

Hazel Imperiale Retires

The Commission is both pleased and saddened to announce the retirement of Hazel Imperiale, who had been the Commission’s Special Master Coordinator since 1987. Hazel’s job involved the selection and appointment of mediators and special masters to resolve impasses in collective bargaining negotiations for Florida’s public employers. She was well known for her professionalism as she maintained a close relationship with numerous mediators and special masters throughout this state and the nation. It is not uncommon for these highly regarded practitioners to approach the Chair and Commissioners to inquire about Hazel and praise her skills.

Although retired, Hazel keeps in contact with the office, updating us on her current events. She is remodeling her house in Crawfordville and enjoying yard work, pastimes to which she has been looking forward. She is also enjoying the extra time with her dog, Tigger, and has picked back up her past passion for painting. The Commission and all of her former colleagues wish Hazel all the best.

While Hazel is certainly not replaceable, Patty Perry has been promoted to the Special Master Coordinator position. Patty was previously the General Counsel’s Secretary. The Commission is confident that Patty will do a splendid job in her new position. If you need her services or just want to introduce yourself and say hello, Patty can be reached at (850) 488-8641, ext. 108 or by e-mail at patricia_perry@fdles.state.fl.us. Although we attempted to have a picture published with this article, it proved impractical at the present time. However, we do intend to dedicate a picture of Hazel at our office in recognition of her services.

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The Commission has made both the PERC News and frequently used forms available online. You can now print or download PERC forms directly from our website: <http://www2.myflorida.com/les/perc/default.html>
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| Employee Organization Annual Financial Statement | Charge Alleging Unfair Labor Practice Strike |
| Recognition Acknowledgement Petition | Computation of Back Pay |
| Representation Certification Petition | Subpoena (duces tecum) |
| Petition to Revoke Certification | Subpoena (ad testificandum) |
| Consent Election Agreement | Unit Clarification or Modification Petition |
| Notice of Negotiations | Agency's Prehearing Statement |
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Significant Service First Opinions

The laws governing the Commission's authority to resolve career service appeals were significantly amended by the 2001 Legislature as part of an extensive reform of the career service system. Some of the sections of the reform legislation became effective on July 1, 2001. However, other sections of the legislation did not specify an effective date; these sections became effective when Governor Bush signed Committee Substitute for Senate Bill 466 into law on May 14, 2001. Ch. 2001-43, § 50 at 151, Laws of Fla. The Commission recently resolved three cases which interpreted these legislative changes.

In Reese v. Department of Corrections, 16 FCSR 365 (2001), the Commission declined to award attorneys fees to a prevailing employee. The Commission reasoned that Section 38 of the new law amended Section 447.208, Florida Statutes, effective May 14, 2001, by removing the Commission's authority to grant an award of attorney's fees and costs in career service appeals. Thus, on May 15, when DOC notified Reese of his dismissal, the law no longer provided for an award of fees and costs to an employee who prevailed in a career service appeal.

The Commission next addressed the changes to its mitigation authority. In Reese v. Department of Children and Families, 16 FCSR 369 (2001), the Commission determined that its authority to mitigate suspensions or dismissals was removed effective May 14, 2001. Ch. 2001-43, § 38, Laws of Fla. Thus, the Commission cannot mitigate imposed discipline for any employees who received notice of their discipline after May 13, 2001. [Editor's Note: The Commission regained authority to mitigate the discipline of law enforcement or correctional officers, firefighters, and professional health care providers, effective July 1, 2001.]

Finally, in Schneider v. Department of Legal Affairs, Office of the Attorney General, 16 FCSR 379 (2001), the Commission interpreted conflicting sections of the new law to determine its authority to hear appeals of layoffs. Effective May 14, Section 37 of the law amended Section 447.207, Florida Statutes, by removing the Commission's authority to hear appeals arising out of layoffs and by transferring the applicable procedures for certain other appeals from Section 447.208 to Section 110.227. Ch. 2001-43, § 37, at 147, Laws of Fla. Another section, also effective on May 14, conformed Section 447.208 by changing the applicable procedures. Ch. 2001-43, § 38, Laws of Fla. However, the language in Section 110.227 providing that the Commission had authority to hear layoff appeals was not removed until July 1. Ch. 2001-43, § 22, at 140-42, Laws of Fla.

As a result of the foregoing, language relating to layoffs being appealable "pursuant to s. 447.208" remained in Section 110.227 from May 14 until July 1. The Commission resolved this conflict by interpreting the more specific jurisdictional language in Section 447.207 as controlling over the procedural language in Section 110.227. Accordingly, the Commission held that its jurisdiction over layoffs was removed on May 14, 2001.

The Commission also disagreed with the hearing officer that the effective date of the layoff determined whether the Commission had jurisdiction over appeals of layoffs. Instead, the Commission held that the critical date for determining if it had jurisdiction was the date the employee received notice of the layoff because that date triggered the employee's right to appeal. Thus, an employee who received notice of his layoff after May 13, 2001, would not have the right to appeal the layoff to the Commission.

PERC NEWS

Published quarterly by the
Public Employees Relations Commission
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Commission Rules Winnowed to a Select Few

Until 1996, the Commission had a full set of administrative rules, codified in Chapter 38D of the Florida Administrative Code, covering its organization, definitions, and procedures for all aspects of its practice. The 1996 revision to the Administrative Procedure Act addressed a perceived over-proliferation of administrative rules by directing the Administration Commission to adopt one or more sets of uniform rules of procedure. See Ch. 96-159 § 10, at 167-69, Laws of Fla., and § 120.54(5)(a) 1, Fla. Stat. (Supp. 1996). The statute provides that “[u]pon filing with the [Department of State], the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.” The Uniform Rules of Procedure, Chapters 28-101 through 28-110, were adopted by the Administration Commission on April 1, 1997.

