



# PERC NEWS

Florida Public Employees Relations Commission

July 1—September 30, 2006

## Commission Rejects Hearing Officer’s Mitigation Recommendation

By Carlos R. Lopez, Hearing Officer.

The Department of Corrections dismissed Correctional Officer Sergeant Julius G. Smith, alleging that he engaged in conduct unbecoming a public employee and willfully violated a state statute, rule, regulation, or policy statement. The hearing officer found that during a police investigation of a domestic dispute between Smith and his wife at their home, Smith while attempting to leave the scene in his truck ran over the toe of a police officer who was seeking to detain him for questioning. Smith knocked the officer into the street with his truck fender, then put the truck in forward gear and accelerated in the officer’s direction, requiring him to jump onto the yard to avoid being hit. Smith was arrested for aggravated battery on a law enforcement officer and aggravated assault. The state attorney did not pursue charges against Smith.

The hearing officer concluded that cause existed to discipline Smith for unbecoming conduct. Although recognizing the seriousness of Smith’s conduct, the hearing officer recommended that his dismissal be reduced to a demotion and a sixty-day suspension without pay based on Smith’s twenty-two and one-half years of employment with no prior discipline, at least one promotion and recent good job appraisals. The hearing officer also appears to have considered Smith’s marital strife and emotional state as mitigating factors.

The Commission rejected the hearing officer’s mitigation recommendation, reiterating that because the legislature has vested it with the authority to make the ultimate mitigation determination, the ultimate authority to assess the weight assigned to a mitigating circumstance in a particular appeal is subject to the Commission’s de novo review. *See Sanders v. Department of Corrections*, 16 FCSR 495, 497 (2001). The Commission determined that the seriousness of Smith’s conduct substantially outweighed his employment record with the Agency because he twice intentionally placed a fellow law enforcement officer in harm’s way. The fact that the officer did not experience significant injury was not a defense to Smith’s willful behavior. Smith’s status as an officer of the law lent even more gravity to his unlawful conduct. The Commission also clarified that marital strife and emotional states are not mitigating factors. Declining to reduce the dismissal, the Commission dismissed Smith’ appeal. *Smith v. Department of Corrections*, Case No CS-2006-030 (Fla. PERC Sept. 18, 2006).

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## A Public Employer May Charge the Public Records Copying Fee for Providing Copies of Documents Related to Collective Bargaining

By Jack E. Ruby, Hearing Officer.

Section 447.203(17)(d), Florida Statutes, states that a refusal to provide a certified collective bargaining representative with public information, excluding work product as defined in Section 447.605, is an incident of bad faith collective bargaining negotiations. Based on this provision, the Commission decided more than twenty years ago that it would be an unfair labor practice for a public employer to charge more than the actual costs of duplication for copies of documents requested by a certified bargaining agent that are relevant to collective bargaining. *Hollywood Fire Fighters, Local 3175 v. City of Hollywood*, 8 FPER ¶ 13324 (1982). In March 2005, the Communications Workers of America filed an unfair labor practice charge, citing the *Hollywood* case, arguing that the City of Miami Beach committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), Florida Statutes, by charging more than the actual cost for copies of documents relevant to collective bargaining. The Commission agreed with the CWA and rejected the city's argument that it could charge the amount allowed by Section 119.07(4) because the documents were public records. *Communications Workers of America v. City of Miami Beach*, 31 FPER ¶ 213 (2005). In its decisions in *Hollywood* and *Miami Beach*, the Commission cited cases from other public sector bargaining agencies holding that copy costs were not dictated by public records acts due to the restrictive nature of requests by certified bargaining agents requesting documents that are relevant to collective bargaining, as compared to ordinary documents which can be requested without qualification by the public.

The city appealed the *Miami Beach* decision to the Third District Court of Appeal. The court reversed the Commission's *Miami Beach* decision, thereby disapproving of the *Hollywood* decision, and held that copying charges for all documents are controlled by Florida's Public Records Act, which preempts the Commission's regulation of copying costs. *City of Miami Beach v. PERC*, 31 Fla. L. Weekly D2289a (Fla. 3rd DCA 2006).

