

Commission Split on Authority to Award Attorney’s Fees and Costs Under Section 57.105, Florida Statutes

By Hearing Officer Joey D. Rix.



Public Employees Relations Commission

PERC NEWS

In a split decision, the Commission ruled that it lacks the statutory authority to award attorney’s fees and costs under Section 57.105, Florida Statutes (2007), in a career service case. *Morgan v. Department of Corrections*, 23 FCSR 7 (2008). The issue arose following the Commission’s reinstatement of Tina Morgan, who was fired by the Department of Corrections (Agency), as reported in a prior PERC News Article. See PERC NEWS, July 1, 2007 – September 30, 2007, page 3. Thereafter, Morgan filed a motion for attorney’s fees, costs, and other sanctions under Section 57.105. The Commission-appointed hearing officer concluded that Morgan was entitled to attorney’s fees and costs under the statute for having to defend herself against an Agency allegation that was not supported by the material facts necessary to establish the claim or by the law.

The majority of the Commission and the dissenting Commissioner agreed that the 2003 amendment to Section 57.105, creating subsection 5, was intended to curtail frivolous administrative cases falling under Chapter 120. The provision, in part, states, “In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney’s fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party’s attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4).”

The majority of the Commission found that on its face, Section 57.105(5) specifically authorizes “an administrative law judge” to award reasonable attorney’s fees and damages, but this provision does not authorize any other person, commission, presiding official, hearing officer, or entity to award attorney’s fees. The majority of the

Commission concluded that this appears to be a legislative oversight, inasmuch as Section 120.80 enumerates several other agencies that are authorized to conduct hearings by utilizing presiding officers who are not administrative law judges employed by the Division of Administrative Hearings. Nevertheless, the majority of the Commission concluded that the Commission does not have the authority to award attorney’s fees under this provision.

The majority of the Commission strictly construed Section 57.105 because attorney’s fees statutes are in derogation of common law. See *Sarkis v. Allstate Insurance Company*, 863 So. 2d 210 (Fla. 2003). Applying this strict standard, the majority of the Commission ruled that the Commission is compelled to abide by the plain language of Section 57.105(5), which clearly states that administrative law judges shall make an

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award of fees and costs, and this plain language cannot be extended to authorize fee awards by Commission hearing officers. In reaching this conclusion, the majority of the Commission was persuaded by the decisions in *French v. Department of Children and Families*, 920 So. 2d 671 (Fla. 5th DCA 2006) (ruling that the plain language of Section 120.595 only authorizes administrative law judges to consider attorney's fees, notwithstanding a statutory exemption in Section 120.80(7), Florida Statutes, permitting DCF to use non-administrative law judges to conduct DCF hearings) and *Jain v. Florida Agricultural and Mechanical University*, 914 So. 2d 998 (Fla.

1st DCA 2005) (ruling that a request for attorney's fees under Section 57.105(5) is to be considered by the administrative law judge, not the university).

Finally, the majority of the Commission receded from the Commission's decisions in *Villar-Reynolds v. Agency for Workforce Innovation*, 31 FPER ¶ 67 (2005); *Santana v. Department of Juvenile Justice*, 31 FPER ¶ 166 (2005) and *White v. Department of Children and Families*, Case No. BP-2005-018 (Fla. PERC Nov. 15, 2005), to the extent that those decisions are inconsistent with the decision in the *Morgan* case.

In his dissent, Commissioner Kossuth concluded that the introduc-

tory language in subsection 5 vests the Commission's hearing officers with the authority to impose attorney's fees and costs sanctions under appropriate circumstances, as was recognized in *Villar-Reynolds*, *Santana*, and *White*. Therefore, he would not recede from those cases. He considered the reference to administrative law judges in the statute to be merely procedural and opined that it should be construed to include any presiding officer in a Chapter 120 proceeding, including Commission hearing officers. Otherwise, Commissioner Kossuth noted, unlike other citizens, state employees are subject to discipline for totally groundless reasons and forced to defend themselves at their own expense or, even worse, with no legal representation.

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Stephen Meck Named a Top Government Attorney

By Hearing Officer Sharon A. Zahner.

