

Who Are The Hearing Officers?

The Commission employs a staff of eleven full-time and two part-time hearing officers. The minimum requirements for the hearing officer position require that a candidate currently be a member of The Florida Bar and have been a member of The Florida Bar in good standing for the preceding five years. The actual training, expertise, and experience brought to the job by the Commission’s legal staff, however, far exceed this standard. Here’s a look at that staff:

- The staff includes 8 men and 5 women with an average of 20 years of legal experience. They are a remarkably loyal troupe. Even the most recent hire has been with the Commission for 5 years; the hearing officer with the longest Commission career has put in 25 years behind the PERC gavel. The staff average is 15½ years with the Commission.
- By happenstance, the staff contains an equal number of FSU and U of F law school grads. Other law schools represented among the staff include Ohio Northern University, the University of Cincinnati, Wake Forest University, Nova University, and the University of North Carolina at Chapel Hill. Many of the staff attained their Juris Doctor (JD) degrees with honors and won book awards and other recognition for their scholastic endeavors. One hearing officer has also earned a Masters of Laws (LLM) degree.
- The Commission’s legal staff has completed specialized training in the conduct of fair administrative hearings and preparation of orders at the National Judicial College. One of the hearing officers is certified in circuit and county court civil mediation.
- A dedication to public service is evident in the number of legal positions that hearing officers have held with local, state, and national government employers. Hearing officers have held legal positions in seven other state agencies, including the Industrial Relations Commission, the Florida Commission on Human Relations, the Florida State Hospital, the Department of Revenue, the Department of Legal Affairs, the Unemployment Compensation Appeals Commission, and the Florida Board of Regents.
- Several hearing officers have performed legal work for the federal government, including stints with the Judge Advocate General’s Corps of the U.S. Navy, the U.S. Army, the Equal Employment Opportunity Commission, the National Labor Relations Board, and the U.S. Attorney’s Office.
- Hearing officers have also worked as staff for the Florida House of Representatives, Finance and Taxation Committee, and the Guardian ad litem program. One particularly ecumenical hearing officer represented both Lutheran Ministries of Florida and the Archdiocese of Miami Catholic Cemeteries.
- Over 60% of the hearing officers have engaged in the private practice of law at some point in their legal careers.
- Far from confining their areas of expertise to matters of law, the hearing officers possess varied backgrounds in other walks of life that facilitate and enrich their ability to understand and fairly consider the conflicts they are tasked to adjudicate. Nearly half of the compliment of hearing officers holds masters degrees; their fields include business administration, management, counselor educations, public administration, and special education. The non-legal jobs that staff members have held include: deputy sheriff, title examiner, account executive, social worker, NLRB field examiner, personnel specialist, Xerox sales representative, IBM systems engineer, police officer, Army medic, psychiatric/social work intake counselor, drug education specialist, graduate assistant, teacher, and medical office manager.

In this Issue:	Who are the Hearing Officers..... 1	Career Service Cases 4-7
	Upcoming PELR Forum2	Unfair Labor Practice Cases..... 7-8
	Insurance Re-enrollment.....2	Representation Cases.....8-10
	Evidentiary Issues.....3	Elections Verified.....11
	Registration Deficiencies3	

Upcoming 28th Annual PELR Forum

On October 24 and 15, 2002, the City, County, and Local Government Law Section and the Labor and Employment Law Section of The Florida Bar will present the 28th Annual Public Employment Labor Relations Forum in Orlando, Florida. The Commission and its General Counsel will discuss recent developments and participate in a question and answer period. Other topics to be presented at the conference include: Developments and Strategy in Teacher Discipline Matters; Federal and State Retirement Issues; Recent Developments and Strategies Regarding Harassment in the Public Workplace; Update on Wage and Hour Issues; Whistleblower and Retaliation Issues; Accommodating the Employee: ADA/FMLA/Workers' Compensation, Including Leave and Light Duty Considerations; Serving Multiple Masters Ethically and Professionally, and Strategies on the Impasse Resolution Process. In a luncheon presentation, Peter Hurtgen, Director of the Federal Mediation and Conciliation Service, will discuss the future of the FMCS. Registration information is available from The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 or at www.flabar.org.

Insurance Re-enrollment of Reinstated Employee

In Broussard v. Department of Corrections, Case No. BP-2002-003 (Aug. 8, 2002), the Commission addressed the issue of a reinstated employee's right to re-enroll in the state's health insurance plan. On February 13, 2002, the Commission ordered the agency to reinstate Broussard with back pay and benefits, having concluded that the agency did not have cause to discipline her. On May 19, 2002, Broussard requested that she be allowed to withdraw her back pay petition even though a minor issue relating to her health insurance remained. The Commission granted the request and closed the back pay case.

Five months later, on July 29, 2002, Broussard filed a consented motion to vacate the Commission's final order and issue a new final order including a statement that Broussard may re-enroll in the state's group health insurance plan within thirty days of that order. Broussard argued that reopening the back pay case in this manner was warranted by the refusal of the Division of State Group Insurance to reinstate her health insurance because she had failed to comply with a Division rule requiring new state employees to enroll within thirty days of their employment. Under the Division's rule, Broussard would be required to wait until the next open enrollment period to re-enroll.