### 32nd PELR Forum

The 32nd Annual Public Employment Labor Relations Forum will be presented on October 19-20, 2006, in Orlando. The topics to be addressed include free speech and privacy concerns, libel and slander in the public workplace, public employment/public records issues, sovereign immunity and § 768.28 caps, retaliation claims in the public sector, and FMCS services available to Florida public employers. Updates will be offered on the subjects of benefits and retirement, the Family and Medical Leave Act, wage and hour law, the Florida Civil Rights Act, and PERC cases. Judge J. Donna McIntosh of the Seminole Circuit Court will speak on ethics and professionalism at a luncheon on the second day of the forum. The program has been approved for 13.5 hours of general CLE credit and 2 hours of ethics credit as well as 10 hours of certification credit in City, County and Local Government and Labor and Employment Law.

#### PERC NEWS

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## Employees' At-Will Status Does Not Demonstrate Lack of Reasonable Expectation of Continued Employment

By John G. Showalter, Hearing Officer.

In *Communications Workers of America, AFL-CIO, CLC v. City of Safety Harbor*, Case No. RC-2006-024 (Fla. PERC Aug. 23, 2006), the CWA filed a representation petition seeking to represent a wall-to-wall bargaining unit of non-supervisory, non-professional employees of the city. Prior to hearing, the parties were able to resolve all unit placement issues except for the issue of whether the city's "temporary" employees were regular part-time employees who should be included in the bargaining unit. The hearing officer determined that the temporary employees were regular part-time employees and they shared a community of interest with the full-time employees. Thus, the hearing officer recommended that they be included in the bargaining unit. The city filed one exception, arguing that the temporary employees should not be included in the bargaining unit with full-time employees because they do not have a reasonable expectation of continued employment based upon their at-will employment status.

The Commission noted that an employer's labeling of part-time employees as "temporary" is not dispositive of the issue of whether they are appropriately included in a bargaining unit with full-time employees. Moreover, the Commission must review the facts of each case and determine whether the temporary employees are actually regular part-time employees appropriate for unit inclusion.

The Commission consistently includes part-time employees in bargaining units with full-time employees if their employment can be described as "regular," rather than temporary or casual. To be a "regular" employee, it must be demonstrated that an employee has a reasonable expectation of continued employment. See *In re School Board of Collier County*, 10 FPER ¶ 15169 (1984). A part-time employee has a reasonable expectation of continued employment if he is employed on a long-term uninterrupted basis and there is no evidence that the employment will end upon a date certain. See *Florida Public Employees Council 79, AFSCME v. City of Jacksonville*, 13 FPER ¶ 18273 (1987).

In addition to assessing whether employees have a reasonable expectation of continued employment, the Commission also considers whether there is a community of interest between part-time employees and full-time employees. The Commission has determined that part-time employees share a community of interest with full-time employees when the part-time employees are subject to the same rules and regulations as full-time employees, perform similar tasks, and have common working conditions and common supervision, even if they do not receive similar benefits. See *In re School Board of Collier County*, 10 FPER ¶ 15169 (1984).

The Commission relied upon two prior decisions to reject the city's argument that the temporary employees' at-will status signified that they did not have a reasonable expectation of continued employment. See *Office, Clerical, and Professional Employees Union, Local 1222, IBFO, AFL-CIO v. City of St. Petersburg*, 16 FPER ¶ 21117 (1990); *IBPAT, Local 1010 v. City of Deerfield Beach*, 19 FPER ¶ 19099 (1988). The Commission stated that it was not attempting to discern whether the employees had a property interest in public employment. Rather, it was considering whether a less than full-time employee is a regular employee, as opposed to temporary, seasonal, or casual. Here, the temporary employees recommended for inclusion by the hearing officer were considered regular part-time employees because they had a reasonable expectation of continued employment based upon their long term employment and no predetermined end to that employment. Similarly, they shared a community of interest with full-time employees because they are subject to the same personnel ordinances and personnel rules, and had similar working conditions, chain of command, and supervision. Therefore, the Commission included the regular part-time employees in the bargaining unit with the full-time employees.

## **To Bump or Not to Bump - - That is the Question**

By William D. Salmon, Hearing Officer.

The First District Court of Appeal recently ruled on the appeals of two dismissed unfair labor practice charges filed by the Florida Public Employees Council 79, AFSCME against the State of Florida. In both charges, AFSCME alleged that the state unlawfully refused to arbitrate grievances regarding the procedure to be followed in two layoffs. AFSCME contended that the state had to follow the layoff procedure set forth in Florida Administrative Code Rule 60K-17, which permitted bumping. The state refused to arbitrate both grievances because the 2001 "Service First" legislation, which prohibited a layoff procedure that included bumping rights, superseded Florida Administrative Code Rule 60K-17, the layoff procedure in effect in 2001.

