Service Cases*, in binder with sectional dividers, may be obtained from the Clerk of the Commission for the cost of \$10.50. The document is also available on the Commission's website at <http://www2.myflorida.com/les/perc>. Select "PERC Publications."

### Career Service Guide Update

The Commission has made two amendments to its publication, *Career Service Appeals Under Service First*. The first amendment is to correct erratum on page 7; the second amendment updates the discussion of hearing procedures on page 9 to reflect the new standard for excusing a failure to appear at hearing. [See related article on page 3 of this PERC News] Amended pages can be downloaded from the PDF version of the publication on the Commission's website at <http://www2.myflorida.com/les/perc>. Select "PERC Publications." Please be sure to select the pages numbered 7 and 9 at the bottom of the page, not the seventh and ninth pages by the PDF page count.

## Elections Verified January 1—March 31, 2003

*International Union of Police Associations, AFL-CIO v. City of Belle Glade/Police Department*, Case No. EL-02-048; Election conducted 12/30/2002 thru 01/21/2003 (Union won)

*Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. Broward Sheriff's Office v. Florida State Lodge, Fraternal Order of Police, Inc.*, Case No. EL-02-047; Election conducted 12/26/2002 thru 01/22/2003 (FOP won)

*District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, Affiliated with American Maritime Officers v. Miami-Dade County (F/K/A Metropolitan Dade County) v. Miami-Dade Water and Sewer Authority Employees, Local 121, AFSCME, AFL-CIO*, Case No. EL-02-044; Election conducted 01/23/2003 (AFSCME won)

*JEA Supervisors Association v. St. Johns River Power Park*, Case No. EL-02-049; Election conducted 01/21/2003 thru 02/11/2003 (Tie vote; Challenges will be determinative; Remand for hearing on challenges)

*Cindy B. Hale v. Coastal Florida Public Employees Association v. City of South Daytona*, Case No. EL-02-045; Election conducted 01/21/2003 thru 02/11/2003 (Union won)

*National Conference of Firemen & Oilers/SEIU, Local 1227, AFL-CIO v. City of Boynton Beach*, Case No. EL-03-002; Election conducted 02/11/2003 thru 03/04/2003 (Union lost)

*International Union of Police Associations, AFL-CIO v. City of St. Cloud/Police Department*, Case No. EL-03-001; Election conducted 02/12/2003 thru 03/05/2003 (Union lost)

*Florida Police Benevolent Association, Inc. v. City of Lake City*, Case No. EL-03-003; Election conducted 2/18/2003 thru 03/11/2003 (Union lost)

*Tom Carter v. Federation of Public Employees, A Division of the National Federation of Public and Private Employees (AFL-CIO) v. City of Oakland Park*, Case No. EL-03-006; Election conducted 02/25/2003 thru 03/18/2003 (Union won)

*Southwest Florida Professional Firefighters & Paramedics, Local 1826, IAFF, Inc. v. City of Fort Myers*, Case No. EL-03-007; Election conducted 03/05/2003 thru 03/26/2003 (Union won)

*Northeast Florida Public Employees', Local 630, LIUNA, AFL-CIO v. City of Atlantic Beach*, Case No. EL-03-004; Election conducted 03/05/2003 thru 03/26/2003 (Union lost)

*Northeast Florida Public Employees', Local 630, LIUNA, AFL-CIO v. City of Atlantic Beach*, Case No. EL-03-005; Election conducted 03/05/2003 thru 03/26/2003 (Union won)



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