While declining to reopen the back pay case, the Commission noted that the final order reinstating Broussard had the legal effect of nullifying her termination and, consequently, she had not been separated from employment and should not be required to reapply for insurance as a new employee. The Commission advised that Broussard can seek enforcement of its order through Section 447.5035, Florida Statutes.

PERC NEWS

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

Donna M. Poole	Chair
Charles H. Kossuth, Jr.	Commissioner
Jessica Enciso Varn	Commissioner
Stephen A. Meck	General Counsel
Suzanne M. Choppin	Editor
Frances H. Seidler	Career Service Case Summaries
Christi Gray Sundberg	Labor Case Summaries
Barbara J. Kirkland	Designer

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

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

Evidentiary Issues: Hearsay and Marital Privilege

The Commission considered several evidentiary issues in Washington v. Department of Children and Families, 17 FCSR 244A (2002), the appeal of an employee dismissed for alleged sexual abuse of his step-daughter over seven years ago. The agency's case consisted of the testimony of the agency investigator who investigated the abuse allegations and that of the alleged victim, who denied making the more serious abuse allegations attributed to her by the investigator. Finding the alleged victim untruthful about her abuse reporting, the hearing officer gave her testimony regarding the occurrence of any abuse little credibility. The hearing officer concluded that the agency had not sustained its burden of proving by a preponderance of competent substantial evidence that Washington engaged in conduct unbecoming a public employee by committing child sexual abuse. The agency excepted to the hearing officer's evidentiary rulings, contending that the hearing officer erred in treating the investigator's notes and report as hearsay. The Commission found no merit in the agency's argument that the investigator's notes and report fall within exceptions to the hearsay rule as either records of a regularly conducted business activity or as public records and reports. Therefore, the reports and notes could only be used to supplement or explain other evidence.

Likewise, the Commission considered and rejected the agency's contention that statements made to the investigator by the alleged victim's therapist and a detective, relating the accounts of abuse given to them by the alleged victim, which were contained in the investigator's notes and report, were excepted from the hearsay rule as business records or public records. The Commission concluded that the hearing officer correctly found that, absent any direct testimony from the therapist or detective, these third-hand accounts of abuse were not sufficiently reliable to support a finding that the alleged abuse occurred.

The alleged victim's mother, Washington's wife, was present at hearing but was not called to testify. Instead, the agency argued that statements made by the wife to the investigator were admissible as spontaneous statements since the wife had just learned of the full extent of the allegations against Washington when she made the statements. The Commission rejected this contention because there was a nine-year lapse between the events described in the wife's statement and the making of that statement.

Registration Deficiencies

by Sharon Zahner

Recently, the First District Court of Appeal affirmed, per curiam, the Commission's decision to permit a union to correct material registration deficiencies prior to a representation election. Broward County Local Union 532, AF-SCME v. Florida State Lodge, Fraternal Order of Police, Case No. 1D01-2830 (Fla. 1st DCA July 10, 2002). Although the per curiam affirmance does not provide precedence, it indicates that the First DCA has changed its position on this issue.

Notwithstanding the Commission's preference to allow a petitioner in a representation case to cure material deficiencies in its registration, until the decision in Sanitation Employees Association, Inc. v. Metropolitan Dade County, 526 So. 2d 128 (Fla. 3rd DCA 1988), *rev. dismissed*, 538 So. 2d 1255 (1988), *reversing* 13 FPER ¶ 18070 (1987), *recon. denied*, 13 FPER ¶ 18099 (1987), the Commission interpreted decisions by the First and Fifth District Courts of Appeal as requiring dismissal of such petitions. See Hillsborough County Board of County Commissioners v. PERC, 447 So.2d 1371, 1372 (Fla. 1st DCA 1983); North Brevard County Hospital District, Inc. v. PERC, 392 So. 2d 566 (Fla. 1st DCA 1980); City of Ocoee v. Central Florida Professional Fire Fighters Association, Local 2057, IAFF, 389 So. 2d 296, 300 (Fla. 5th DCA 1980). In Sanitation Employees Association, the Third District reversed the Commission's dismissal of a representation petition on grounds of material registration deficiencies, concluding that the legislative purpose was achieved when a union cures a registration deficiency with adequate notice to employees before the election campaign. In its decision, the Third DCA distinguished Hillsborough County and specifically disagreed with North Brevard County and City of Ocoee. Since the Sanitation Employees Association decision, the Commission has consistently permitted a petitioner the opportunity to cure its material deficiencies and to allow the representation election to proceed if the registration deficiencies are cured sufficiently in advance of the election. That change in policy now has the tacit endorsement of the First DCA.



Career Service Cases



Swain v. Department of Children and Families, 17 FCSR 214 (2002).

Economic self-sufficiency specialist's dismissal for conduct violating agency rules, requiring her to inform the agency of changes to her household affecting the cash assistance she received, affirmed. Appeal pending.

Thompson v. Department of Corrections, 17 FCSR 216 (2002).

Correctional officer's fifteen-workday suspension for conduct inconsistent with the maintenance of security and insubordination affirmed. The employee's record did not justify a lesser discipline in light of prior incidents of misconduct.