In analyzing the first charge, which involved a workforce reduction of certain Department of Transportation toll collectors in June 2001, the court focused on the legislature's intent in enacting "Service First." The court held that the legislature intended for the layoff procedure in Florida Administrative Code Rule 60K-17 to remain in effect until January 1, 2002, after which the legislature intended that the state's layoff procedure would change. The court concluded that, because the toll collectors were laid-off in 2001, the layoff was governed by Florida Administrative Code Rule 60K-17. Thus, AFSCME's charge demonstrated a prima facie violation, and the charge was reinstated. *Florida Public Employees Council 79, AFSCME, AFL-CIO v. State of Florida, JEB Ellis Bush as Governor*, 921 So. 2d 676 (Fla. 1st DCA 2006). The charge is currently pending before a hearing officer.

The second charge involved a 2005 workforce reduction of certain personnel employed by the Department of Children and Families. The court held that the state's new rule governing layoffs, Florida Administrative Code Rule 60L-33.004, was in effect at the time of that layoff, and the state was no longer contractually required to follow the layoff procedure set forth in the former rule. Consequently, the court affirmed the dismissal of AFSCME's unfair labor practice charge. *Florida Public Employees Council 79, AFSCME, AFL-CIO v. Governor John Ellis "JEB" Bush*, 31 Fla. L. Weekly (Fla. 1st DCA 2006). AFSCME has filed a motion for rehearing.

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## **No Nexus, No Hearing**

By William D. Salmon, Hearing Officer.

The Commission's General Counsel summarily dismissed unfair labor practice charges filed by Andrea J.B. Cagle because they failed to provide a nexus demonstrating that Cagle's concerted protected activity, the filing of a veteran's preference complaint with the Commission in 2001 and her testimony at a Commission hearing in 2002, were substantial or motivating factors in the alleged retaliation by the School District of St. Johns County in 2004. In the absence of the requisite nexus, the General Counsel concluded that the charges did not establish a prima facie violation. The Commission affirmed the General Counsel, and Cagle appealed to the Fifth District Court of Appeal asserting that she had demonstrated the required nexus and the Commission erred in summarily dismissing her charge.

The court applied a de novo standard of review. In analyzing the appeal, the court recognized the Commission's "special expertise in addressing labor issues," and that the Commission is "uniquely qualified to interpret and apply the policies enunciated in Chapter 447." Thus, the court acknowledged that the Commission should be "afforded wide discretion in the interpretation of [Chapter 447] which it is given the power and duty to administer." The court also stated that a reviewing court "must defer to [PERC's] interpretation of [Chapter 447] as long as that interpretation is consistent with legislative intent and is supported by competent substantial evidence...If [PERC's] interpretation is within the range of possible and reasonable interpretations, it is not clearly erroneous and should be affirmed."

After reviewing the facts alleged in the charges, the court held that a charging party, such as Cagle, is entitled to an evidentiary hearing only when the charging party can show a nexus between the concerted protected activity and the alleged adverse action. In the absence of facts demonstrating such a nexus, the court affirmed the Commission's final order. *Cagle v. St. John's County School District*, 31 Fla. L. Weekly D2262a (Fla. 5th DCA 2006).

## Who's the Rep?

By Jerry W. Chatham, Hearing Officer.

In two related cases, *In re Petition of Collier Support Professionals Association to Amend Certification No. 745* and *In re Petition of Collier County School Board*, Case Nos. AC-2006-012 and MS-2006-001 (Fla. PERC Sept. 20, 2006), the Commission resolved a lingering dispute over who was the real bargaining agent for a unit of employees of the Collier County School Board. The 1987 original certification was to the Collier Support Personnel – NEA, which acted as the exclusive bargaining agent until recently when the local, now calling itself the Collier Support Professionals Association, disaffiliated from the statewide NEA organization.

However, the procedures used by the local did not allow all of the employees a fair opportunity to consider and vote on the change. Thus, the Commission rejected the local's petition to substitute it alone as the exclusive bargaining agent. Concomitantly, the Commission cautioned the school board not to bargain with an uncertified group as it addressed the school board's petition seeking clarification of its bargaining obligations. Finally, the Commission granted the requests of the NEA and the school board for an award of reasonable attorney's fees and costs because the Collier Support Professionals Association submitted a false pleading stating that all employees had been allowed to vote on the change.