Consistent with this legislative change, the Commission approved proposed rules repealing most of its procedural rules in November 1997. Among the Commission rules that were not repealed were rules regarding attorney’s fees and costs, oral argument, motions for reconsideration, filing and processing of unfair labor practice charges, and back pay procedures.

In August 1999, the First District Court of Appeal handed down a ruling that sounded the death knell to most of the Commission’s remaining rules. In Department of Corrections v. Saulter and Saulter, 742 So.2d 368 (Fla. 1st DCA 1999), DOC moved for reconsideration of a Commission final order reinstating the Saulters and then, after that motion was denied, filed a notice of appeal. Although the notice of appeal was filed within thirty days of the order denying reconsideration, it was filed more than thirty days after rendition of the Commission’s final order. The court held that the uniform rules of procedure had replaced PERC’s rules by operation of law, so that they were no longer in effect at any pertinent time. Since the uniform rules do not contain a rule authorizing motions for reconsideration and PERC’s rule had been repealed by law, the court found that there was no rule of practice authorizing DOC’s motion for reconsideration and concluded that the motion did not toll the time for filing DOC’s appeal.

The Third DCA reached a contrary result in Crawford v. Department of Children and Families, 785 So.2d 505 (Fla. 3rd DCA 2000). The court found that because the uniform rules of procedure do not address motions for reconsideration, such motions do not fall within the subject matter or scope of those rules, and the Commission did not have to apply for or receive an exception to the uniform rules to retain and apply its rule authorizing motions for reconsideration. The Crawford court certified conflict with the Saulter decision.

Nonetheless, the Commission responded to Saulter by repealing its remaining procedural rules, including all of the rules described above. It is important to note, however, that despite the repeal of these rules, many of their provisions remain applicable to practice before the Commission through Commission precedent or statutory law. For instance, oral argument is authorized by section 110.227(6)(d), Florida Statutes (2001). The back pay procedure formerly set forth in rule 38D-24.012, including the necessity of demonstrating an active good faith effort to secure employment during the back pay period, was based on Commission case law which continues to control the entitlement to back pay.

So what’s left? The Commission still has the following rules; now codified in Chapter 60 pursuant to the Commission’s transfer to the Department of Management Services:

60CC-1.001	Showing of Interest
60CC-1.002	Additional Unit Appropriateness Factors
60CC-2.001 - .006	Election Procedures
60CC-3.001 - .008	Special Master Proceedings
60CC-4.001 - .004	Ratification of Collective Bargaining Agreements
60CC-5.001 - .002	Filing and Processing of Unfair Labor Practice Charges

Duty of Fair Representation Cases Are Exclusively Within the Province Of PERC

In Gow v. AFSCME, 4 FPER ¶ 4168 (1978), the Commission recognized that Sections 447.301 and 447.307, Florida Statutes, pertaining to the representation of public employees, create a duty of fair representation on behalf of certified unions analogous to those found in the private sector under the National Labor Relations Act (NLRA). The National Labor Relations Board (NLRB) held that it is an unfair labor practice under the NLRA for a union to unfairly represent a bargaining unit employee in either negotiations or grievances. See Wallace Corp. v. NLRB, 323 U.S. 248, 255 (1944) (under the NLRA exclusive bargaining agents are “charged with the responsibility of representing...[the employees’] interest fairly and impartially.”); see also Miranda Fuel Co., 140 NLRB 181 (1962), rev’d, 326 F.2d 172 (2nd Cir. 1963) (although reversed, Miranda Fuel is the seminal NLRB case cited in subsequent NLRB cases for the proposition that a violation of the duty of fair representation is an unfair labor practice).

The Commission announced in Gow that, as in the private sector, a union breaches its duty to represent employees fairly when its conduct in negotiations, including the processing of grievances, is arbitrary, discriminatory, or taken in bad faith. Gow, 4 FPER ¶ 4168 at 325. Accordingly, it is an unfair labor practice within the meaning of Section 447.501(2)(a), Florida Statutes, for the union to violate its duty of fair representation. Id.; see also Galbreath v. School Board of Broward County, 466 So.2d 1045, 1047 (Fla. 1984), appeal dismissed, 469 U.S. 801 (1984) and IBPAT, Local 1010 v. Anderson, 401 So.2d 824, 831 (Fla. 5th DCA 1981)

(adopting the Commission decisions concerning a union’s duty of fair representation).

Since Gow, duty of fair representation cases have been litigated exclusively before the Commission. However, in the private sector, under the NLRA, employees have not exclusively used the remedy of filing an unfair labor practice with the NLRB. In the seminal case of Vaca v. Sipes, 386 U.S. 171 (1967), the U.S. Supreme Court held that trial courts and the NLRB have concurrent jurisdiction of fair representation violations under the NLRA. In a recent Florida state appellate case, the Fifth District Court of Appeal held that the Commission has exclusive jurisdiction and the circuit courts of Florida have no jurisdiction of fair representation cases, unlike the concurrent jurisdiction of cases under the NLRA. Browning v. Brody, 26 Fla. L. Weekly D2232a (Fla. 5th DCA 2001).

Browning, in her capacity as a public school teacher and union member, filed a complaint against her union in circuit court alleging that it had breached its duty of fair representation by failing to follow the proper procedure in the filing of grievances on her behalf. The union moved to dismiss the complaint for lack of subject matter jurisdiction, maintaining that the Commission possessed exclusive jurisdiction over the matter because the union’s alleged breaches of its duty of fair representation constituted unfair labor practices as set forth in Section 447.501(2)(a), Florida Statutes. The trial court agreed and the Fifth DCA affirmed.