Green v. Department of Children and Families, 17 FCSR 219 (2002).

Institutional security specialist's dismissal for conduct unbecoming a public employee by falsifying a work-related document affirmed. The particular seriousness of the conduct served as an aggravator when considering the issue of mitigation. On balancing the mitigating and aggravating circumstances, there was insufficient evidence to mitigate.

Hamilton v. Department of Children and Families, 17 FCSR 222 (2002); *Barker-Dittmer v. Department of Corrections*, 17 FCSR 233 (2002); *Weldon-DeLeon v. Department of Children and Families*, Case No. CS-2002-209 (July 30, 2002); *Hostetter v. Department of Agriculture and Consumer Services*, Case No. CS-2002-248 (Aug. 23, 2002); *Strapp v. Depart-*

ment of Children and Families, Case No. CS-2002-234 (Aug. 26, 2002); *Edenfield v. Department of Corrections*, Case No. CS-2002-222 (Aug. 27, 2002).

Appeals dismissed because employees failed to appear at hearings.

Harris v. Department of Corrections, 17 FCSR 223 (2002).

Untimely appeal dismissed.

Brown v. Department of Children and Families, 17 FCSR 224 (2002).

Economic self-sufficiency specialist's dismissal for his personal involvement in assisting a friend obtain public assistance, contrary to agency rule prohibiting such involvement, affirmed.

Haley v. Department of Management Services, 17 FCSR 227A (2002); *Trevino v. Department of Corrections*, Case No. CS-2002-260 (Sept. 12, 2002); *Szczerbiak v. Department of Corrections*, Case No. CS-2002-271 (Sept. 25, 2002).

When agencies unilaterally reduced employees' suspensions to written reprimands and agreed to pay back pay, Commission did not have jurisdiction to review the merits of the written reprimand, but retained jurisdiction to determine amount of back pay, if disputed.

Clements-Turner v. Department of Corrections, 17 FCSR 227B (2002).

Correctional probation officer's dismissal due to her admitted inability to work affirmed.

Medina-Kinne v. Department of Transportation, 17 FCSR 228 (2002).

Appeal dismissed because employee also challenged her termination with a whistleblower complaint in state court.

Lee v. Department of Corrections, 17 FCSR 232 (2002).

Employee's appeal, which had been stayed until the resolution of a criminal

charge that was the basis of her dismissal, was dismissed when the employee failed to respond to hearing officer's inquiry as to whether she intended to pursue her appeal after the criminal proceedings were concluded.

Vickers v. Department of State, 17 FCSR 234 (2002), appeal filed, Case No. 1D02-3125 (Fla. 1st DCA Aug. 2, 2002).

Document specialist's dismissal for abuse of sick leave affirmed. Imposition of discipline for a pattern of abuse is not barred by employee's previous punishment for incurring an excessive absenteeism rate. At most, the employee's prior reprimand could only bar consideration of the absences within the period covered by the reprimand.

Cardenas v. Department of Corrections, 17 FCSR 238 (2002).

Correctional officer's dismissal for unnecessary use of force and physical abuse of an inmate affirmed. Mitigation not warranted.

Davis v. Department of Corrections, 17 FCSR 241 (2002).

Correctional officer sergeant's five-workday suspension vacated. Agency did not have cause to discipline employee for violation of rules and negligence by entering cell to subdue inmate to prevent injury to inmate and agency property, without first contacting officer in charge. Back pay awarded.

Smith v. Department of Corrections, 17 FCSR 244A (2002).

Commission accepted the parties' joint stipulations and closed back pay case.

Capers v. Department of Corrections, 17 FCSR 249 (2002).

Agency had cause to discipline correctional officer who made entry in log prior to occurrence of the event for violating policy, but not for falsification of records. Officer's fifteen-day suspen-

(Continued on page 5)

(Continued from page 4)

sion mitigated to a five-day suspension in light of his good work record and the agency's disparate treatment of another employee.

Ross-Boyd v. Florida School for the Deaf and the Blind, 17 FCSR 252 (2002).

Bus chaperone's dismissal for sleeping on duty and using threatening language to a co-worker affirmed. Employee was awarded ten days of back pay because the agency improperly invoked the extraordinary dismissal procedure.

Connors v. Department of Revenue, 17 FCSR 255 (2002).

Revenue specialist's dismissal for conduct unbecoming a public employee affirmed.

Smith v. University of Florida, 17 FCSR 259 (2002).

Appeal filed by State University System employee dismissed for lack of jurisdiction.

Holton v. Department of Children and Families, 17 FCSR 260 (2002).

Human services worker's dismissal for poor work performance affirmed. Employee did not testify, offer any exhibits, or cross-examine the agency's sole witness.

McDonald v. Department of Corrections, 17 FCSR 261 (2002).

Correctional officer's ten-day suspension for insubordination and conduct unbecoming a public employee affirmed. Commission did not uphold one of the insubordination charges because the directive to provide a doctor's note or suffer the denial of sick leave is not an order, but a statement of options. Commission also held that any requirement to procure a doctor's note for an absence that did not involve attendance by or consultation with a doctor would not be a reasonable order.

McCloud v. Department of Children and Families, 17 FCSR 264 (2002).