## Career Service Cases

### *Rodriguez v. Department of Environmental Protection*, 21 FCSR 137 (2006).

Dismissal of park ranger for physical inability to perform his assigned duties due to knee injury affirmed.

### *Kennington v. Department of Corrections*, 21 FCSR 138 (2006).

Dismissal of correctional officer captain for violating agency rules and policies and unbecoming conduct due to conviction for possession of steroids affirmed. Mitigation not warranted where seriousness of conduct outweighs six unblemished year employment record, and employee failed to demonstrate disparate treatment.

### *Gorum v. Department of Transportation*, 21 FCSR 141 (2006).

Dismissal of associate contract administrator for poor performance for unauthorized absences affirmed.

### *Von Nix v. Department of Children and Families*, 21 FCSR 143 (2006).

Dismissal of unit treatment and rehabilitative senior supervisor for physical inability to perform assigned duties due to knee injury affirmed.

### *Ritch v. Department of Military Affairs*, 21 FCSR 146 (2006).

Dismissal of electronic technician for job abandonment for failing to seek prior authorization for leave by designated procedures affirmed.

### *Craig v. Department of Corrections*, Case No. CS-2006-128 (Aug. 2, 2006).

Fifteen-day suspension of correctional officer for excessive absenteeism where officer had twelve unscheduled absences in less than eight months affirmed. Mitigation

not warranted due to prior suspension based on poor attendance, and where absences required agency to transfer employees from another unit to meet critical complement.

### *Fitzgerald v. Department of Corrections*, Case No. CS-2006-140 (Aug. 7, 2006).

Five-day suspension of correctional officer for alleged failure to report to work vacated where employee had notified agency that he had family situation with need for special care in the case of emergency, there was serious hurricane, there was no power or telephone service, and employee's mother had potentially life threatening medical problems.

### *Brown-Anderson v. Department of Corrections*, Case No. CS-2006-128 (Aug. 10, 2006).

Five-day suspension of correctional officer for alleged failure to report to work while institution was under emergency status vacated where employee followed agency's procedures regarding absences.

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***Knights v. Department of Corrections, Case No. CS-2006-153 (Aug. 15, 2006).***

Five-day suspension of correctional officer for failure to report to work while institution was under emergency status affirmed where employee's absences were not caused by circumstances beyond her control, but rather by her failure to prepare for the hurricane in advance. Mitigation not warranted where eight-year employment record is outweighed by disciplinary record, and employee was essential personnel.

***Hudson v. Department of Health, Case No. CS-2006-170 (Aug. 15, 2006).***

Appeal dismissed where employee had previously filed a collective bargaining grievance concerning her dismissal.

***McDermott v. Department of Health, Case No. CS-2006-141 (Aug. 22, 2006).***

Appeal of dismissal of probationary employee dismissed for lack of jurisdiction.

***Watson v. Agency for Persons With Disabilities, Case No. CS-2006-146 (Aug. 22, 2006).***

Three-day suspension of storekeeper for three incidents of insubordination and poor performance affirmed.

***Arias v. Department of Corrections, Case No. CS-2006-173 (Aug. 22, 2006).***

Five-day suspension of correctional officer for failure to follow oral or written instructions for being absent from work without permission in the aftermath of hurricane

affirmed. Mitigation not warranted because employee was considered emergency personnel and had less than five-year employment record with prior discipline for same offense.

***Nichols v. Department of Corrections, Case No. CS-2006-156 (Aug. 23, 2006).***

Five-day suspension of wellness education specialist for sleeping on duty or failure to maintain proper alertness affirmed.

***Botella v. Department of Corrections, Case No. CS-2006-155 (Aug. 24, 2006).***

Five-day suspension of correctional officer for alleged failure to obtain prior permission to not report for duty in aftermath of hurricane vacated. Employee had notified officer in charge and reasonably interpreted his response of "I understand" as approval of her absence.

***Colarusso v. Department of Corrections, Case No. CS-2006-138 (Aug. 28, 2006).***

Dismissal of correctional officer for engaging in personal relationship with inmate and falsely denying relationship affirmed. Mitigation not warranted.

***Williams v. Department of Children and Families, Case No. CS-2006-159 (Aug. 28, 2006).***

Appeal of temporary or OPS employee dismissed for lack of jurisdiction.