In concluding that fair representation matters were within the exclusive

jurisdiction of the Commission, the court distinguished the U.S. Supreme Court’s decision in Vaca from cases in Florida under Chapter 447, Part II, Florida Statutes, as follows:

The [U.S. Supreme] Court’s decision in Vaca was grounded in the concern that concurrent jurisdiction [between the trial courts and the NLRB] was necessary to assure that injured private sector employees could receive impartial review of their administrative complaints in light of the fact that, under the federal scheme, the National Labor Relations Board’s (NLRB) general counsel had “unreviewable discretion to refuse to institute an unfair labor practice complaint.” Id. at 182. Florida’s Act which pertains to public employees contains no provision analogous to the “unreviewable discretion” of the NLRB’s general counsel to decide if a charge can be filed in the first instance. Id.

A case that is more on point is Karahalios v. National Federation of Federal Employees, Local 1263, 489 U.S. 527 (1989). Karahalios involved a public employee’s claim of the breach of duty of fair representation against a union under the Civil Service Reform Act of 1978 (CSRA) which applies to federal public employees. The Court held that the remedy for a breach of the duty of fair representation, which the CSRA explicitly defined as being an unfair labor practice, was exclusively before the Federal Labor Relations Authority, the public sector counterpart to the NLRB. In distinguishing Vaca, the Court explained that the CSRA does not deprive employees of recourse or remedies otherwise

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First DCA Rules on Stipulated Fees, Back Pay

The case of Doyle v. Department of Business and Professional Regulation, Case No. CS-96-117, has a protracted history, including a three-day career service hearing, a remand to the hearing officer, a hearing to determine the amount of back pay, attorney's fees, and costs, and three appeals to the First District Court of Appeal. In sum, the Commission reduced Doyle's dismissal to a five-day suspension and she was awarded back pay and reasonable attorney's fees and costs. Thereafter, the Agency and one of the two sets of attorneys representing Doyle at the career service hearing stipulated to \$75,000.00 in attorney's fees and costs. The hearing officer rejected the stipulation as unreasonable because it included \$46,150.00 in appellate fees that had not been awarded by the court. A consolidated hearing on fees and back pay was conducted. The hearing officer awarded \$9,508.58 in fees and costs to those attorneys and a larger

amount to another attorney who had also represented Doyle at the career service hearing. In addition, the hearing officer rejected, as unsubstantiated, the parties' stipulation to increase Doyle's back pay award by \$7,533.00 to compensate her for an increased federal income tax liability. On review, the Commission increased the fees and costs award to \$12,471.08 and agreed with the hearing officer on the back pay issue.

In the third appeal of this case, the issue was whether the Commission had the authority pursuant to former Section 447.208(3)(e), Florida Statutes, to reject a stipulated amount of back pay, attorney's fees, and costs as unreasonable. The back pay and attorney's fees cases were consolidated for appellate review. Doyle v. Department of Business and Professional Regulation, 26 Fla. L. Weekly D2183c (Fla. 1st DCA 2001).

In interpreting former Section 447.208(3)(e), the court focused on the provision that attorney's fees may be awarded in an amount "to be determined by the commission" and concluded that the statute authorized the Commission to determine the amount of reasonable fees and costs only when a dispute existed between the employee and the state agency. The court held that in the absence of a dispute the Commission must infer that the parties entered into the stipulation after good faith negotiations. Thus, the Commission lacked the authority to reject as unreasonable the stipulated amount of attorney's fees and costs. Similarly, the court concluded that in the absence of a dispute between the parties the Commission could not reject as unreasonable a stipulation that a career service employee is entitled to increased back pay to compensate for an increased federal income tax liability. The Commission was ordered to reinstate the stipulated amounts.

First DCA: Transfer of Work Out of Unit Without Impact Bargaining Is Not ULP

In City of Jacksonville v. Jacksonville Supervisor's Association, Inc., 26 Fla. L. Weekly D1734e (Fla. 1st DCA July 17, 2001), the First District Court of Appeal reversed the Commission's determination that the City of Jacksonville committed an unfair labor practice by not engaging in impact bargaining over the transfer of bargaining unit work to positions outside of the bargaining unit. In reorganizing three departments in 1999, the City deleted three positions in the bargaining unit and created positions outside of the bargaining unit. In its decision, the court held that in granting discretion to the public employer "to exercise control and discretion over its organization and operations," Section 447.209, Florida Statutes, rejects the concept of impact bargaining with respect to

good faith changes in a public employer's organization and operations, unless those changes impact the determination of wages, hours, and terms and conditions of employment of employees within the bargaining unit. Since there was no dispute that the reorganization had any impact upon the wages, hours, or terms and conditions of employment of any employees in the bargaining unit, the court found that impact bargaining was not required. The court affirmed an issue not challenged on appeal, that the City committed an unfair labor practice by failing to provide the JSA with information regarding the reorganization.

Labor Decisions of Note

In Union of Needletrades, Industrial and Textile Employees (UNITE!) v. City of Tallahassee, Case No. EL-2001-025 (Fla. PERC Aug. 24, 2001), the Commission dismissed post-election objections, verified election results rejecting UNITE, and dismissed a representation-certification petition seeking a bargaining unit of blue-collar City employees. Certain election objections were dismissed for failure to provide information supporting the objections pursuant to Florida Administrative Code Rule 38D-18.005(1). Objections pertaining to comments made at meetings between City officials and employees were dismissed because there was no authentication of the transcripts of the alleged meetings. In addition, there was no basis to objectively assess the impact on the election of improper statements allegedly made at the meetings because there was no indication of the number of employees at the meetings.

Further, even if the transcripts had been sufficient, the comments complained of failed to objectively demonstrate that the City's conduct impacted the election to a degree that would warrant a rerun election. Specifically, the City's statements that employees' terms and conditions of employment would be governed by a collective bargaining agreement and be "frozen" until such time as a contract was ratified by the parties represented fair comments on the possible effects of unionization and could not objectively be construed as a threat of reprisal. The Commission concluded that other meetings between City officials and employees did not affect the election.