Human services worker's dismissal for conduct unbecoming a public employee, related to an attempt to hit a co-worker with her vehicle, affirmed.

Lynch v. Department of Health, Case No. BP-2002-010 (Aug. 5, 2002); Stith v. Department of Management Services, Case No. BP-2002-013 (Aug. 20, 2002); Moore v. Department of Highway Safety and Motor Vehicles, Case No. BP-2002-012 (Aug. 27, 2002); Haley v. Department of Management Services, Case No. BP-2002-014 (Sept. 12, 2002).

Commission granted employees' requests to close back pay cases because employees had received back pay.

Rose v. Department of Children and Families, Case No. CS-2002-139 (Aug. 6, 2002); Mescher v. Department of Children and Families, Case No. CS-2002-145 (Aug. 6, 2002).

Protective investigators' dismissals for conduct unbecoming a public employee, for removing personal property from the apartment of agency clients without following agency rules or procedure, affirmed. Agency failed, however, to justify use of the extraordinary dismissal procedure. Therefore, the employees were each awarded ten calendar days of back pay.

Washington v. Department of Corrections, Case No. CS-2002-159 (Aug. 6, 2002).

Correctional officer's fifteen-day suspension for failing to maintain alertness and conduct inconsistent with the maintenance of proper security and welfare of the institution and inmates, based on employee slumping in chair with lights out and cursing a superior officer, affirmed. The employee waived the mitigation issue.

Butler v. Department of Corrections, Case No. CS-2002-160 (Aug. 8, 2002).

Correctional officer's dismissal for knowingly submitting inaccurate or untruthful information on employment applications affirmed. Mitigation not warranted. Commission held that the hearing officer erred in admitting, over a best-evidence objection, transcript of interrogation without the tape recording of the interrogation. Error was harmless, however, where transcript was merely cumulative evidence.

Coates v. Department of Corrections, Case No. CS-2002-138 (Aug. 9, 2002).

While agreeing with a hearing officer's conclusion that the agency had cause to discipline correctional officer for insubordination, but not for other offenses charged, the Commission disagreed with the hearing officer's recommendation not to mitigate the officer's suspension. The Commission found that, despite the fact that the employee's insubordination occurred in a prison, the circumstances surrounding the incident did not make the seriousness of the conduct a serious aggravator. Consequently, the Commission mitigated the five-day suspension to a one-day suspension.

Mandola v. Department of Corrections, Case No. CS-2002-174 (Aug. 15, 2002).

Correctional officer sergeant's dismissal for violating agency policies, excessive and unnecessary use of force against an inmate, insubordination, failure to follow oral instructions, and conduct inconsistent with the maintenance of proper security affirmed. Mitigation not warranted.

Francois v. Department of Transportation, Case No. CS-2002-185 (Aug. 15, 2002).

Computer technician's dismissal for poor work performance affirmed.

(Continued on page 6)

(Continued from page 5)

Employee never improved despite his assignment and work with other computer technicians and placement upon a performance improvement plan.

Hodges v. Department of Children and Families, Case No. CS-2002-208 (Aug. 15, 2002).

Support services aide's dismissal for poor work performance caused by her irregular attendance and excessive absenteeism affirmed.

Coronado v. Department of Corrections, Case No. CS-2002-225 (Aug. 15, 2002).

Correctional officer's dismissal for knowingly committing an act or engaging in conduct which would violate any state statute, rule, directive or policy statement and conduct unbecoming a public employee affirmed. Employee purchased marijuana from a man on the street. Mitigation was not warranted, even though the employee argued that other officers had not been fired for committing more serious violations. Employee failed to present any specifics of asserted disparate treatment.

Swetokos v. Department of Agriculture and Consumer Services, Case No. CS-2002-221 (Aug. 19, 2002).

Appeal of probationary employee dismissed for lack of jurisdiction.

Telfort v. Department of Children and Families, Case No. CS-2002-197 (Aug. 20, 2002).

Unit treatment and rehabilitation specialist's dismissal for insubordination and conduct unbecoming a public employee, based on employee refusing an order to leave a hospital unit to which she was not assigned and calling the supervisor "stupid" in front of other employees, affirmed.

Bennett v. Department of Business and Professional Regulation, Case No. CS-2002-213 (Aug. 21, 2002).

Appeal of trainee who had not attained permanent status as a career service employee dismissed for lack of jurisdiction.

Brooks v. Department of Children and Families, Case No. CS-2002-211 (Aug. 22, 2002).

Family service counselor's dismissal for poor performance and violation of the provisions of law or rules affirmed. Employee made misrepresentations to the general master about the agency's recommendations concerning termination of parental rights versus reunification of a minor child.

Bateman v. Department of Corrections, Case No. CS-2002-205 (Aug. 26, 2002).

Environmental safety sergeant's ten-workday suspension for falsification of timesheets and statements, and violation of instructions vacated. Back pay awarded.

Guillot, McLemore, and Wood v. Department of Corrections, Case Nos. CS-2002-125, CS-2002-144, and CS-2002-152 (Aug. 27, 2002).