***Fields v. Department of Corrections Case No. CS-2006-160 (Aug. 28, 2006).***

Five-day suspension of correctional officer for failing to report for duty while institution was under

emergency status during hurricane and reporting late in aftermath of hurricane reduced to two-day suspension. Unscheduled absence was due to conditions beyond employee's control, but tardiness was caused by failure to follow instructions to maintain sufficient fuel in employee's vehicle to get to work. Mitigation warranted due to long-term employment with no prior discipline.

***West v. Department of Corrections, Case No. CS-2006-162 (Aug. 28, 2006).***

Five-day suspension of captain for failing to report for duty while institution was under emergency status in aftermath of hurricane affirmed. Mitigation not warranted.

***Watley v. Department of Corrections, Case No. CS-2006-177 (Aug. 28, 2006); Lewis v. Department of Corrections, Case No. CS-2006-219 (Sept. 25, 2006).***

Appeals dismissed where employees failed to appear at hearing.

***Gonce v. Agency for Persons With Disabilities, Case No. CS-2006-199 (Aug. 28, 2006).***

Appeal challenging agency investigation dismissed for lack of jurisdiction.

***Thomas v. Department of Children and Families, Case No. CS-2006-207 (Sept. 5, 2006).***

Appeal filed more than fourteen days after receipt of final action letter dismissed as untimely filed.

***Pena v. Department of Corrections, Case No. CS-2006-180 (Sept. 7, 2006).***

Dismissal of placement and

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transition specialist-EJT for failing to meet certification requirements for his position affirmed.

***Dicks v. Department of Corrections*, Case No. CS-2006-102 (Sept. 25, 2006).**

Dismissal of captain for inability to perform assigned job duties where employee's rhinitis and contact dermatitis prevented him from performing an essential function of his job affirmed.

***Cheshire v. Agency for Persons With Disabilities*, Case No. CS-2006-148 (Sept. 25, 2006).**

Appeal of three-day suspension dismissed for lack of jurisdiction where agency reduced discipline to a written reprimand and reimbursed employee for suspension.

***Garland v. Department of Corrections*, Case No. CS-2006-150 (Sept. 27, 2006).**

Dismissal of correctional officer lieutenant for having a personal relationship with an inmate and for failing to timely report the incident mitigated to 30-day suspension. Employee's twenty-six employment history outweighed seriousness of incident.



***Clarke v. Transport Workers Union of America, Local 291, AFL-CIO*, Case No. CB-2006-003 (Aug. 16, 2006).**

Union committed an unfair labor practice when it required a union member to prepay for estimated costs associated with retrieving financial records he requested and costs associated with monitoring his inspection of such records.

***Coral Gables Walter F. Stathers Memorial Lodge 7, Fraternal Order of Police v. City of Coral Gables*, Case No. CA-2006-016 (Aug. 21, 2006).**

City committed an unfair labor practice by threatening employees with retaliation for engaging in concerted protected activity in the filing and resolution of collective bargaining agreement grievances. The city manager's threat of future wage freezes and a statement that the city would somehow recoup pension money being refunded to the employees as part of a grievance settlement was intended to coerce the employees into relinquishing their collective right to the reimbursement checks.

***Local 1158, Clearwater Fire Fighters Association, Inc., IAFF v. City of Clearwater*, Case Nos. CA-2006-065 and CA-2006-071 (Aug. 30, 2006).**

City committed an unfair labor practice when the fire chief and city manager issued separate e-mails

which threatened Local 1158's officers and unit members for engaging in the protected activity of conducting a "no confidence" vote regarding the fire chief. The city also committed a violation when the assistant fire marshal issued a letter, through counsel, threatening to sue Local 1158 because its officers engaged in the protected conduct of investigating his job qualifications. Lastly, the city committed a violation when the fire chief sent an e-mail threatening to sue Local 1158 for questioning his failure to obtain State of Florida firefighter certification within a year of his employment. Attorney's fees awarded to Local 1158.

***King v. Pinellas County School Board*, Case No. CA-2005-088 (Aug. 30, 2006).**

The School Board did not commit an unfair labor practice when it advised a probationary employee in a letter that she was prohibited from contacting other employees about her impending dismissal while she was on administrative leave. The standard letter issued to the employee was only intended to prohibit her from engaging in unprotected conduct, discussing her dismissal with other school board employees. The employee was still free to engage in protected, concerted activities with co-workers such as discussions concerning improving work conditions.

