

Commissioner Kossuth Reports on Legislative Action

Well, another legislative session is upon us. I follow the action, both via the internet and at the Capitol. We at PERC are fortunate to also have General Counsel Steve Meck and Office Manager Mary Ann Burns tracking and assisting in the legislative arena

Bills we are watching this year would make changes to Chapter 447, Florida Statutes, and the Veteran’s Preference statute. These include SB 128 (Companion Bill HB 73), SB 156 (Companion Bill HB 37), SB 728, SB 1420 and SB 2714 (Companion Bill HB 479). All are moving along and one cannot say what will happen until sine die.

The one bill of interest to PERC which has passed both chambers and been signed by the Governor is SB 1226. This bill started out as a shell but moved very quickly through the process. Committee substitute for Committee substitute for SB 1226 in the enrolled form changes the STAR program for teachers. It was approved by the teachers, school administrators, school boards, and overwhelmingly by the legislature. Pages 10 and 11 of the bill include changes to FS 447.403, relating to resolution of impasses. It requires PERC to initiate, and the parties to follow, an expedited impasse procedure if the dispute concerns the new law (FS 1012.225) and the parties are a union and a school board. Any party who may become involved in such an impasse is encouraged to look at this new law.

Of course, the proposed budget bill is also a big concern for us again this year. Thankfully, the budgets of the Senate and House, as they relate to PERC, are now similar to the Governor’s. If passed as they are, we will maintain the same budget as last year and we can live with that. I believe that the employees at PERC work exceptionally hard to provide quality services to the people of Florida and the citizens are getting a “Bang for their Buck”!

Finally, Chair Donna Poole, Commissioner Jessica Varn, myself, and all the great people at PERC thank all the politicians, from the Governor to the least senior legislator, and their dedicated staff for the work they do for all the citizens of our great state.

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Career Service Cases

Solazzo v. Department of Health, 22 FCSR 1 (2007).

The dismissal of a senior community health nursing supervisor for inability to perform assigned duties was affirmed where the employee failed to demonstrate an available reasonable accommodation.

Bennett v. City of Largo, 22 FCSR 3 (2007).

The appeal of a city employee was dismissed for lack of jurisdiction.

Cherry v. Department of Corrections, 22 FCSR 5 (2007).

The dismissal of a correctional officer for conduct unbecoming a public employee for participating in a threatening confrontation of a civilian and for providing false testimony/evidence during an investigation was affirmed. The agency failed to prove willful violation of rules and regulations for failing to maintain a professional relationship with a probationer because it did not prove that the employee knew the person was on probation or knew about the rules prohibiting such a relationship. Mitigation was not warranted due to a three-year employment record marred by discipline and the seriousness of the conduct.

Coopman v. Department of Corrections, 22 FCSR 8 (2007).

The twenty-day suspension of a correctional probation officer for

allegedly impersonating a police officer and attempting to use his official position for personal gain was vacated where the agency failed to prove that the employee intended to pretend to be a police officer. Back pay was awarded.

Nichols v. Department of Corrections, 22 FCSR 12b (2007).

The five-day suspension of a correctional officer captain for alleged failure to dispatch third shift staff to assist with post use of force procedures and to timely dispatch staff after being told to do so was vacated where the employee promptly complied with orders and the use of force occurred on a prior shift.

Gavin v. Department of Corrections, 22 FCSR 15 (2007).

The appeal of the dismissal of a vocational instructor was dismissed as abandoned where the hearing was continued based on the employee's inability to physically attend the hearing, but the employee failed to file required status reports.

Moore v. Department of Transportation, 22 FCSR 16 (2007).

An appeal was dismissed where the employee failed to appear at the hearing.

Poltrino v. Department of Children and Families, 22 FCSR 17b (2007).

The dismissal of a child protective investigator for unbecoming conduct for falsifying records was affirmed.

Patterson v. Department of Corrections, 22 FCSR 19 (2007).

The ten-day suspension of a correctional officer captain for

improper use of a chemical agent on a "mental health status inmate" was vacated where the warden authorized the use of a chemical agent, the warden determined that the use of force was appropriate, and the inmate was not in a protected mental health status.