Two correctional officers' dismissals for failure to maintain the security and welfare of an inmate, cruel and inhumane treatment, inappropriate use of force and failure to report that use of force, and physical and verbal abuse of an inmate affirmed. Third officer did not participate in the mistreatment of the inmate, but his dismissal was affirmed for failure to truthfully answer questions and giving false testimony during the Inspector General's investigation of the abuse incident.

Gomez v. Department of Revenue, Case No. CS-2002-193 (Aug. 27, 2002).

Tax auditor's dismissal for poor performance of his only mandatory performance factor affirmed. The em-

ployee was unable to meet standard of closing twenty audit cases a year.

Solis v. Department of Juvenile Justice, Case No. CS-2002-218 (Aug. 27, 2002).

Juvenile detention officer's dismissal for use of a controlled substance affirmed.

Leynes v. Department of Corrections, Case No. CS-2002-228 (Aug. 28, 2002).

Vocational instructor's dismissal for violation of a statute and conduct unbecoming a public employee, arising out of employee driving under the influence and leaving the scene of an accident with property damage, affirmed.

Davis v. Department of Children and Families, Case No. CS-2002-202 (Aug. 29, 2002).

Human services worker's dismissal for poor performance, based on employee sleeping on duty, affirmed.

Benjamin v. Department of Juvenile Justice, Case No. CS-2002-227 (Sept. 5, 2002).

Senior juvenile detention officer's ten-day suspension for her alleged involvement in an accident in a state vehicle reversed where hearing officer found no accident occurred. Back pay awarded.

Scrub v. Department of Juvenile Justice, Case No. CS-2002-236 (Sept. 5, 2002).

Dismissal of juvenile probation officer for unbecoming conduct by threatening behavior and insubordination affirmed.

Sylvester v. Department of Children and Families, Case No. CS-2002-242 (Sept. 5, 2002).

Dismissal of public assistance specialist for processing a public assistance application for a client with whom she

(Continued on page 7)

(Continued from page 6)

had a personal relationship affirmed.

Gray v. Department of Juvenile Justice, Case No. CS-2002-240 (Sept. 6, 2002).

Dismissal of senior juvenile detention officer for violating agency rules by failing to perform ten-minute check on juvenile clients affirmed.

Sparks-Fulton v. Department of Children and Families, Case No. CS-2002-201 (Sept. 9, 2002).

Dismissal of administrative assistant at abuse hotline for insubordination and for unbecoming conduct affirmed. Employee's motion to reopen record for the introduction of additional documents submitted with employee's exceptions denied. Appeal pending.

Evans-Hepburn v. Department of Children and Families, Case No. CS-2002-249 (Sept. 10, 2002).

Dismissal of public assistance specialist for poor performance affirmed where the employee failed to meet several essential performance standards for her position.

Ekwenuya v. Department of Children and Families, Case No. CS-2002-255 (Sept. 10, 2002).

Dismissal of economic self-sufficiency specialist for poor performance affirmed where the employee failed to provide the agency with a timely doctor's note and failed to appear at work from May 16 until his termination on July 5.

Wiseman v. Department of Insurance, Case No. CS-2002-102 (Sept. 19, 2002).

Dismissal of law enforcement officer in State Fire Marshall's Bureau of Fire and Arson investigations for insubordination, conduct unbecoming a public employee by making a false statement under oath, and violation of agency rules regarding use of state

equipment for personal gain and off-duty employment creating a conflict of interest affirmed. Mitigation not warranted.

Barber v. Department of Agriculture and Consumer Services, Case No. CS-2002-220 (Sept. 23, 2002).

Dismissal of regulatory consultant for negligence/neglect of job duties, lying, and absence without authorized leave affirmed.

Ross-Boyd v. Florida School for the Deaf and the Blind, Case No. BP-2002-018 (Sept. 25, 2002); Capers v. Department of Corrections, Case No. BP-2002-017 (Sept. 25, 2002).

Back pay case closed where the employee failed to request issuance of a computation of back pay statement or respond to an order to show cause why her back pay case should not be closed.

Laffin v. Department of Corrections, Case No. CS-2002-215 (Sept. 25, 2002).

Appeal dismissed when the agency rescinded the suspension and agreed to provide the employee with back pay.

these unfair labor practices because the current union had no standing to challenge the city's failure to follow the grievance procedure in the previous union's collective bargaining agreement, and there was no past practice of allowing witnesses to testify at grievance hearings. Commission granted an award of attorney's fees and costs of litigation to the city.

United Faculty of Florida v. Florida Board of Education, Case No. CA-2002-020 (July 17, 2002).

Union alleged that the board committed an unfair labor practice by wrongfully insisting to impasse on a salary proposal waiving the union's right to bargain, which is a permissive subject of bargaining. Commission concluded that the board committed an unfair labor practice and awarded the union attorney's fees and costs of litigation.

City of Jacksonville v. Professional Association of City Employees, Inc., Case Nos. CA-2001-068 and CB-2001-031 (July 22, 2002).

Parties alleged that each other engaged in bad faith bargaining. Union also alleged that the city attempted to interfere with its internal union affairs. Commission found that the union refused to bargain in good faith with the city because the union refused to meet with the city until its chief negotiator was removed and the chapter presidents were given paid time off. Commission also found that the union failed to demonstrate the city engaged in any action that was intended to, or had the effect of, interfering with its internal affairs. City was awarded attorney's fees and costs of litigation for its charge that the union engaged in bad faith bargaining and for defending against the union's charge that the city allegedly engaged in conduct that was intended to, or had the effect of, interfering with the union's internal affairs. Appeal pending.