***Coral Gables Walter F. Stathers Memorial Lodge 7, Fraternal Order of Police v. City of Coral Gables*, Case No. CA-2006-029 (Sept. 19, 2006).**

City committed an unfair labor practice when it suspended efforts to

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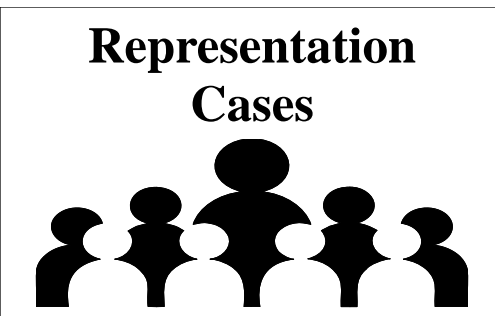


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schedule mediation/negotiations with the union from February 21 through April 7 because it was trying to conclude negotiations with two other unions. The city's argument that it was unable to arrange bargaining sessions because of time constraints was rejected where the city did not raise this issue until the filing of its exceptions to the hearing officer's recommended order.

***United School Employees of Pasco v. Pasco County School Board, Case No. CA-2006-021 (Sept. 26, 2006).***

Unfair labor practice charge dismissed where the parties filed a "joint stipulation for consent order of dismissal" prior to the issuance of the final order.



***Office and Professional Employees International Union v. Housing Authority of the City of Miami Beach, 32 FPER ¶ 145 (2006).***

Consent election agreement seeking to represent a unit of white-collar and blue-collar employees approved.

***Florida Police Benevolent Association, Inc. v. Sheriff of Levy County v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO, 32 FPER ¶ 147 (2006).***

Representation-certification peti-

tion seeking to represent a unit of correctional officers and correctional corporals granted. Local 630's request to disclaim interest granted prospectively to expiration date of parties' collective bargaining agreement.

***Palm Beach County Police Benevolent Association, Inc., Chartered by the Florida Police Benevolent Association, Inc. v. Village of Tequesta v. Florida State Lodge, Fraternal Order of Police, 32 FPER ¶ 148 (2006).***

Consent election agreement seeking to represent a unit of sworn police employees approved. FOP's motion to withdraw from the election and disclaim interest granted.

***Dade County Police Benevolent Association, Inc. v. City of South Miami, 32 FPER ¶ 152 (2006).***

Unit clarification petition seeking to include newly-created classification of police division commander into a bargaining unit of supervisory law enforcement personnel granted.

***Indian River County Fire-fighter/Paramedic Association, International Association of Fire Fighters, Local 2201 v. Indian River County Board of County Commissioners v. Teamsters Local Union 769, Affiliated with the International Brotherhood of Teamsters, 32 FPER ¶ 154 (2006).***

Representation-certification petition seeking to represent a unit of rank-and-file emergency services employees granted. Teamsters' motion to disclaim interest was granted and its certification revoked.

***Franklin County Education Association v. Franklin County School Board, 32 FPER ¶ 155 (2006).***

Recognition-acknowledgment petition seeking to represent a combined unit of instructional and non-instructional personnel dismissed where: the petitioner was not properly registered with the Commission; there was no evidence the school board had recognized the union; there was no indication that a majority of the employees voted for petitioner to represent them; and no vote was taken pursuant to 447.307 (4)(h), Florida Statutes, indicating that the professional and nonprofessional employees wanted to be included in the same unit.

***International Union of Police Associations, AFL-CIO v. City of Fernandina Beach v. Coastal Florida Police Benevolent Association, Inc., 32 FPER ¶ 156 (2006).***

Consent election agreement seeking to represent a unit of non-supervisory law enforcement officers approved.

***Florida Police Benevolent Association, Inc. v. Sheriff of Alachua County v. Gator Lodge 67, Inc., Fraternal Order of Police, 32 FPER ¶ 157 (2006).***

Consent election agreement seeking to represent a unit of non-supervisory, sworn law enforcement officers approved.

***Dwyer v. Florida State Lodge, Fraternal Order of Police, Inc. v. City of Belleview, 32 FPER ¶ 158 (2006).***

Petition seeking to revoke certification of incumbent union as certified bargaining agent for a rank-and-

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file unit of law enforcement officers granted.

***Knowlton v. Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. City of Winter Haven, 32 FPER ¶ 161 (2006).***

Petition to revoke the certification of incumbent union was dismissed where a sufficient showing of interest was not filed within the window period provided in Section 447.307(3)(d), Florida Statutes.