Bishop v. Department of Corrections, 22 FCSR 22a (2007); DeLong v. Department of Corrections, Case No. CS-2007-005 (Feb. 13, 2007); Leahey v. Department of Corrections, Case No. CS-2006-318 (Feb. 21, 2007); and Mato v. Department of Business and Professional Regulation, Case No. CS-2006-323 (Feb. 23, 2007).

The appeals of suspensions were dismissed for lack of jurisdiction when the agencies rescinded the suspensions and replaced them with written reprimands.

PERC NEWS

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Morcom v. Department of Corrections, 22 FCSR 23 (2007).

The agency was required to bear the costs of reinstating a reinstated employee's insurance.

Garzon v. Department of Business and Professional Regulation, 22 FCSR 24 (2007).

A motion for clarification was denied because the Commission lacks authority to entertain such a motion.

De La Cruz v. Department of Children and Families, Case No. CS-2006-327 (Feb. 6, 2007).

The dismissal of an economic self sufficiency specialist for insubordination and conduct unbecoming a public employee for being discourteous and disrespectful to his supervisor and refusing to comply with the supervisor's directive was affirmed.

Prieto v. Department of Corrections, Case No. CS-2006-317 (Feb. 13, 2007).

The demotion of a correctional officer lieutenant to correctional officer sergeant for failing to ensure that an employee was searched prior to entering a secured area and for failing to notify the duty warden and detain another employee who appeared drunk was vacated where the lieutenant refused the employee access when she refused to be searched and notified the duty warden as soon as possible regarding the other employee's apparent intoxication. Back pay was awarded.

Clay-Wilson v. Department of Corrections, Case No. CS-2006-331 (Feb. 16, 2007).

The ten-day suspension of a

correctional officer for willful violation of agency rules and insubordination for wearing an unauthorized tongue ring in violation of the warden's order and for failing to show the tongue ring to a colonel when asked was affirmed.

Jackson v. Department of Children and Families, Case No. CS-2006-233 (Feb. 19, 2007).

The dismissal of a medical unit specialist for unbecoming conduct for engaging in inappropriate and disruptive behavior toward a co-worker was affirmed.

Smith v. Department of Juvenile Justice, Case No. CS-2007-004 (Feb. 23, 2007).

The dismissal of a juvenile justice detention officer for violation of law or agency rule for driving without a valid driver's license, inability to perform an essential job function for failing to have a valid license, and insubordination for failing to bring in proof of a valid license when ordered to do so was affirmed.

Thornton v. Department of Corrections, Case No. CS-2006-088 (Mar. 5, 2007).

An appeal was dismissed as apparently abandoned where a show cause order sent to the employee's last known address was returned as undeliverable and where, during the stay of his case, the employee did not file required status reports concerning his related criminal case.

Hodges v. Department of Transportation, Case No. CS-2006-332 (Mar. 5, 2007).

The dismissal of a maintenance mechanic for alleged poor performance related to absences due to incar-

ceration was vacated where the employee, who otherwise would have been released on bail and able to return to work, was detained because the judge was unavailable, and thus, his absence from work was due to circumstances beyond his control. Back pay was awarded.

Manin v. Department of Corrections, Case No. CS-2006-330 (Mar. 13, 2007).

The extraordinary dismissal of a correctional officer sergeant for conduct unbecoming a public employee for being arrested and associating with an ex-inmate was vacated where the criminal charges against the employee were dropped, the ex-inmate was no longer under the agency's supervision, and the employee did not know the ex-inmate had committed another crime causing the police to search for him. Back pay was awarded.

Ferreira v. Department of Highway Safety and Motor Vehicles, Case No. CS-2007-011 (Mar. 13, 2007).

The twenty-four hour suspension of a driver's license examiner for conduct unbecoming a public employee for arguing with a customer was affirmed.

Whaley v. Department of Children and Families, Case No. BP-2007-001 (Relates to CS-2006-257) (Mar. 15, 2007).