Professional Association of City Employees, Inc. v. City of Jacksonville, 28 FPER ¶ 33224 (2002).

Union alleged that the city committed several unfair labor practices by ceasing the processing of any contract grievances and by prohibiting union's president from investigating a grievance and calling any witnesses in a grievance meeting. Commission concluded that the city did not commit

(Continued on page 8)

(Continued from page 7)

City of Lake Worth Public Employees Union and City of Lake Worth Professional Managers and Supervisors Association v. City of Lake Worth, Case No. CA-2002-008 (July 25, 2002).

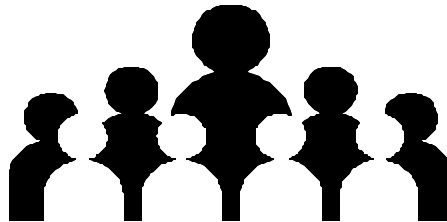
Union alleged that the city refused to bargain in good faith over the impact of the city's change in its regulation of curbside parking spaces previously used by employees. Commission found that the city did not commit an unfair labor practice when it refused to impact bargain because the city did not change its parking regulations or implement new regulations. Rather, the city merely enforced existing laws and rules or regulations. Furthermore, the Commission found that the request to negotiate the safety issue outside of the workplace was not an effective demand to bargain over a mandatory subject of bargaining because it was predicated upon the erroneous assertion that a change had been made and that workplace safety was an impact of that alleged change. It is illogical to conclude that safety in transit to and from work is a wage, hour, or term and condition of employment. Neither party was entitled to an award of attorney's fees.

Laborers' International Union of North America, Local 678, AFL-CIO v. Greater Orlando Aviation Authority, Case No. CA-2002-037 (Sept. 6, 2002).

The Commission affirmed the General Counsel's rationale for dismissing an unfair labor practice charge and his conclusion that the authority's decision to tighten airport security by placing further restrictions upon employee access to secured areas was a managerial prerogative that the authority could unilaterally make without bargaining. Furthermore, Local 678 failed to establish a prima facie violation of any duty the Authority may have had to bargain over the impact upon bargain-

ing unit employees' terms and conditions of employment flowing from the implementation of its managerial decision. To establish a prima facie violation of an employer's duty to engage in impact bargaining, Local 678 was required to not only allege that it requested and was refused an opportunity to impact bargain, but also that it identified negotiable effects upon terms and conditions of employment resulting from implementation of the employer's underlying decision. Local 678 alleged neither. Appeal pending.

Representation Cases



Office and Professional Employees International Union v. Volusia County, 28 FPER ¶ 33219 (2002).

Employees whose absences from the polling area were beyond their control due to being out of town for work-related training were allowed to vote by absentee ballot. Employees who would be on vacation at time of the election were not permitted to vote by absentee ballot.

Palm Beach County Police Benevolent Association, Inc. v. City of Boynton Beach v. Florida State Lodge, Fraternal Order of Police, 28 FPER ¶ 33220 (2002).

Consent agreements for a unit of police sergeants and a unit of lieutenants approved.

Morris v. National Conference of

Firemen and Oilers, Local 1220, SEIU v. Pinellas Suncoast Transit Authority, 28 FPER ¶ 33222 (2002).

Commission directed an election to determine whether a majority of the members of unit of blue-collar supervisory employees desire to revoke the union's certification.

Mutschler v. School Employees Union, National Conference of Firemen and Oilers, Local 1221, SEIU, AFL-CIO, CLC v. Pinellas Suncoast Transit Authority, 28 FPER ¶ 33223 (2002).

Commission directed an election to determine whether a majority of the members of unit of nonsupervisory white-collar employees desire to revoke the union's certification.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Sunrise v. Federation of Public Employees, A Division of the National Federation of Public and Private Employees, (AFL-CIO), 28 FPER ¶ 33225 (2002).

Commission directed an election in a wall-to-wall bargaining unit of non-supervisory non-professional city employees.

National Conference of Firemen & Oilers, SEIU, Local 1227, AFL-CIO v. Palm Tran, Inc. and Palm Beach County, 28 FPER ¶ 33226 (2002).

Consent agreement for a unit of non-professional supervisory employees in the classifications of maintenance shift supervisor, operations supervisor, and utilities supervisor approved.

Lee County Public Employees Association v. Lee County Board of County Commissioners, 28 FPER ¶ 33228 (2002).

Union's request to allow vacationing employees to vote by absentee ballot in the on-site representation election denied because employees can only vote by absentee ballot when their ab-

(Continued on page 9)

(Continued from page 8)

sence from the polling area is beyond their control due to the performance of duties within the normal scope of their employment. Request for an absentee ballot for employee required to attend Naval Reserve training during the election granted.

Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO v. City of Atlantic Beach, Case No. UC-2002-018 (July 17, 2002).

Unit clarification petition to an operational services bargaining unit granted.