Florida Trend magazine has chosen Acting General Counsel/Hearing Officer Stephen Meck as a Florida Legal Elite honoree and his name will appear in the magazine's July 2008 issue. The magazine invites members of The Florida Bar to rate their lawyer peers. The magazine asks fellow lawyers for names of lawyers they hold in highest regard and those they would recommend to others. Congratulations to Steve!

Alleged Coercive Remarks Must Have Unlawful Motivation to Constitute an Unfair Labor Practice

By Hearing Officer Jack E. Ruby.

Section 447.501(a), Florida Statutes (2007), prohibits a public employer from interfering with, restraining or coercing public employees in collective bargaining or other protected concerted activities guaranteed by Chapter 447, Part II, Florida Statutes (2007). On August 21, 2006, the Commission affirmed a hearing officer's conclusion that the City of Coral Gables (City) had violated Section 447.501(1)(a), when it threatened future wage freezes and recoupment "one way or another" concerning a grievance settlement in an unfair labor practice charge filed by the Coral Gables Walter F. Strathers Memorial Lodge 7, Fraternal Order of Police (FOP). *Coral Gables Walter F. Strathers Memorial Lodge 7, FOP v. City of Coral Gables*, 32 FPER ¶173 (2006). The violation was predicated upon the comments having the foreseeable effect of instilling in employees a reasonable belief that further protected activities, specifically filing and pursuing collective bargaining grievances, may result in adverse employment consequences. The City appealed the Commission's final order. On February 6, 2008, the Florida Third District Court of Appeal reversed the Commission's decision in *City of Coral Gables v. Coral Gables Walter F. Strathers Memorial Lodge 7, FOP*, 976 So. 2d 57 (Fla. 3d DCA (2008)).

The Court agreed with the City's argument on appeal that the Commission erred because,

regardless of whether the remarks were reasonably considered threatening or coercive, unless there was a finding of unlawful motive related to a protected right, there was no unfair labor practice within the meaning of Section 447.501(1)(a). The court opined that the Commission had misapplied the First District Court of Appeal decision in *School Board of Lee County v. Lee County School Board Employees Local 780, AFSCME*, 512 So. 2d 238 (Fla. 1st DCA 1987), which held that there was a requirement of a finding of unlawful motive for an alleged threat to be a violation of Section 447.501(1)(a). The court, in a lengthy discussion, specifically disapproved of a prior Commission case that had attempted to distinguish *Lee County* and not require a finding of unlawful motive in order to conclude that an alleged threat was a violation of Section 447.501(1)(a).

In 1987, soon after the First District's decision in *Lee County*, the Commission had distinguished the factual circumstances of the *Lee County* decision in a Commission decision that held that, if there were "unambiguous threats," no unlawful motivation needed to be shown in order to find a violation of Section 447.501(1)(a). *Professional Fire Fighters of Orlando v. City of Orlando*, 13 FPER ¶18218 (1987). The Commission held in the *Orlando* decision that, although the First District's opinion in *Lee County*

could be read to require a showing of unlawful motivation in all Section 447.501(1)(a) violations, as the *Lee County* decision concerned a situation where the alleged threat was ambiguous, the Commission held that unlawful motive would be imputed from the statement itself where the alleged threat was unambiguous. *Id.* at 517.

The Third District in *Coral Gables* held that the Commission's decision in *Orlando* improperly attempted to limit the applicability of the First District Court of Appeal's decision in *Lee County*. Specifically, the Third District Court of Appeal held that, regardless of the comments' contents, in order to find a violation of Section 447.501(1)(a), there must be proof and a finding that protected conduct motivated the employer to make the alleged threatening or coercive remark. Consequently, the court reversed the Commission's decision and remanded the case for dismissal, holding that, in light of the undisputed facts, there was no need for further proceedings upon remand. On March 6, the court denied the FOP's motion for rehearing. The FOP has appealed to the Florida Supreme Court.

Vet Gets Victory But No Back Pay

By Hearing Officer Carlos R. Lopez.