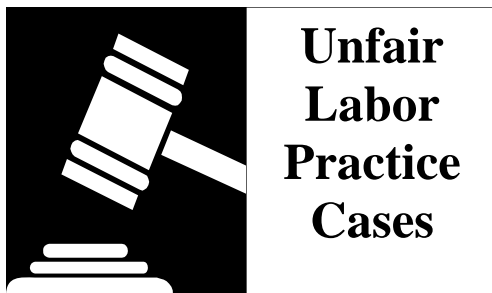
Back pay, sick leave credit, and annual leave credit were awarded to a reinstated employee.

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Lingard v. Department of Corrections, Case No. CS-2007-023 (Mar. 28, 2007)

The appeal of a probationary employee's demotion was dismissed for lack of jurisdiction.



Bell v. Department of Highway Safety and Motor Vehicles, 33 FPER ¶ 6 (2007).

The Commission denied a request for indigency in the appeal of a summary dismissal of an unfair labor practice charge where the appellant failed to disclose the equity value of her real property.

Clarke v. Transport Workers Union of America, Local 291, AFL-CIO, 33 FPER ¶ 9 (2007).

The union did not commit an unfair labor practice by the manner in which it conducted a collective bargaining agreement ratification vote. Notice of the ratification vote to unit members was adequate, and sufficient copies of the tentative agreement were available for review prior to the vote.

Escambia County School Board v. Escambia Education Association, Case No. SM-2006-046 (Jan. 17, 2007).

A Commission majority denied the union's motion to stay special magistrate proceedings because a delay in processing impasse could result in a loss to the school board of over two million dollars in state revenue from the Special Teachers Are Rewarded (STAR) program. In order to receive the funds, the school board was required by law to submit its STAR plan no later than December 1, 2006, and a stay of the impasse proceeding would result in missing the statutory deadline.

Bailey v. General Association of Miramar Employees, Office and Professional Employees International Union, Local 101, AFL-CIO, Case No. CB-2006-015 (Jan. 23, 2007).

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge alleging breach of the union's duty of fair representation. The General Counsel correctly determined that the union reasonably decided that an employee's grievance was not meritorious. Further, the Commission was not at liberty to inquire into the propriety of the union's decision to rely upon the employer's investigation of the incident, rather than conduct its own independent investigation, where there was no evidence the union's decision was made discriminatorily or in bad faith.

United Faculty of Florida v. Florida State University Board of Trustees, Case No. CA-2007-004 (Feb. 14, 2007).

The Commission granted a motion to stay an unfair labor practice charge pending resolution of a challenge to the constitutionality of Section 447.203(11), Florida Statutes, in circuit court.

Teamsters Local Union 769 Affiliated with the International Brotherhood of Teamsters v. City of Fort Pierce, Case No. CA-2006-064 (Mar. 6, 2007).

The city committed an unfair labor practice by failing to bargain in good faith during the budget process when it unreasonably delayed bargaining over wages.

Snow v. St. Petersburg College Board of Trustees, Case No. CA-2006-081 (Mar. 7, 2007).

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge where the charging party failed to allege sufficient objective facts to support his belief that the college laid him off because he was a union organizer.

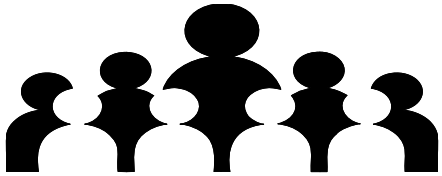
Queflander v. Canaveral Port Authority, Case No. CA-06-062 (Mar. 8, 2007).

The Commission dismissed unfair labor practice case where charging party failed to appear at the evidentiary hearing and did not file any exceptions to the hearing officer's determination that he had abandoned the case.

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Representation Cases



Dade County Public Employees Local 1363, AFSCME, AFL-CIO, 33 FPER ¶ 256 (2007).

A unit clarification petition seeking to include a professional classification in a bargaining unit of non-professional employees without an election in both groups as required by Section 447.307(4)(h), Florida Statutes, was dismissed.

Florida Police Benevolent Association, Inc. v. Lee County Port Authority, 33 FPER ¶ 259 (2007).

A consent election agreement seeking to represent a unit of rank-and-file sworn law enforcement officers was approved.

Teamsters, Chauffeurs and Helpers, Local Union 79 v. Collier County School Board v. Collier Support Personnel – NEA, 33 FPER ¶ 2 (Relates to Case No. EL-2006-060) (Jan. 8, 2007 and Feb. 7, 2007).