The Commission also rejected an objection to a City leaflet that described current pay and benefits available to all City employees, indicating a difference in benefits for unionized and non-unionized employees. The Commis-

sion concluded that the leaflet, standing alone, did not provide a promise of benefit or a threat of reprisal that would be sufficient to negate the election results. Finally, the Commission rejected an objection to one or two incidents of a supervisor attending UNITE meetings, finding this insufficient to impact the election. The Commission concluded that, without more, this conduct did not establish that the City had engaged in a campaign of surveillance such that a new election should be ordered.

In State Employees Attorneys Guild v. State of Florida, Case No. RC-2000-045 (Fla. PERC Aug. 31, 2001), after the Commission denied a motion for reconsideration, the First District Court of Appeal relinquished its jurisdiction so the Commission could address the motion for reconsideration. The original order issued by the Commission on June 11, 2001, with one dissent, held that, given the enactment of Chapter 2001-43, Laws of Florida, effective May 14, 2001, a representation-certification petition seeking to represent a bargaining unit of attorneys should be dismissed because of a "strong State policy towards a more comprehensive organizational structure of Selected Exempt Services (SES) that groups organizations together with respect to benefits and rewards rather than compartmentalizing them." The majority further found that the "work-related interest of attorneys can be successfully represented by a bargaining agent in a unit with others SES professional employees."

On reconsideration, the Commission rejected SEAG'S argument that no other SES professional employees exist that might share a community of interest with the attorneys. It also rejected SEAG'S request to be allowed to supplement its showing of interest for an "expanded" bargaining unit rather than

suffer dismissal of its petition. The Commission held that a petitioner is only allowed to supplement its showing of interest after hearing when the Commission increases the number of employees in a proposed unit which it has found to be appropriate. Where the Commission determines the proposed petition is inappropriate, the petition must be dismissed. Consequently, SEAG'S motion for reconsideration was denied.

In Seminole Education Association v. School Board of Seminole County v. Seminole Education Clerical Association, Case No. UC-2001-040 (Fla. PERC Sept. 14, 2001), the Commission granted a unit clarification petition seeking to move classifications from one bargaining unit to another. Because of confusion on this issue, the Commission took the opportunity to state conditions under which such a unit clarification would be granted. A unit clarification procedure is appropriately 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. The Commission stated that, despite the parties' agreement, the unit clarification criteria must be fulfilled in order to move employees from one bargaining unit to another. The Commission further held that it would not apply the stricter severance standard of showing that a unit has become "unworkable or otherwise inappropriate" in order to remove a classification from a bargaining unit in a unit clarification proceeding. Thus, where the unit clarification procedure is properly invoked, and classifications have changed substantially since certification, those classifications may be moved from one bargaining unit to another as long as the scope of each of the bargaining units involved is not enlarged or diminished.

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provided by statute or regulation. *Id.* at 524-536. Similar to public employees in *Karahalios*, *Browning* is adequately covered by the Act which mandates PERC to expeditiously process charges of unfair labor practices.

The *Karahalios* Court was also persuaded by the fact that the legislature had specifically conferred jurisdiction on the federal district courts in a few specific areas, none of which reference claims of breach of duty of fair representation. Similarly, Florida's Act confers jurisdiction to the circuit courts in a few specific in-

stances. For example, Section 447.507 of the Act authorizes circuit courts to hear and determine all actions alleging violations of the no-strike provision of the Act and Section 447.509 of the Act authorizes circuit courts to issue injunctions and conduct contempt proceedings over claims involving specified unlawful acts committed by unions and their members. The union also correctly points out other courts have rejected claims of concurrent jurisdiction under similar circumstances. See *Foley v. AFSCME, Counsel 31, Local No. 2258*, 556 N.E. 2d 581, 585 (Ill. App. 1 Dist. 1990) (holding that state labor relations board possess exclusive jurisdiction over duty of fair repre-

sentation claims as unfair labor practices); see also *Coleman v. Children's Services Div. of Department of Human Resources*, 694 P. 2d 555 (Or. App. 1985) (same).

In a footnote, the *Browning* court held that there was no "common law" duty of fair representation recognized by Florida courts. The court stated that state courts have recognized the duty of fair representation as being separate and distinct from any common law duty, citing the Florida Supreme Court decision in *DeGrio v. AFG*, 484 So.2d 1 (Fla. 1986), which held that unions are excused from simple negligence in their representation.

Career Service Cases

Davy v. Department of Juvenile Justice, 16 FCSR 329 (2001).

Employee's transfer from Fort Lauderdale to Tallahassee affirmed. Agency had a legitimate business reason for its decision to reorganize its legal department and employee's transfer was not arbitrary, capricious, or impermissibly motivated.

Standridge v. Department of Highway Safety and Motor Vehicles, 16 FCSR 333 (2001).

Employee's dismissal for improper use of state computer, accessing inappropriate non-work related internet sites, sleeping on the job, doing homework at work, and violating work hours affirmed.

Warren v. Department of Corrections, 16 FCSR 337 (2001).

Dismissal of a correctional officer for conduct unbecoming a public employee and willful violation of rules affirmed. Employee made numerous unwelcome sexual comments to several women and was asleep while assigned to a perimeter post.

Kidwell v. Agency for Health Care Administration, 16 FCSR 342 (2001).

Employee's dismissal for falsification of records or statements affirmed. Commission agreed with hearing officer that two false oral statements and false written statements regarding the reason employee needed leave were serious breaches of employee's duties. Employee failed to show that the agency violated its alcoholism policy because she never informed the agency prior to the dismissal offense that she needed assistance with an alcohol problem.