On June 30, 2005, the Department of Transportation (Agency) laid-off Richard L. Duley because his position was abolished. By a letter dated July 30, 2007, Duley filed a complaint with the Department of Veterans' Affairs (DVA) alleging that the Agency denied him a veteran's preference in retention during the 2005 layoff. The DVA investigated Duley's complaint, accepted it as timely, and concluded that it was valid. Thereafter, Duley filed with the Commission a veteran's preference complaint against the Agency, and an evidentiary hearing was conducted.

The Commission-appointed hearing officer found that the Agency violated the veterans' preference law by not affording Duley special consideration in the layoff. However, he reasoned that under Commission precedent, Duley could not be afforded any relief other than attorney's fees, costs, and a Commission admonition that the Agency must abide by the law.

Duley filed five exceptions to the hearing officer's factual findings and excepted to several of his conclusions. At Duley's request, the Commission heard oral argument. In its final order, the Commission denied Duley exceptions to the hearing officer's factual findings and denied his exceptions to two of the conclusions of law.

In the remaining legal conclusion to which Duley excepted, the hearing officer stated that, "Duley's position has been abolished. He is not entitled

to reinstatement or an award of back pay and benefits." Duley argued that the fact that the Agency abolished his position is irrelevant because he received no special consideration based on his veteran's preference. Because he received no special consideration, Duley asserted that he must be reinstated, citing the Florida Supreme Court's decision in *Yates v. Palmintiero*, 96 So. 2d 148, 150 (Fla. 1957), Section 295.07, Florida Statutes (2007), and Florida Administrative Code Rule 55A-7.015 (1).

In *Yates*, the supreme court addressed the remedy for an eligible veteran who was not afforded any preference in retention in a layoff situation. The preference in *Yates*, was based on a numerical "lay-off score," the underpinnings of which the court ultimately found lacking. Based on this method, ten employees in the same custodial work classification in the department in which the veteran worked were retained, even though seven of the ten were non-veterans. A majority of the court concluded that the veteran:

... should be reinstated at least unless and until the Civil Service Board can show that some preference was accorded to him which would comply with the requirement of the statute. We do not anticipate that this requirement is satisfied by the vague formula previously set forth herein, if only because this formula does not appear to apply to the

appellee, and produces the result that no preference whatever is accorded to him.

Yates, 96 So. 2d at 150.

Duley contended that *Yates* controlled the instant case and, therefore, he should be reinstated with back pay and benefits until such time as the Agency complies with the applicable statute.

The Commission observed that it was faced with a different fact scenario than the court in *Yates*; that is, where an eligible veteran cannot be reinstated to his former position because it has been abolished. Thus, unlike in *Yates*, no employees remained in Duley's position because it was eliminated.

The Commission balanced two competing and compelling considerations in fashioning a remedy. First, because the Agency did not provide any special consideration as statutorily required, it concluded that the Agency should experience a serious consequence for this failure. Therefore, the Agency was directed to make Duley an offer of employment to an existing position comparable to that which he held prior to his layoff and for which he meets the minimum qualifications. To this extent, Duley's exception was granted.

Second, the Commission considered that the facts revealed Duley received notice of all vacant positions before they became open to the public, he was interviewed for all

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positions for which he appeared to meet the minimum qualifications, and he was being considered for a vacant position which he chose not to pursue. The Commission rejected Duley's apparent belief that he was entitled to a position that included a salary equivalent to that which he had been previously earning. The Commission reasoned that, although the statute refers to equivalency, it did not apply to the facts of this case. *See, e.g.*, § 295.09, Fla. Stat. (2007) (requiring that a state employee who has served in the Armed Forces of the United States and is discharged or separated

with an honorable discharge be reemployed or reinstated to the same position held prior to such service in the armed forces, or to an equivalent position, provided such person returns to the position within one year of the date of separation or, in cases of extended active duty, within one year of the date of discharge or separation subsequent to the extension).