In the January 8 order, this case was remanded to the hearing officer after an order directing election was issued because the intervenor union filed a motion alleging that the parties had failed to include in the stipulated bargaining unit eleven positions that had been “traditionally” included in the unit.

The Commission determined that the interests of the public employees involved and efficiency in the administration of the Commission’s election functions dictated that the issue of the appropriate placement of the eleven classifications be addressed before an election was conducted.

In the February 7 order, the Commission granted a stipulated motion to amend the unit description to include the eleven classifications at issue in the bargaining unit.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, 33 FPER ¶ 3 (2007).

A unit clarification petition seeking to add the newly-created position of payroll supervisor to a bargaining unit of non-professional supervisory employees was granted.

Leon County School Board v. Leon Educational Staff Professional Association, 33 FPER ¶ 5 (2007).

A unit clarification petition seeking to clarify a bargaining unit of non-supervisory, professional and non-professional administrative, clerical and educational support personnel was granted.

Coastal Florida Public Employees Association v. City of Port St. Lucie, 33 FPER ¶ 8 (2007).

A consent election agreement seeking to represent a unit of supervisory personnel was approved.

City of St. Petersburg v. Service Employees International Union, National Conference of Firemen and Oilers, Local 1220, 33 FPER ¶ 10 (2007).

A unit clarification petition

seeking to include the classification of chief building inspector in a bargaining unit of operational services employees was granted.

Leon County School Board v. Leon Educational Staff Professional Association, 33 FPER ¶ 13 (2007).

A unit clarification petition seeking to clarify the definition of a bargaining unit of non-supervisory, professional and non-professional administrative, clerical, and educational support personnel was granted.

Palm Beach County Police Benevolent Association, Inc., Chartered by the Florida Police Benevolent Association, Inc. v. Town of Juno Beach, 33 FPER ¶ 15 (2007).

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

International Brotherhood of Electrical Workers, Local Union 2358 v. JEA v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO, 33 FPER ¶ 18 (2007).

The Commission dismissed a unit clarification petition which failed to meet the criteria for such a petition even though the parties agreed that the two classifications at issue should be placed in the bargaining unit. The unit clarification process is properly invoked only when the positions involved have been created, abolished, or substantially altered after certification or when the initial inclusion or exclusion of such positions resulted from misunderstanding or inadvertence.

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Whaley v. Coastal Florida Police Benevolent Association, Inc. v. Sheriff of Nassau County, Case No. RD-2006-009 (Feb. 6, 2007).

A petition seeking to revoke the certification of the incumbent union was granted.

Cale v. Florida Police Benevolent Association, Inc. v. City of Okeechobee, Case No. RD-2007-002 (Feb. 6, 2007).

The union's motion to disclaim interest in representing a rank-and-file police unit was granted, and the union's certification was revoked.

Florida Police Benevolent Association, Inc. v. Sheriff of Alachua County, Case No. RC-2006-056 (Feb. 7, 2007).

A consent election agreement seeking to represent a unit of sergeants and lieutenants was approved.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Winter Park, Case No. RC-2006-058 (Feb. 13, 2007).

A consent election agreement seeking to represent a rank-and-file bargaining unit of law enforcement personnel was approved.

Smith v. Coastal Florida Police Benevolent Association, Inc. v. Sheriff of Nassau County, Case No. RD-2007-001 (Feb. 20, 2007).

A petition seeking to revoke the certification of the incumbent union was granted.

JEA Supervisors Association v. JEA v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO, Case Nos. UC-2006-043, UC-2006-044, and UC-2006-045 (Feb. 21, 2007).

Unit clarification petitions were dismissed where the employer indicated that it had intended to clarify a bargaining unit other than the certifications named in the petition. The employer's request to amend the petition was deemed an improper exception to the recommended order and was denied.

Polk County Professional Firefighters, Local 3531, IAFF v. Polk County Board of County Commissioners, Case No. RC-2006-059 (Mar. 5, 2007).

A consent election agreement seeking to represent a supervisory unit of EMS chiefs and EMS medical supervisors was approved.

Florida Police Benevolent Association, Inc. v. Sheriff of Hendry County, Case No. RC-2007-001 (Mar. 5, 2007).