Turner v. Department of Corrections, 16 FCSR 348 (2001).

Employee's dismissal for unbecoming conduct, negligence, failure to follow instructions, willful violation of rules, and failure to immediately report violation of rules affirmed. Employee failed to prevent a fight between inmates and did not follow the proper procedures after the fight was stopped, including timely reporting the fight and notifying his supervisor.

Wagner v. Office of the State Attorney, Nineteenth Judicial Circuit, 16 FCSR 351 (2001).

Appeal dismissed because Commission does not have jurisdiction to hear appeals from employees of the judicial branch.

Adriance v. Department of Children and Families, 16 FCSR 351 (2001).

Employee awarded \$1,902.72 in back pay and \$1,250.00 in attorney's fees. Commission did not allow employee to recover attorney's fees for the time his attorney spent preparing for and attending the hearing because he knew or should have known prior to the hearing that there was "a very strong basis" for his motion for summary judgment. The motion for summary judgment should have been filed much sooner.

Cook v. Department of Juvenile Justice, 16 FCSR 360 (2001).

Appeal dismissed because Commission lacks jurisdiction to review a written reprimand.

Dunston v. Department of Children and Families, 16 FCSR 362 (2001).

Employee's dismissal for negligence and unbecoming conduct affirmed. Employee suggested to a mentally disabled resident that she burglarize a supervisor's house and failed to intervene when a resident threatened to hurt herself.

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Hamilton v. Department of Children and Families, 16 FCSR 373 (2001).

Dismissal for exploiting and abusing female residents of a forensic unit vacated. The hearing officer's credibility determinations and findings of fact that employee did not make inappropriate comments to females residents, improperly touch them, or watch them undress supported by competent substantial evidence. Back pay, attorney's fees, and costs awarded.

Thomas v. Department of Children and Families, 16 FCSR 388 (2001).

Employee's dismissal for unbecoming conduct affirmed. Employee engaged in criminal conduct by battering his wife and threatening her with a handgun. Statements uttered by the victim to a police officer fell within the excited utterance exception to the hearsay rule and could be used as substantive evidence. Commission rejected hearing officer's recommendation that circuit court be allowed to determine whether employee should be reinstated, and determined that mitigation was not appropriate.

Bravo-Uvanni v. Department of Juvenile Justice, 16 FCSR 393 (2001).

Employee's appeal of demotion and reduction in pay for failing to properly supervise a subordinate dismissed. Commission determined that mitigation was not applicable because employee's appeal was filed after May 14, 2001.

Kelley v. Florida Fish and Wildlife Conservation Commission, 16 FCSR 398 (2001).

Employee's claim for back pay denied. She was unavailable for work for portion of the back pay period because of health problems and failed to demonstrate that she conducted an active good faith search for comparable employment during the remainder of the back pay period.

Bosch v. Department of Corrections, 16 FCSR 408 (2001); Fisher v. Department of Citrus, 16 FCSR 409 (2001); Moseley v. Department of Citrus, 16 FCSR 411 (2001); Betts v. Department of Citrus, 16 FCSR 421 (2001).

Employees' appeals of layoffs dismissed because Commission was divested of

jurisdiction to hear layoff appeals effective May 14, 2001.

Akouri v. Department of Transportation, 16 FCSR 404 (2001).

Employee's dismissal for performing personal business on state time and with state equipment affirmed.

Wisnewski v. Department of Transportation, 16 FCSR 413 (2001); Brantley v. Department of Transportation, Case No. CS-2001-270 (September 10, 2001); and Blount v. Department of Juvenile Justice, Case No. CS-2001-218 (September 10, 2001).

Employees' appeals dismissed for failing to appear at the hearings.

Greenwade v. Department of Children and Families, 16 FCSR 414 (2001).

Employee's appeal of voluntary resignation dismissed.

Mimms v. Department of Labor and Employment Security, 16 FCSR 415 (2001).

Commission dismissed employee's appeal because she failed to demonstrate an equitable reason for the Commission to accept jurisdiction of the untimely appeal. In addition, the employee failed to show that her demotion and reduction in pay was involuntary.

Sawhney v. Department of Transportation, 16 FCSR 414 (2001).

Agency ordered to pay employee \$182.08 for two days of back pay.

Shakespeare-Ramsey v. Department of Health, 16 FCSR 418 (2001).

Employee's appeal dismissed because Commission had no remedy to offer employee in light of her admission that she is unable to return to work now or in the near future.

Floyd v. Department of Juvenile Justice, 16 FCSR 422 (2001).

Employee's demotion for actively participating in a political campaign while on work time affirmed.

Wisnewski v. Department of Transportation, Case No. CS-2001-239 (September 6, 2001).

Commission refused to reconsider final order dismissing employee's appeal. Employee filed a letter seven days after the Commission issued its final order indicating that he failed to attend hearing because of

threats against his family and himself. Commission indicated that it may have remanded the case to the hearing officer to determine whether there was a legitimate reason for the employee's failure to appear for the hearing if he had provided those reasons to the Commission during the exceptions period. However, the employee's letter was not timely filed before the expiration of the exceptions period or the issuance of a final order. The Commission further determined that it had no basis upon which to reissue or revisit its final order.

Mead v. Okaloosa-Walton Community College, Case No. CS-2001-299 (September 10, 2001).

Community college employee's appeal of her demotion dismissed because Commission does not have jurisdiction to review appeals from community college employees.

Miller v. Department of Transportation, Case No. CS-2001-203 (September 11, 2001).

Employee's dismissal for absence without authorized leave, use of threatening and abusive language, insubordination, and rudeness or uncooperative behavior affirmed.

Owen v. Department of Agriculture and Consumer Services, Case No. CS-2001-158 (September 14, 2001).