The Commission further observed that Duley had been notified of all vacant positions existing prior to his layoff, but he did not identify any position for which he was minimally qualified and that matched his former salary. Thus, by refusing to be

considered for a position that did not match his former salary, Duley short-circuited the Agency's procedure for retaining an employee whose position had been designated for deletion. Because Duley's actions precluded the Agency from making him an offer of employment, the Commission exercised its discretion under Section 295.14(1), Florida Statutes (2007), and declined to award Duley compensation for the loss of any wages. Therefore, the remainder of the Duley's exception was denied.

Duley v. Department of Transportation, Case No. VP-2007-001 (Fla. PERC Apr. 8, 2008).

Career Service Cases

Villano v. Department of Health, 23 FCSR 1 (2008); Smith v. Department of Corrections, 23 FCSR ¶ 2 (2008).

Appeals were dismissed as abandoned after the employees failed to appear at hearing.

Hamilton v. Department of Corrections, 23 FCSR 3 (2008).

Five-day suspension of a correctional officer sergeant for excessive absences was affirmed. In less than two months, the employee was absent five days, three of which were in conjunction with her days off. Mitigation was unwarranted because the employee's twenty-year employment record was offset by the seriousness of the offense and two written reprimands related to excessive absenteeism, one of which issued less than a month prior to her next unscheduled absence.

Dorobiala v. Department of Corrections, 23 FCSR 5 (2008).

Ten-day suspension of a correctional officer sergeant for

using unnecessary force on an inmate was affirmed. Mitigation was not raised as an issue.

Hayes v. Department of Business and Professional Regulation, 23 FCSR 10 (2008).

Appeal had been stayed pending a hearing before the Division of Administrative Hearings where the employee challenged her reclassification to the selected exempt service. The agency's unopposed motion to dismiss the appeal was granted based on the employee and agency's settlement of the DOAH case.

Ortiz v. Department of Children and Families, 23 FCSR 11 (2008).

Dismissal of an economic self-sufficiency specialist for poor performance and inability to perform assigned duties was affirmed; the employee was incapable of performing the essential duties of his position. The Commission is without authority to order an agency to

place an employee on light duty or in an alternative position.

Ward v. Department of Corrections, 23 FCSR 13 (2008); Bowers v. Department of Corrections, 23 FCSR 17a (2008); Bloodworth v. Agency for Persons with Disabilities, 23 FCSR 38 (2008).

Appeals were dismissed when agencies rescinded disciplines.

Allen v. Department of Corrections, 23 FCSR 15 (2008).

Dismissal of a correctional officer lieutenant for a second occurrence of negligence and failure to follow instructions after failing to report an inmate slapping a visitor and ordering a subordinate not to file an incident report was affirmed. Mitigation was not warranted where the thirteen-year employment record was outweighed by four reprimands and two suspensions.

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Hill v. Department of Corrections, 23 FCSR 18 (2008).

Dismissal of a correctional officer sergeant for giving false testimony during an official agency investigation and a second occurrence of unbecoming conduct was affirmed. Mitigation was not warranted where the fourteen-year tenure was outweighed by three reprimands, a suspension, and the seriousness of providing false testimony during an official investigation.

Kyle v. Agency for Persons with Disabilities, 23 FCSR 22 (2008).

Dismissal of a human services worker for negligence was affirmed; the employee failed to maintain line-of-sight supervision of a mentally retarded resident who injured himself in her absence.

Gattuso v. Department of Corrections, 23 FCSR 24 (2008).

Appeal filed more than fourteen days after receipt of the final action letter was dismissed as untimely. Equitable tolling was unwarranted.

George v. Department of Corrections, 23 FCSR 26 (2008).

Ten-day suspension of a correctional officer for insubordination, unbecoming conduct, and willful violation of agency rules was affirmed. The employee insubordinately refused to respond to a supervisor's lawful inquiry, referred to the supervisor as a "cracker," and threatened the supervisor and a co-worker.

Wainwright v. Agency for Health Care Administration, 23 FCSR 29 (2008).

The Commission affirmed the dismissal of a medical health care analyst for refusing to return to work

after her doctor notified the agency that she was capable of returning to work.

Coates v. Department of Corrections, 23 FCSR 32 (2008).

Appeal dismissed for lack of jurisdiction because the disciplinary action was covered by an executed settlement agreement.