Laborers' International Union of North America, Local Union No. 800 v. City of North Bay Village, Case No. RC-2002-031 (July 18, 2002).

Consent agreement for a wall-to-wall bargaining unit of rank-and-file nonprofessional employees approved.

Coastal Florida Police Benevolent Association, Inc. v. City of Rockledge v. Florida State Lodge, Fraternal Order of Police, Case No. RC-2002-032 (July 22, 2002).

Consent agreement for a unit of law enforcement and communication employees in the classifications of communications officer, communications supervisor, patrolman, detective, and sergeant approved.

Florida State Lodge, Fraternal Order of Police v. City of Satellite Beach v. Coastal Florida Police Benevolent Association, Case No. RC-2002-033 (July 30, 2002).

Consent agreement for a unit of communications supervisor, dispatcher, police officer, record evidence supervisor, sergeant, and staff sergeant approved. PBA's motion to withdraw from the representation election and disclaim interest approved.

nevolent Association v. City of Dade City v. Florida State Lodge, Fraternal Order of Police, Case No. RC-2002-037 (July 30, 2002).

Consent agreement for a unit of certified detectives and police officers approved.

Coastal Florida Police Benevolent Association, Inc. v. City of Rockledge v. Florida State Lodge, Fraternal Order of Police, Case No. EL-2002-029 (Relates to RC-2002-032) (Aug. 6, 2002).

Motion to conduct an on-site election which failed to articulate any reason why a mail ballot election would not be feasible denied. Because the unit was comprised of fifty-five employees who worked different shifts at the same work location, election staff would have to travel to a difficult destination and would have to cover all three work shifts if an election were conducted on-site.

Carter v. Federation of Public Employees, A Division of the National Federation of Public and Private Employees (AFL-CIO) v. City of Oakland Park, Case No. RD-2002-006 (Aug. 15, 2002).

Decertification petition dismissed because it was prematurely filed outside of the window period and had several deficiencies in the accompanying showing of interest.

National Association of Government Employees v. City of Palm Bay, Case No. UC-2002-022 (Aug. 15, 2002).

Unit clarification petition seeking to change a specific unit description to a generic description, including the deletion of eliminated part-time positions, granted.

ees International Union v. Volusia County, Case No. EL-2002-014 (Relates to RC-2001-062) (Aug. 21, 2002).

Union's post-election petition which failed to present evidence of misconduct by the county that would be sufficient to overturn the election dismissed. Campaign literature will not serve as the basis for overturning the results of an election unless it contains a threat of reprisal or a promise of a benefit.

Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees v. Jeb Bush, Governor of the State of Florida, Case No. RC-2002-017 (Aug. 29, 2002).

Consent agreement for a nonprofessional supervisory state-wide unit of selected exempt service employees approved. Portion of the consent agreement that attempted to bind the Commission's conduct of the election rejected. Elections are conducted by the elections supervisor, who consults the parties and attempt to accommodate every reasonable request.

Teamsters Local Union No. 385 v. City of Winter Green, Case No. RC-2002-036 (Sept. 4, 2002).

Bargaining unit of regular full-time police officers and police corporals, except for the internal affairs corporal approved

St. Cloud Professional Firefighters, Local 4153, IAFF v. City of St. Cloud, Case No. RC-2002-004 (Sept. 6, 2002).

Inclusion of fire lieutenants and operations commanders in a single supervisory bargaining unit approved where there is a strong community of interest between the classifications and the supervisory conflict extant between the classifications is not significant enough to warrant the exclusion of the operations commanders from the unit.

(Continued from page 9)

Wakulla Classroom Teachers Association v. Wakulla County School Board, Case No. RC-2002-039 (Sept. 9, 2002).

Consent agreement for a unit of non-instructional employees approved.

In Re Petition of Professional Firefighters of Naples, IAFF, Local 2174, Case No. MS-2002-001 (Sept. 12, 2002).

The Commission revoked certification 403 for a rank-and-file bargaining unit because it was issued prior to the formation of the City of Naples' mini-PERC and its unit description no longer remains viable after dissolution of that mini-PERC. New certifications for the rank-and-file bargaining unit and a supervisory bargaining unit issued.

Teamsters Local Union No. 769 v. Indian River County Emergency Services District, Case No. RC-2002-044 (Sept. 23, 2002).

Consent agreement for a unit consisting of only EMS battalion chiefs approved.

In Re Petition of Palm Harbor/Oldsmar Professional Firefighters, Local 2980, IAFF, To Amend Certification No. 690, Case No. AC-2002-009 (Sept. 23, 2002).

Petition to amend certification number 690 to reflect a name change from Palm Harbor Fire/Rescue Association, Local 2980, IAFF, AFL-CIO, CLC, to Palm Harbor/Oldsmar Professional Firefighters, Local 2980, IAFF, granted.

In Re Petition of Service Employees International Union, Local 1991, AFL-CIO, CLC, To Amend Certification No. 961, Case No. AC-2002-008 (Sept. 25, 2002).

Petition to amend certification number 961 by substituting Local 1991 for the SEIU Organizing Committee as

the exclusive bargaining agent for a unit of Jackson Memorial Hospital/Public Health Trust employees granted.