Employee's dismissal for falsification of records and violation of various agency rules and procedures affirmed.

Hosseini v. Department of Transportation, Case No. CS-2001-195 (September 14, 2001).

Employee's demotion and reduction in pay affirmed. Demotion appropriate because employee failed to meet requirements of her performance improvement plan.

Jackson v. Department of Corrections, Case No. CS-2001-263 (September 24, 2001).

Correctional officer's dismissal for violation of agency policy and staff/offender relationships, conduct inconsistent with the maintenance of proper security and welfare of the institution, presenting a gift to an inmate, having an unprofessional relationship with an inmate, and willful violation of rules affirmed.

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Bowmer v. Department of Corrections, Case No. CS-2001-282 (September 25, 2001).

Employee's dismissal for inability to perform her assigned job duties as a correctional officer affirmed.

Castanedo v. Department of Children and Families, Case No. CS-2001-234 (September 25, 2001).

Commission dismissed employee's appeal because he failed to prove a justifiable excuse for his failure to appear at the original hearing. Employee could not present testimony in "private" because career service hearings are public hearings.

Stewart v. Department of Children and Families, Case No. CS-2001-262 (September 26, 2001).

Employee's dismissal for client abuse affirmed.

McReynolds v. Department of Corrections, Case No. CS-2001-281 (September 27, 2001).

Employee's dismissal for conduct unbecoming a public employee and violation of rules and procedures affirmed.

Unfair Labor Practice Cases

In Re Petition of Taylor County Education Association, Case No. MS-2001-002 (August 14, 2001).

The union filed a miscellaneous petition with the Commission seeking its intervention in a circuit court case filed by a school board concerning the validity of a collective bargaining agreement between the parties. The Commission refused to intervene in the proceeding and dismissed the petition, indicating that circuit courts have concurrent jurisdiction with the Commission to determine violations of collective bargaining agreements. However, the circuit court's jurisdiction pertains to contractual matters while the Commission's jurisdiction solely relates to unfair labor practice disputes. The Commission's dismissal was without prejudice to the union filing an unfair labor practice charge concerning the dispute.

Oscar Walker v. Duval County School Board, Case No. CA-2001-032 (August 29, 2001).

The Commission affirmed the general counsel's summary dismissal of an unfair labor practice charge as deficient. The Commission stated that it would not consider a charging party's general disapproval of the summary dismissal procedure and language used in a summary dismissal as a basis for its review. A charging party that intends to appeal a summary dismissal must identify those portions of the summary dismissal with which the charging party disagrees. In reviewing the basis for the summary dismissal concerning the charging party's legal allegations, the Commission agreed with the summary dismissal.

Jacksonville Supervisors Association, Inc. v. City of Jacksonville, Case No. CA-99-060 (September 12, 2001).

Upon remand from the First District Court of Appeal reversing a portion of the Commission's final order in Jacksonville Supervisors Association, Inc. v. City of Jacksonville, 26 FPER ¶ 31140 (2000), the Commission receded from the portion of its prior opinion indicating that the city had failed to bargain over the impact of removing bargaining unit work.

Florida Public Employees Council 79, AFSCME v. State of Florida, John Ellis "Jeb" Bush as Governor, Case No. CA-2001-042 (September 27, 2001).

The Commission affirmed the general counsel's order staying an unfair labor practice case in light of the union's lawsuit in circuit court challenging the constitutionality and validity of statutes and budget legislation alleged to improperly affect collective bargaining by State of Florida employees represented by the union. Although the Commission and circuit courts have concurrent jurisdiction to interpret contractual violations, and the Commission has exclusive jurisdiction to determine unfair labor practice violations, the Commission has no authority to invalidate statutes or other acts of the legislature. Since the court litigation could moot the unfair labor practice charge, the Commission stayed the charge pending resolution of the court case.

Representation Cases

International Union of Painters and Allied Trades, AFL-CIO, Local 2301 v. City of Cape Coral, 27 FPER ¶ 32199 (2001).

Unit clarification petition granted to add newly created classifications, delete abolished classifications, and retitle classifications in a unit of non-professional supervisory city employees.

State Employees Attorneys Guild v. State of Florida, 27 FPER ¶ 32200 (2001).

Motion for reconsideration of order dismissing RC petition denied. The Commission's rule allowing reconsideration has been repealed and the basis for reconsideration was not one that the Commission has an authority to grant.

National Conference of Firemen & Oilers, SEIU, Local 1227 v. City of Boynton Beach, 27 FPER ¶ 32201 (2001).

Unit clarification petition granted in part to amend the unit description to reflect title changes to several classifications in a blue-collar bargaining unit of nonsupervisory employees. The Commission refused to move two classifications to different bargaining units as the relief requested was appropriately obtained through a recognition-acknowledgement petition or a representation petition rather than a clarification petition.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Boynton Beach v. Palm Beach County Police Benevolent Association, Inc., 27 FPER ¶ 32202 (2001).

Consent agreement in unit of rank-and-file police officers and detectives approved.

City of Miami Beach v. Communication Workers of America v. Marcia Knowles and Susan Lomando, 27 FPER ¶ 32203 (2001).

Joint unit clarification petition granted to amend a comprehensive white-and-blue collar bargaining unit of city employees by including and excluding certain classifications. The Commission denied two individual employees' exceptions as to their inclusion into the bargaining unit.

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rial Lodge #7, Fraternal Order of Police v. City of Coral Gables, 27 FPER ¶ 32204 (2001).

Secret ballot opt-in election ordered to add a classification to a unit of nonsupervisory police officers.

Fort Walton Beach Fire Fighters Association, IAFF, Local 2601 v. City of Fort Walton Beach, 27 FPER ¶ 32206 (2001).