A consent election agreement seeking to represent a unit of law enforcement sergeants and lieutenants was approved.

St. Lucie County Classroom Teachers' Association and Classified Unit v. St. Lucie County School Board, Case No. UC-2007-036 (Mar. 6, 2007).

A unit clarification petition seeking to add eighteen classifications to an instructional unit was granted.

Hillsborough County Police Benevolent Association, Inc., D/B/A West Central Florida Police Benevolent Association v. City of Zephyrhills, Case No. RC-07-002 (Mar. 27, 2007).

A consent election agreement seeking to represent a supervisory unit of sworn law enforcement personnel was approved.

Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Nassau County v. Coastal Florida Police Benevolent Association, Inc., Case No. RC-2007-003 (Mar. 26, 2007).

A representation-certification petition seeking to represent a unit of sworn law enforcement supervisory personnel was granted. After issuance of the hearing officer's recommended order, the Coastal Florida PBA was decertified in a separate proceeding, and thus, was not granted automatic intervenor status in the instant case.

Vega, Zahn, and DiGangi v. City of West Palm Beach v. Local 1227 National Conference of Firemen & Oilers, SEIU, AFL-CIO, CLC, Case Nos. UC-2007-001, UC-2007-002 and UC-2007-003 (Mar. 27, 2007).

Unit clarification petitions filed by individual employees were dismissed because such petitions can only be filed by a certified bargaining agent or a public employer.

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Wood v. Florida Atlantic University Board of Trustees, 33 FPER ¶ 1 (2007).

The Commission has no statutory authority within the context of its veteran's preference jurisdiction to consider whether an employer retaliated against a person who filed an earlier veteran's preference complaint. The proper method for challenging adverse actions by a public employer resulting from utilization of the Commission's processes is to file an unfair labor practice charge. The veteran had been hired by FAU as a result of a settlement agreement reached after he filed a veteran's preference complaint with the Commission, but was fired during his probationary period.

Elections Verified and Certifications Issued

Florida PBA, Inc. v. Sheriff of Hendry County, Case No. EL-2006-057; Election 12/15-2006 – 01/11/2007; Union won; Certification 1621.

Local 4374, Islamorada Professional Firefighters Association v. Village of Islamorada, Case No. EL-2006-055; Election 12/15-2006 – 01/11/2007; Union won; Certification 1622.

Broward Teachers Union 1975, Florida Education Association, American Federation of Teachers, AFL-CIO v. City of Pembroke Pines, Case No. EL-2006-058; Election 01/24/2007; Union won; Certification 1623

Knowlton v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees, AFL-CIO v. City of Winter Haven, Case No. EL-2006-059; Election 01/16 – 02/06/2007; Federation won.

Florida PBA, Inc. v. Orange County Board of County Commissioners v. Charles E. Brookfield Lodge 86, FOP, Case No. EL-2006-051; Election 02/20 – 02/21/2007; Lodge 86 won.

Florida PBA, Inc. v. Lee County Port Authority, Case No. EL-2007-001; Election 02/06 – 02/27/2007; Union lost.

Coastal Florida Public Employees Association v. City of Port St. Lucie, Case No. EL-2007-002; Election 02/13 – 03/06/2007; Union lost.

Palm Beach County PBA, Inc., Chartered by the Florida Police Benevolent Association, Inc. v. Town of Juno Beach, Case No. EL-2007-003; Election 02/20 – 03/13/2007; Union won.

Florida PBA, Inc. v. Sheriff of Alachua County, Case No. EL-2007-005; Election 02/27 – 03/20/2007; Union won.

Keith Whaley v. Coastal Florida PBA, Inc. v. Sheriff of Nassau County, Case No. EL-2007-004; Election 03/02 – 03/22/2007; Union lost.

Teamsters, Chauffeurs and Helpers, Local Union 79 v. Collier County School Board v. Collier Support Personnel - NEA, Case No. EL-2006-060; Election 03/08 – 03/29/2007; Local 79 won.

Florida State Lodge, FOP, Inc. v. City of Winter Park, Case No. EL-2007-006; Election 03/09 – 03/30/2007; Union lost.



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