In Re Petition of Palm Harbor/Oldsmar Professional Firefighters, Local 2980, IAFF, To Amend Certification No. 691, Case No. AC-2002-010 (Sept. 25, 2002).

Petition to amend certification number 691 to reflect a change in its name from Palm Harbor Fire/Rescue Association, Local 2980, IAFF, AFL-CIO, CLC, to Palm Harbor/Oldsmar Professional Firefighters, Local 2980, IAFF, granted.

Wakulla Classroom Teachers Association v. Wakulla County School Board, Case No. EL-2002-035 (Relates to RC-2002-039) (Sept. 25, 2002).

Commission directed an on-site election where the school board was willing to provide employees with release time so that they could travel to the polling locations, and no employees would be required to travel a great distance to vote.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Quincy v. Florida Police Benevolent Association, Inc., Case No. RC-2002-040 (Sept. 26, 2002).

Bargaining unit of rank-and-file sworn law enforcement officers approved. The sworn law enforcement officers were removed from a combined unit of sworn law enforcement officers and certified firefighters.

(Continued from page 3)

Evidentiary Issues

Finally, the agency asserted that the hearing officer erred in applying the marital privilege to exclude portions of the wife's statements included in the investigative report. The Commission found any error in this ruling to be harmless in light of the hearsay nature of the investigator's report and notes. The Commission also rejected the agency's contention that the hearing officer's questionable application of the marital privilege had a chilling effect on its ability to call the wife as a witness, noting that it was the agency's burden, not to withhold its witness and claim to be chilled, but to put that witness on the stand, elicit testimony, require the hearing officer to rule on the applicability of the marital privilege, and make appropriate proffers where objections to her testimony were sustained



Elections Verified July 1 – September 30, 2002

Orange County Professional Firefighters, Local 2057 v. Orange County Fire Rescue, Case No. EL-02-017; Election conducted 06/12/2002 thru 07/02/2002 (Union won)

Office and Professional Employees International Union v. Volusia County, Case No. EL-02-014; Election conducted 07/10/2002 (Union lost)

Ponce Inlet Professional Firefighters, Local 4140 v. Town of Ponce Inlet, Case No. EL-02-019; Election conducted 06/19/2002 thru 07/10/2002 (Union won)

Teamsters Local Union No. 385 v. City of Palm Coast, Case No. EL-02-016; Election conducted 06/19/2002 thru 07/10/2002 (Union won)

Florida Police Benevolent Association, Inc. v. City of Punta Gorda, Case No. EL-02-015; Election conducted 06/19/2002 thru 07/10/2002 (Union won)

Lee County Public Employees Association v. Lee County Board of County Commissioners, Case No. EL-02-018; Election conducted 07/17/2002 thru 07/18/2002 (Union lost)

St. Cloud Professional Firefighters, Local 4153, IAFF v. City of St. Cloud, Case No. EL-02-020; Election conducted 07/10/2002 thru 07/31/2002 (Union won)

Florida Police Benevolent Association, Inc. v. City of Clewiston, Case No. EL-02-021; Election conducted 07/24/2002 thru 08/14/2002 (Union lost)

Gary F. Morris v. National Conference of Firemen and Oilers, Local 1220, SEIU, AFL-CIO, CLC v. Pinellas Suncoast Transit Authority, Case No. EL-02-024; Election conducted 07/31/2002 thru 08/21/2002 (Union won)

Stephen Mutschler v. School Employees Union, National Conference of Firemen and Oilers, Local 1221, SEIU, AFL-CIO, CLC v. Pinellas Suncoast Transit Authority, Case No. EL-02-025; Election conducted 07/31/2002 thru 08/21/2002 (Union lost)

National Conference of Firemen & Oilers, SEIU, Local 1227, AFL-CIO v. Palm Tran Inc. and Palm Beach County, Case No. EL-02-027; Election conducted 08/08/2002 thru 08/28/2002 (Union won)

Palm Beach County Police Benevolent Association, Inc. v. City of Boynton Beach v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. EL-02-022; Election conducted 08/08/2002 thru 08/29/2002 (Union won)

Palm Beach County Police Benevolent Association, Inc. v. City of Boynton Beach v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. EL-02-023; Election conducted 08/08/2002 thru 08/29/2002 (Union won)

Laborers' International Union of North America, Local Union No. 800 v. City of North Bay Village, Case No. EL-02-028; Election conducted 08/12/2002 thru 09/03/2002 (Union won)

West Central Florida Police Benevolent Association v. City of Dade City v. Florida State Lodge, Fraternal Order of Police, Case No. EL-02-030; Election conducted 08/13/2002 thru 09/03/2002 (PBA won)

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Satellite Beach v. Coastal Florida Police Benevolent Association, Inc., Case No. EL-02-031; Election conducted 08/21/2002 thru 09/10/2002 (FOP won)

Coastal Florida Police Benevolent Association, Inc. v. City of Rockledge v. Florida State Lodge, Fraternal Order of Police, Case No. EL-02-029; Election conducted 08/21/2002 thru 09/10/2002 (PBA won)



STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
4050 Esplanade Way
Tallahassee, Florida 32399-0950

Presort
Standard
U.S. Postage
PAID
Tallahassee, FL
Permit No. 55