Unit of firefighters clarified to include captain classification to reflect change in job title.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, 27 FPER ¶ 32210 (2001).

Consent agreement in unit of city professional employees approved.

Broward County School Administrators Association v. School District of Broward County, 27 FPER ¶ 32211(2001).

The Commission resolved challenges to an election, directing the Commission's elections staff to issue an amended tally of ballots based upon the resolution of the challenged ballots. Challenges were granted to 3 ballots cast by employees not included in the bargaining unit. Challenges to 13 ballots were denied as an attempt to relitigate issues concerning the composition or scope of the unit.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Boynton Beach v. Palm Beach County Police Benevolent Association, Inc., 27 FPER ¶ 32212 (2001).

Regardless of the parties' agreement requesting an on-site election, the Commission will determine whether to conduct a mail ballot or on-site election on a case-by-case basis. Motion for an on-site election granted.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, 27 FPER ¶ 32213 (2001).

Petition to clarify a unit of operational services personnel by adding certain classifications to the unit, deleting certain classifications that no longer exist, and changing job titles of two classifications granted.

International Union of Police Associations, AFL-CIO v. City of Casselberry, 27 FPER ¶ 32215 (2001).

Consent agreement in a unit of supervisory police officers approved.

Pinellas Lodge No. 43, Fraternal Order of Police v. City of St. Petersburg v. Pinellas County Police Benevolent Association, Inc., 27 FPER ¶ 32216 (2001).

Consent agreement to conduct election in previously defined unit to determine whether the incumbent or petitioner would represent unit approved.

Dade County Employees Local 1363, American Federation of State, County and Municipal Employees, AFL-CIO v. Metropolitan Dade County/Public Health Trust, Case No. UC-2001-038 (July 31, 2001).

Unit clarification petition was dismissed because petitioner was not registered pursuant to Section 447.305, which requires a bargaining unit representative to be currently registered before a representation or unit clarification petition can be processed, and because the bargaining unit had previously been redefined with a generic unit description to allow the union and employer, upon their agreement, to add classifications to the unit without resorting to the Commission's unit clarification process.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. RC-2001-029 (August 2, 2001).

Request to recount the petitioning union's showing of interest because of a significant narrowing of the proposed bargaining unit when defined by the Commission denied.

Lori Anderson v. Federation of Physicians and Dentists/Alliance for Healthcare and Professional Employees v. City of Inverness, Case No. RD-2001-005 (August 6, 2001).

Election directed pursuant to a decertification petition. The union's claim that the city had unlawfully disrupted the "laboratory conditions" under which the election was to be conducted by offering to pay the entire cost of the decertification election is more appropriately resolved in a post-election petition.

Utility Workers Union of America, AFL-CIO v. City of Fort Myers, Case No. RC-2001-040 (August 6, 2001).

Representation-certification petition dismissed because the petitioner was not registered with the Commission and because petition did not disclose whether there was a collective bargaining agreement covering the bargaining unit. The petition was also dismissed because no reason was shown for the Commission to deviate from its policy of abstaining from defining fragmented departmental bargaining units, where the petition sought a unit of the city's water treatment employees.

International Union of Police Associations, AFL-CIO v. City of Casselberry v. Central Florida Police Benevolent Association, Inc., a Chapter of the Florida Police Benevolent Association, Inc., Case No. RC-2001-018 (August 14, 2001).

Consent agreement in unit of police officers approved.

Fraternal Order of Police, Florida State Lodge v. Town of Jupiter v. Palm Beach County Police Benevolent Association, Inc. and International Union of Police Associations, AFL-CIO v. Town of Jupiter v. Palm Beach County Police Benevolent Association, Inc., Case Nos. RC-2001-024 and RC-2001-025 (August 20, 2001).

Consent agreements in units of rank-and-file and supervisory police officers approved.

Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Nassau County, Florida, Case No. RA-2001-005 (August 21, 2001).

Amended representation-acknowledgement petition concerning separate units of supervisory and non-supervisory correctional officers granted.

International Union of Police Associations, AFL-CIO v. City of Casselberry, Case No. EL-2001-033 (Relates to RC-2001-019) and International Union of Police Associations, AFL-CIO v. City of Casselberry v. Central Florida Police Benevolent Association, Inc, a Chapter of the Florida Police Benevolent Association, Inc., Case No. EL-2001-036 (Relates to RC-2001-018) (August 22, 2001).

Motion for an on-site rather than a mail ballot election for a supervisory unit of five

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lieutenants and a unit of forty-nine rank-and-file police department employees denied. The small number of eligible voters militated in favor of a mail ballot election. Argument that mail ballots are unreliable, produce a substantial delay in the election's outcome, and would threaten the integrity of the election process more than the conduct of an on-site election rejected as speculation.

Labors' International Union of North America, Public Employees, Local 678, AFL-CIO v. Greater Orlando Aviation Authority, Case No. UC-2001-042 (August 22, 2001).

Motions to review interlocutory hearing officer's order denying a motion to dismiss and ordering that evidentiary hearing continue denied.

St. Lucie County Classroom Teachers' Association and Classified Unit v. School Board of St. Lucie County, Case No. UC-2001-039 (August 22, 2001).

Unit clarification petition adding new classifications, deleting classification that no longer exist, and amending the job titles granted.

Teamsters Local Union No. 769, Affiliated with the International Brotherhood of Teamsters v. City of Hialeah Gardens, Case No. UC-2001-030 (August 22, 2001).

Exceptions to a hearing officer's recommendation that a unit clarification petition be dismissed pursuant to the petitioner's withdrawal of the petition denied. An individual employee argued that since it was her classification in dispute, dismissal of the petition should be prohibited, and she should be allowed to intervene. The Commission noted that the employee had transferred out of the classification in dispute and no longer had any legitimate interest in the unit placement of her former position.