***Florida Police Benevolent Association, Inc. v. Sheriff of Alachua County v. Gator Lodge 67, Inc., Fraternal Order of Police, Case No. EL-2006-043 (Aug. 2, 2006).***

Union's motion to conduct an election on-site rather than by mail ballot was denied where only basis for the request was mere assertion that more voters would participate in the election if it were held on the employer's premises.

***City of Pinellas Park v. Pinellas Park Firefighters Association, Local 2193 of the International Association of Fire Fighters, AFL-CIO, Case No. UC-2006-014 (Aug. 2, 2006).***

Unit clarification petition seeking to add the classification of fire lieutenant-life safety into a supervisory bargaining unit of firefighting personnel granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Pasco County, Case No. RC-2006-036 (Aug. 9, 2006).***

Consent election agreement seeking to represent a supervisory unit of certified correctional officers in the classifications of sergeant and lieutenant approved.

***Broward County Professional Fire Fighters and Paramedics, International Association of Fire Fighters, Local 4321, AFL-CIO v. Sheriff of Broward County, Case No. UC-2006-017 (Aug. 10, 2006).***

Unit clarification petition seeking to include the classification of fire safety inspector into a rank-and-file fire/rescue unit granted.

***City of Kissimmee v. Kissimmee Professional Firefighters, Local 4208, International Association of Fire Fighters, Case No. UC-2006-012 (Aug. 15, 2006).***

Unit clarification petition seeking to add the newly-created classification of fire investigation specialist into a unit of fire suppression and medical rescue personnel granted.

***International Association of EMT's and Paramedics, A Division of the National Association of Government Employees v. Emergency Medical Services Alliance, Case No. EL-2006-008 (Aug. 16, 2006).***

Commission followed its established policy of vacating automatic stays of certification orders appealed to district courts in the absence of extraordinary circumstances. The Commission reasoned that the substantial harm to unit employees and the potential for erosion of union support occasioned by a delay in negotiations outweighed any

inconvenience to the employer caused by its participation in negotiations that might eventually be ruled unnecessary by the court.

***City of Orlando v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. UC-2006-006 (Aug. 30, 2006).***

Unit clarification petition seeking to exclude the newly created position of lieutenant assigned to the Mayor's office from a supervisory unit of police lieutenants granted.

***City of Tallahassee v. Professional Firefighters of Tallahassee, Local 2339, IAFF, Case No. UC-2006-016 (Aug. 30, 2006).***

Unit clarification petition seeking to delete, retitle and add certain classifications was granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Town of Melbourne Village, Case No. RC-2006-038 (Sept. 15, 2006).***

Consent election agreements seeking to represent a unit of police officers and corporals and a supervisory unit of sergeants approved.

***Fort Lauderdale Police Lodge 31, Fraternal Order of Police v. City of Fort Lauderdale, Case No. UC-2006-023 (Sept. 15, 2006).***

Unit clarification petition seeking to add the newly-created classification of police lieutenant to a supervisory bargaining unit of police captains granted.

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**Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. Sheriff of Hillsborough County, Case No. RC-2006-034 (Sept. 20, 2006).**

Consent election agreement seeking to represent a unit of supervisory certified correctional personnel in the classification of detention sergeant approved.

**Navarre Beach Professional Fire Fighters, IAFF, Local 4494 v. Navarre Beach Volunteer Fire Department, Inc., Case No. RC-2006-041 (Sept. 26, 2006).**

Representation-certification petition dismissed where the employer was not a public entity within the meaning of Section 447.203(2), Florida Statutes, and therefore, its employees were not public employees subject to the jurisdiction of the Commission.

**Marianna Professional Firefighters v. City of Marianna v. Jackson County Fire Fighters Association, Local 3043, IAFF, Case No RC-2006-049 (Sept. 28, 2006).**

Representation-certification petition dismissed where the petitioner was not registered with the Commission and the petition was not filed within the statutory window period prior to the expiration of a collective bargaining agreement.