Duley v. Department of Transportation, 23 FCSR 33 (2008).

Appeal dismissed for lack of jurisdiction because the Commission does not have the authority to determine whether a layoff is a constructive discharge.

Snyder v. Department of Corrections, 23 FCSR 34 (2008).

Appeal of the demotion of a correctional officer sergeant was dismissed because the disciplinary action was covered by an executed settlement agreement, and the facts did not support the employee's assertion that the agreement was involuntary.

Acevedo v. Department of Children and Families, 23 FCSR 37 (2008).

Appeal dismissed as abandoned after the employee failed to keep the Commission advised of the status of a related administrative case pending before the Division of Administrative Hearings.

Mertz v. Department of Corrections, 23 FCSR 39 (2008).

Dismissal of a correctional officer sergeant was affirmed where the sergeant took a training squad to a party instead of conducting a training class, then lied about his actions during an interview with an inspector, and falsified his time sheet. The seriousness of the conduct outweighed an eleven-year employment

history; thus, mitigation was unwarranted.

James v. Department of Corrections, 23 FCSR 41 (2008).

Dismissal of a correctional officer sergeant was affirmed for sexual harassment when he performed unauthorized pat-down searches of a female co-worker on multiple occasions, and he grabbed the co-worker's buttock, pinned her against the corner of a door, and massaged the co-worker's buttocks. Mitigation was unwarranted where a sixteen-year employment record was outweighed by a previous demotion from correctional officer major to sergeant for sexual harassment, the lack of disparate treatment, and the seriousness of the conduct by a supervisory employee.

Odom v. Department of Corrections, Case No. CS-2007-243 (Mar. 3, 2008).

Dismissal of a correctional officer sergeant for allowing an inmate to enter the officers' station and for submitting a false incident report denying that the inmate was in the officers' station was affirmed. Mitigation was unwarranted where a sixteen-year employment record was outweighed by the seriousness of conduct and lack of disparate treatment.

Farinas v. Department of Corrections, Case No. CS-2008-010 (Mar. 4, 2008).

Five-day suspension was affirmed for negligence and conduct inconsistent with the maintenance of proper security and welfare of the institution where a vocational instructor III failed to secure restricted tools, such as a hack saw, in a tool shed frequented by unsupervised inmates.

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Robbins v. Department of Corrections, Case No. CS-2007-214 (Mar. 4, 2008).

The Commission affirmed the five-day suspension of a correctional officer sergeant who yelled, “I have a license to kill,” and made an inflammatory and vulgar remark to an inmate while the dormitory was in lockdown status. Mitigation was unwarranted where a sixteen-year employment record was outweighed by the seriousness of conduct.

Viera v. Department of Children and Families, Case No. CS-2008-017 (Mar. 4, 2008).

Appeal by a probationary employee was dismissed for lack of jurisdiction.

St. Amand v. Department of Corrections, Case No. CS-2008-008 (Mar. 12, 2008).

Five-day suspension of a correctional officer for sleeping on duty, failing to maintain proper alertness, and conduct inconsistent with the maintenance of proper security and welfare of the institution was affirmed. Mitigation was not warranted where the seriousness of the misconduct outweighed a five-year unblemished employment record, and the employee failed to demonstrate disparate treatment.

Green v. Department of Juvenile Justice, Case No. CS-2008-030 (Mar. 18, 2008).

Appeal dismissed for lack of jurisdiction because the employee voluntarily resigned employment, and the appeal was untimely filed.

Sampson v. City of Melbourne, Case No. CS-2008-035 (Mar. 18, 2008).

Appeal dismissed for lack of jurisdiction because the employee was not employed within the state career service system.

Peters v. Department of Transportation, Case No. CS-2008-023 (Mar. 20, 2008).

Three-day suspension of a highway maintenance technician coordinator for insubordination and unbecoming conduct was affirmed where the employee cursed at and used profanity toward inmates who were cleaning roadside ditches.

Declaratory Statement

In Re Petition for Declaratory Statement of the School Board of Escambia County and the Union of Escambia Education Staff Professionals, 34 FPER ¶ 45 (2008).