National Conference of Firemen & Oilers, SEIU, Local 1227, AFL-CIO v. City of Boynton Beach, Case Nos. UC-2001-023 and UC-2001-024 (August 27, 2001).

Unit clarification petition seeking to change several classification titles, delete

non-existing classifications, exclude confidential and professional classifications, and include newly created classifications into a bargaining unit of non-supervisory white-collar city employees granted.

St. Lucie County Classroom Teachers' Association v. School Board of St. Lucie County, Case No. UC-2001-041 (August 28, 2001).

Unit clarification petition to include a classification in a unit of school board instructional personnel granted.

Pinellas Park Firefighters Association, Local 2993 of the International Association of Firefighters, AFL-CIO v. City of Pinellas Park, Case No. RC-2001-034 (August 29, 2001).

Opt-in election to include four fire inspectors/investigators into a rank-and-file bargaining unit of fire fighting employees ordered.

In Re Petition of Florida Police Benevolent Association, Inc., to Amend Certification No. 667, Case No. AC-2001-011 (August 29, 2001).

Amendment to a certification indicating an affiliation with a national organization that was approved by a majority of bargaining unit members where there was a substantial continuity in the representation of bargaining unit members granted.

Joseph F. Going v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees (AFL-CIO) v. Polk County Board of County Commissioners, Case No. RD-2001-004 (August 29, 2001).

Decertification election directed in a previously defined bargaining unit of operational services county employees.

Pinellas Suncoast Transit Authority v. School Employees Union, National Conference of Firemen and Oilers, Local 1221, SEIU, AFL-CIO, CLC, Case No. UC-2001-028 (September 5, 2001).

Unit clarification petition granted in part, deleting an eliminated position. Exclusion of another classification from the non-supervisory, white-collar bargaining unit was unnecessary because the position was not in the unit.

Manatee County and Municipal Employees, Local 1584, AFSCME, AFL-CIO v. School Board of Manatee County, Case No. UC-2001-016 (September 17, 2001).

Unit clarification petition concerning a classification that existed when the Commission defined the bargaining unit dismissed. The Commission noted that the hearing officer had recommended that the petitioner file a representation-certification petition for an opt-in election that would allow the employees in the classification in question to decide whether to be included in the existing bargaining unit.

JEA Supervisors Association v. Jacksonville Electric Authority v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO, Case Nos. UC-2001-022 and UC-2001-034 (September 17, 2001).

Unit clarification petitions were filed concerning the same classifications by the rank-and-file bargaining unit representative and the supervisory bargaining unit representative. Both petitions were granted in part because some members of the classification had actual conflict supervisory duties while others did not.

Florida Police Benevolent Association, Inc. v. City of Clermont, Case No. RC-2001-041 (September 17, 2001).

Consent agreement for unit of supervisory police officers approved.

Local 1749, Amalgamated Transit Union, AFL-CIO, CLC v. Central Florida Regional Transportation Authority d/b/a LYNX, Case No. RC-2001-033 (September 17, 2001).

Consent agreement for a unit of supervisory employees of a transit authority approved.

Ocoee Professional Firefighters, Local 3623 v. City of Ocoee, Case No. RC-2001-037 (September 27, 2001).

Consent agreement in unit of supervisory firefighting employees approved.

Elections Verified July 1—September 30, 2001

Union of Needletrades, Industrial and Textile Employees (UNITE!) v. City of Tallahassee, Case No. EL-2001-025; Election Conducted 05/23/01 - 05/24/01 (Union Lost)

Chris Gillum v. Florida Police Benevolent Association, Inc. v. City of Palmetto Police Department, Case No. EL-2001-020; Election Conducted 5/29/01 - 6/19/01 (Union Lost)

Eustis Professional Fire Fighters, Local 4072, IAFF v. City of Eustis, Case No. EL-2001-022; Election Conducted 6/26/01 (Union Lost)

Louis Italico v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees (AFL-CIO) v. City of Coconut Creek, Case No. EL-2001-023; Election Conducted 6/07/01 - 6/28/01 (Union Won)

Florida State Lodge, Fraternal Order of Police, Inc. v. Town of Longboat Key, Case No. EL-2001-027; Election Conducted 7/03/01 (Union Won)

Volusia County Firefighters Association, Local 3574 v. County of Volusia, Case No. EL-2001-026; Election Conducted 6/15/01 - 7/06/01 (Union Won)

Alvin Mershon v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO v. Columbia County Board of County Commissioners, Case No. EL-2001-028; Election Conducted 7/26/01 (Union Won)

Pinellas Lodge No. 43, Fraternal Order of Police v. City of Pinellas Park v. Pinellas County Police Benevolent Association, Inc., Case No. EL-2001-029; Election Conducted 07/12/2001 - 08/02/2001 (FOP, Lodge #43 Won)

Coral Gables Walter F. Stathers Memorial Lodge #7, Fraternal Order of Police v. City of Coral Gables, Case No. EL-2001-031; Election Conducted 07/31/2001 - 08/21/2001 (Union Won)

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Boynton Beach v. Palm Beach County Police Benevolent Association, Inc.; Case No. EL-2001-030; Election Conducted 08/23/2001 (Palm Beach County PBA Won)

Broward County School Administrators Association v. School District of Broward County, Florida, Case No. EL-2001-021; Election Conducted 08/08/2001 - 08/29/2001 (Union Won)

International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. EL-2001-032; Election Conducted 08/13/01 - 09/06/01 (Union Won)

Pinellas Lodge No. 43, Fraternal Order of Police v. City of St. Petersburg v. Pinellas County Police Benevolent Association, Inc., Case No. EL-2001-034; Election Conducted 08/21/01 - 09/11/01 (FOP Won)



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