## **Elections Verified and Certifications Issued**

*Broward County Police Benevolent Association, Inc. v. Town of Hillsboro Beach, Case No. EL-2006-028; Election 5/31 – 6/21/2006; Union won; Certification 1605.*

*Dade County Police Benevolent Association, Inc. v. Florida International University Board of Trustees, Case No. EL-2006-025; Election 6/1 – 21/2006; Union won; Certification 1606.*

*Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. Sheriff of Pasco County v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. EL-2006-022; Election 7/6 - 7/2006; FOP won; Certification 1607.*

*Florida Police Benevolent Association, Inc. v. Sheriff of Columbia County, Case No. EL-2006-031; Election 6/20 – 7/11/2006; Union lost; Modified Certification 10.*

*St. Lucie County Classroom Teachers' Association and Classified Unit v. St. Lucie County School Board, Case No. EL-2006-029; Election 6/20 – 7/11/2006; Union won.*

*Reedy Creek Fire Fighters Association, Local 2117 of the International Association of Fire Fighters v. Reedy Creek Improvement District, Case No. EL-2006-030; Election 6/20 – 7/11/2006; Union won; Certification 1608.*

*Teachers Association of Lee County v. Lee County School Board, Case No. EL-2006-032; Election 6/30 - 7/24/2006; Union won.*

*Coastal Florida Police Benevolent Association, Inc. v. Sheriff of Indian River County, Case No. EL-2006-033; Election 7/6 - 27/2006; Union lost.*

*Florida Police Benevolent Association, Inc. v. State of Florida v. International Union of Police Associations, AFL-CIO, Case No. EL-2006-023; Election 5/31 – 6/28/2006; PBA won; Certification 1609.*

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*Deerfield Beach Fire Fighters and Paramedics Association, Local 1673, International Association of Fire Fighters v. City of Deerfield Beach*, Case No. EL-2006-034; Election 7/13 – 8/3/2006; Union won; Certification 1610.

*Professional Firefighters of Marathon. Inc., Local 4396, International Association of Firefighters v. City of Marathon*, Case No. EL-2006-035; Election 7/20 – 8/11/2006; Union won; Certification 1611.

*Office and Professional Employees International Union v. Housing Authority of the City of Miami Beach*, Case No. EL-2006-038; Election 7/25 – 8/15/2006; Union won; Certification 1612.

*Coastal Florida Public Employees Association v. Flagler County Board of County Commissioners v. Communications Workers of America, AFL-CIO, CLC*, Case No. EL-2006-037; Election 7/25 - 8/15/2006; CFPEA won; Certification 1613.

*Florida Police Benevolent Association, Inc. v. Sheriff of Levy County v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO*, Case No. EL-2006-039; Election 8/3 - 24/2006; PBA won; Certification 1614.

*Palm Beach County Police Benevolent Association, Inc. v. Village of Tequesta v. Florida State Lodge, Fraternal Order of Police, Inc.*, Case No. EL-2006-040; Election 8/3 - 24/2006; PBA won; Certification 1615.

*Melvin v. Coastal Florida Police Benevolent Association, Inc. v. City of Orange City*, Case No. EL-2006-036; Election 8/3 - 24/2006; Union lost.

*Professional Firefighters of Palatka, Local 2992, IAFF v. City of Palatka*, Case No. EL-2006-024; Election 8/8 – 29/2006; Union won; Certification 1616.

*Indian River County Firefighter/Paramedic Association, International Association of Fire Fighters, Local 2201 v. Indian River County Board of County Commissioners*, Case No. EL-2006-041; Election 8/10 – 31/2006; Union won; Certification 1617.

*International Union of Police Associations, AFL-CIO v. City of Fernandina Beach v. Coastal Florida Police Benevolent Association, Inc.*, Case No. EL-2006-042; Election 8/10 – 31/2006; PBA won; Recertification of No. 720.

*Florida Police Benevolent Association, Inc.. v. Sheriff of Alachua County v. Gator Lodge 67, Inc., Fraternal Order of Police*, Case No. EL-2006-043; Election 8/17 – 9/7/2006; PBA won; Certification 1618.

*Dwyer v. Florida State Lodge, Fraternal Order of Police, Inc. v. City of Belleview*, Case No. EL-2006-044; Election 8/17 – 9/7/2006; Union lost.

*Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Pasco County*, Case No. EL-2006-045; Election 8/31 – 9/22/2006; Union lost.



## NEW PUBLICATION

The Commission is pleased to announce the availability of a new publication, *Appellate Decisions in PERC Labor Cases*. This publication summarizes Florida appellate court cases involving unfair labor practice and representation cases, as well as veteran's preference, Whistle-Blower's Act, and Drug-Free Act cases, from 1969 to the present. *Appellate Decisions* is available at a cost of \$10.00, including postage and handling. Address inquiries to:

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