A prior order amending three certifications to reflect a new bargaining agent did not merge the units for purposes of collective bargaining.

Veteran’s Preference Case

Mitchell v. City of Ocala, 34 FPER ¶ 40 (2008).

The employer denied the employee a veteran’s preference by failing to promote him to the position of police sergeant. Lost wages and costs were awarded. Although the employee scored low on a promotional exam, the employer failed to provide evidence regarding the relative qualifications of the applicants or the actual promotional process it used for selecting the sergeants.

Unfair Labor Practice Cases

***Williams v. Duval Teachers United*, 33 FPER ¶ 314 (2008).**

The Commission affirmed the General Counsel's summary dismissal of a charge alleging breach of the duty of fair representation where the charge was facially deficient, sought relief outside the Commission's jurisdiction, and was untimely.

***Local 1158, Clearwater Fire Fighters Association, Inc., IAFF, v. East Lake Tarpon Special Fire Control District*, 33 FPER ¶ 315 (2008).**

The employer committed an unfair labor practice by unlawfully interrogating bargaining unit members in a way that interfered with, restrained, or coerced members in their right to engage in protected activities. Attorney's fees awarded to union.

***United School Employees of Pasco County v. School District of Pasco County*, 33 FPER ¶ 321 (2008).**

The employer committed an unfair labor practice by unilaterally changing its past practice of staffing emergency shelters with volunteers to a mandatory call-in procedure.

***Fahmy v. School District of Miami-Dade County, Florida*, 34 FPER ¶ 12 (2008).**

The Commission affirmed the General Counsel's summary dismissal of an amended charge alleging retaliatory action where the allegations were conclusory, did not show a connection between the employee's actions and the alleged retaliatory action, and did not demonstrate that the employer prohibited the employee for utilizing the contractual grievance procedure.

***Charlotte County School Bus Drivers v. Charlotte County Support Personnel Association*, 34 FPER ¶ 17 (2008).**

The Commission affirmed the General Counsel's summary dismissal of a charge filed on the wrong form.

***Charlotte County School Bus Drivers v. Charlotte County Support Personnel Association*, 34 FPER ¶ 41 (2008).**

The Commission affirmed the General Counsel's summary dismissal of a charge that was incomplete and ambiguous.

***International Union of Police Associations, AFL-CIO v. State of Florida, Department of Management Services v. Florida Police Benevolent Association, Inc.*, 34 FPER ¶ 21 (2008).**

The employer did not commit an unfair labor practice through the use of the impasse procedure. Pursuant to a court order, the parties negotiated but were unable to resolve an issue regarding work schedule changes. Rather than reinstate the status quo, the parties agreed to continue to negotiate. Upon the request of a legislative staff member, the employer provided its proposed settlement agreement, which included its last offer to settle the work schedule issue, to the legislature, without notice to the union. The reference of this issue to impasse was due to an act prompted by an agent of the legislature and not by the employer. Due to the unique facts of the case, no attorney's fees were awarded. Commissioner Kossuth dissented.

Representation Cases

***Massaro v. West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County*, 33 FPER ¶ 6 (2008).**

Petition seeking to revoke the certification of the incumbent unit was granted.

***Florida State University Board of Trustees v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO*, 33 FPER ¶ 311 (2008).**

Unit clarification petition seeking to clarify a unit of professional employees to reflect a consolidation of classifications was granted.

***City of Jacksonville v. Communications Workers of America, AFL-CIO, CLC*, 33 FPER ¶ 312 (2008).**

Unit clarification petition seeking to clarify a unit of professional employees to include a newly created classification was granted.

***School-Based Computer Technicians of the School District of Miami-Dade County, Florida v. School District of Miami-Dade County, Florida v. Dade County, Florida School Board Employees of the American Federation of State, County and Municipal Employees, AFL-CIO*, 33 FPER ¶ 313 (2008).**

Unit clarification petition

seeking to clarify a unit of employees to exclude positions not currently in the unit was dismissed.

***City of Dania Beach v. Local 3080, Metro-Broward Professional Fire Fighters, IAFF*, 33 FPER ¶ 316 (2008).**

Unit clarification petition seeking to clarify a unit of non-supervisory fire suppression personnel to exclude a position not currently in the unit was dismissed.

***International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral*, 33 FPER ¶ 320 (2008).**

Unit clarification petition seeking to clarify a unit of non-supervisory office, clerical, and administrative employees to include a newly created classification was granted.

***Florida State Lodge, Fraternal Order of Police v. City of Pensacola*, 33 FPER ¶ 323 (2008).**

Representation-certification petition seeking to represent a supervisory unit of police lieutenants was granted over the employer's objection that the lieutenants are managerial employees.

Page v. Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police

***Benevolent Association v. Sheriff of Hillsborough County*, 34 FPER ¶ 4 (2008).**

Petition seeking to revoke the certification of the incumbent unit was granted.

***International Union of Police Associations, AFL-CIO v. City of Boca Raton*, 34 FPER ¶ 5 (2008).**

Representation-certification petition seeking to represent a unit of civilian white collar employees was dismissed as deficient.

***Massaro v. West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County*, 34 FPER ¶ 6 (2008).**

Motion for mail ballot election was granted.

***Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. City of Plant City*, 34 FPER ¶ 7 (2008).**

Representation-certification petition seeking to represent a unit of rank-and-file sworn law enforcement personnel was granted.

***City of Jacksonville v. Jacksonville Supervisors Association, Inc.*, 34 FPER ¶ 9 (2008).**

Unit clarification petition seeking to clarify a unit of professional supervisory

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employees to include a newly created classification and exclude an abolished classification was granted.

Port Orange Professional Fire Fighters, I.A.F.F., Local 3118 v. City of Port Orange, 34 FPER ¶ 15 (2008).

Representation-certification petition seeking to represent a supervisory unit of battalion commanders was granted where the commanders were found not to be managerial or confidential employees.

Florida Public Employees Council 79, American Federation of State, County, and Municipal Employees, AFL-CIO v. Florida State University Board of Trustees, 34 FPER ¶ 16 (2008).

Unit clarification petition seeking to clarify a unit of operational services employees to include newly created classifications and exclude abolished classifications was granted.

Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Santa Rosa County, 34 FPER ¶ 22 (2008).

Representation-certification petition seeking to represent a unit of civilian personnel that was previously granted was amended to exclude an administrative assistant as confidential and include the administrative assistant I classification as inadvertently omitted.

Deehan v. Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Pasco County, 34 FPER ¶ 25 (2008).

Petition seeking to revoke the certification of the incumbent unit was granted.

United Faculty of Florida v. Florida Agricultural and Mechanical University Board of Trustees, 34 FPER ¶ 26 (2008).

Unit clarification petition seeking to clarify a unit of faculty and other professional employees to include eleven inadvertently omitted classifications was granted.

School-Based Computer Technicians Committee v. School District of Miami-Dade County, Florida, Case No. RC-2008-005 (Feb. 19, 2008).

Representation-certification petition seeking to represent a unit of employees was dismissed as deficient.

Florida Police Benevolent Association, Inc. v. Sheriff of Orange County, 34 FPER ¶ 27 (2008).

Unit clarification petition seeking to clarify a unit of law enforcement personnel to include the newly created classification of court service officer was granted.

United Faculty of Florida v. Florida Atlantic University Board of Trustees, 34 FPER ¶ 33 (2008).

Unit clarification petition seeking to remedy an alleged unilateral change to the composition of the bargaining unit was

dismissed because such relief is not appropriate in unit clarification process.

In re Petition of Orlando Lodge 25, Fraternal Order of Police, to Amend Certification No. 1007, 34 FPER ¶ 36 (2008).

Petition seeking to amend a certification by substituting petitioner as the certified bargaining representative for a unit of non-supervisory police personnel was granted.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, 34 FPER ¶ 37 (2008).

Unit clarification petition seeking to clarify a unit of non-professional supervisory employees to include newly created classifications was granted.

Black v. Hillsborough County Police Benevolent Association, Inc. d/b/a West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County, 34 FPER ¶ 38 (2008).

Petition seeking to revoke the certification of the incumbent unit was dismissed due to insufficient showing of interest statements.

Local 3169, Professional Firefighters of Marion County, IAFF, v. Marion County Board of County Commissioners, 34 FPER ¶ 43 (2008).

Unit clarification petition seeking to clarify a unit of rank-and-file fire suppression

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personnel to include the classifications of firefighter I through firefighter VII and probationary employees, delete an abolished classification, and exclude the deputy chief, division chief, and battalion chief classifications was granted.

***City of Kissimmee v. Florida Police Benevolent Association, Inc.*, 34 FPER ¶ 42 (2008).**

Unit clarification petition seeking to clarify a unit of police officers and detectives to exclude an abolished classification and a newly created classification was granted.

***Coastal Florida Police Benevolent Association, Inc. v. City of Atlantic Beach*, Case No. RC-2008-003 (Mar. 18, 2008).**

Consent election agreement

seeking to represent a unit of police officers, detectives, and sergeants was approved.

***Coastal Florida Police Benevolent Association, Inc. v. City of Port Orange*, Case No. UC-2008-005 (Mar. 19, 2008).**

Unit clarification petition seeking to include non-sworn community service officers in a unit of sworn law enforcement personnel was denied where the union failed to demonstrate that the non-sworn classifications shared a special interdependence with sworn classifications.

***Florida Public Employees Council 79, American Federation of State, County and Municipal Employees v. City of Oakland Park*, Case No. RC-2007-062 (Mar. 26, 2008).**

Consent election agreement seeking to represent a unit of non-

supervisory professional employees was approved.

***Florida State Lodge Fraternal Order of Police, Inc. v. Sheriff of Okeechobee County*, Case No. RC-2008-006 (Mar. 31, 2008).**

Consent election agreement seeking to represent a unit of sworn full-time law enforcement personnel in the classification of deputy sheriff was approved.



Elections Verified and Certifications Issued or Revoked

Cronk v. SEIU Florida Public Services Union, CTW, CLC v. Village of Royal Palm Beach, Case No. EL-2007-058; Election 1/17 – 2/8/08; Union lost; Certification 1027 revoked.

Massaro v. West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County, Case No. EL-2008-001; Election 2/7 – 2/27/08; Union lost; Certification 1461 revoked.

Deehan v. Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Pasco County, Case No. EL-2008-006; Election 3/18 – 3/19/08; Union lost; Certification 1607 revoked.

Page v. Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County, Case No. EL-2008-003; Election 2/20 – 3/12/08; Union lost; Certification 1620 revoked.

Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. City of Oakland Park, Case No. EL-2007-050; Election 12/4/07 – 1/3/08; Union won; Certification 1655.

Coastal Florida Police Benevolent Association, Inc. v. City of Port St. Lucie, Case No. EL-2007-053; Election 12/18/07 – 1/10/08; Union won; Certification 1656.

Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. City of Williston, Case No. EL-2007-052; Election 12/18/07 – 1/17/08; Union won; Certification 1657.

Coastal Florida Police Benevolent Association, Inc. v. City of St. Augustine Beach, Case No. EL-2007-056; Election 1/3 – 1/24/08; Union won; Certification 1658.

Coastal Florida Police Benevolent Association, Inc. v. City of St. Augustine Beach, Case No. EL-2007-055; Election 1/3 – 1/24/08; Union won; Certification 1659.

Pinellas County Police Benevolent Association, Inc. v. City of Brooksville, Case No. EL-2007-051; Election 12/11/07 – 1/3/08; Union won; Certification 1660.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Hialeah Gardens, Case No. EL-2007-054; Election 1/8 – 1/29/08; Union won; Certification 1661.

Port Orange Professional Fire Fighters, I.A.F.F., Local 3118 v. City of Port Orange, Case No. EL-2008-005; Election 2/21 – 3/6/08; Union won; Certification 1662.

Binkley v. Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Clay County, Case No. EL-2007-057; Election 1/10 – 1/31/08; FOP won decertification election.

Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. City of Plant City, Case No. EL-2008-004; Election 2/15 – 3/4/08; Union lost.