

## Court Remand Results in Mitigation by Split Decision

By Hearing Officer Carlos R. Lopez

Julius G. Smith filed an appeal of his dismissal by the Department of Corrections (Agency) for alleged conduct unbecoming a public employee and willful violation of a state statute, rules, regulations, or policy statements.

The charges against Smith derive from an incident that occurred during a weekend in which Smith had become distraught and began consuming alcohol when the wife with whom he had recently reconciled stayed out all night. An officer responding to the wife's report that Smith had been drinking and destroying property saw the destruction within the home and became concerned for the wife's safety. Smith, who had driven to a liquor store and emerged to find that his wife had smashed his truck's windows with a hammer, had returned to the home and was inside when the officer arrived.

Suspecting something more serious than a domestic disturbance, the officer confronted Smith who exited the house and began walking away. The officer told Smith to stop, stating that he wanted to question him. Smith continued walking. The officer told Smith he would be arrested if he did not stop. Smith entered his truck. The officer ran to the truck door, put his hands on the

driver's side window edge, and told Smith not to leave. Smith put the truck in reverse gear and, as he backed up, the front left tire ran over the toe or side edge of the officer's left foot, and the left front fender caught the officer and pushed or tossed him into the street. Smith stopped in the street, put the truck in forward gear, and accelerated in the officer's direction. The officer had to jump onto the yard to avoid being hit.

Smith was arrested for aggravated battery on a law enforcement officer and aggravated assault. When he was booked at the jail, Smith identified himself as an Agency law enforcement officer, and the jail staff telephoned the Agency to confirm Smith's statement. Ultimately, the State Attorney's Office decided not to pursue the charges against Smith.

Based upon these facts, the hearing officer concluded that the Agency had cause to discipline Smith for conduct unbecoming a public employee. He recommended that Smith's dismissal be mitigated by demoting him from a correctional officer sergeant to a correctional officer and by suspending him for 60 calendar days without pay. The Agency objected to mitigating Smith's dismissal.

The Commission adopted the hearing officer's findings of fact, but rejected his mitigation recommendation. In rejecting the mitigation recommendation, the Commission stated that "marital strife and emotional states are not mitigating factors." Smith appealed the Commission's order to the First District Court of Appeal. The court vacated the final order, concluding that the Commission erred as a matter of law by enunciating a policy that marital strife and emotional turmoil never qualify as mitigating factors. *Smith v. Florida Department of Corrections*, 32 Fla. L. Weekly D1750b (Fla. 1st DCA July 27, 2007).

On remand, a majority of the Commission determined that weighing against mitigation was the seriousness of Smith's conduct, particularly as it was perpetuated by a correctional officer sergeant who had been drinking a significant amount of alcohol, even though he was not intoxicated. Weighing in favor of mitigation was Smith's over 22-year employment record with good performance and no prior discipline, which was the emotional turmoil Smith was experiencing on the day of the incident, engendered by the marital strife and vandalism of his

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vehicle. A slightly mitigating factor was the decision of the State Attorney's Office not to pursue charges against Smith. Noting that this was a close case, the majority agreed with the hearing officer that the mitigating factors outweighed the aggravating factors and adopted the hearing officer's recommended discipline.

In her dissent, Chair Donna Poole concluded that Smith's marital strife and emotional turmoil and his long and good employment record were not sufficient to out-

weigh the seriousness of his conduct. Specifically, Poole noted that Smith twice intentionally placed a fellow law enforcement officer in harm's way. Had that officer not jumped onto the yard to avoid being hit, he may have been seriously injured. Chair Poole also considered that Smith's status as an officer of the law lent even more gravity to his unlawful conduct, and she was troubled that the incident was witnessed by a 12-year-old boy. *Smith v. Department of Corrections*, Case No. CR-2007-001 (Fla. PERC Aug. 23, 2007) (Relates to Case No. CS-2006-030). The Commission's latest order on the merits is not an appealable final order because the amount of back pay remains to be determined.

## Farewell to Fran

It has been three years since the hearing officer lineup has changed at PERC. Sadly, at the end of August, PERC staff bid farewell to an eighteen-year veteran, Fran Seidler. Fran previously worked as a state unemployment compensation appeals referee in Miami and began her employment at PERC under former Chairman Mike Mattimore in 1989.

Fran brought a set of life experiences to the Commission that served her well in officiating over hearings. Fran's no-nonsense attitude toward her work and life in general also translated into skills useful in settling Commission cases. As a consequence, Fran served the Commission as back-up to the Commission's regular settlement officer. She also contributed to the Commission's efficient functioning by supervising its word processing staff.

Fran's willingness to work through the holiday season handling hearings so that other staff could be with their families was especially appreciated by her fellow hearing officers. Mostly, the staff will remember Fran for her cheerful attitude and her friendship; she was always ready to offer encouragement and support to those who needed it. We wish her a long fulfilling retirement, fully immersed in those interests that give her life meaning and purpose.

### PERC NEWS

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## **Fired DOC Officer Reinstated**

By Hearing Officer Joey D. Rix

In *Morgan v. Department of Corrections*, 22 FCSR 181 (2007), the Commission reversed the extraordinary dismissal of a Department of Corrections lieutenant for attending a social gathering at the residence of a former colonel on Agency property where two former employees who had been dismissed for inmate abuse were also present. The lieutenant was also disciplined for stating during an investigatory interview that the colonel's dismissal was wrong, that she had attending the gathering to tell him that he had done a great job, and that she would do it again.

The hearing officer concluded that the Agency failed to prove that the lieutenant violated any Agency rules or engaged in misconduct in attending the social gathering. The hearing officer also concluded that the lieutenant's statements showing support for the colonel, her friend and co-worker, did not rise to the level of unbecoming conduct because neither her statements nor her conduct discredited or embarrassed the Agency, adversely affected the Agency's ability to carry out its mission or her ability to do her job, or affected the respect accorded her and the Agency.

In concluding that the lieutenant's dismissal must be vacated, the Commission rejected the Agency's argument that the hearing officer should have considered whether the lieutenant also failed to contact the warden to report the presence of previously dismissed employees on state property. In so doing, the Commission reiterated the long standing principle that an agency's final action letter is not required to meet the technical niceties or formal exactness required of pleadings in the courts. Rather, due process requires only that the final action letter be clear enough to inform an employee of the proposed action and the facts upon which it hinges. The Commission reviewed the final action letter which resulted in the lieutenant's discipline and concluded that it did not inform the lieutenant that the disciplinary action against her case hinged on her failure to contact the warden to report the presence of previously dismissed employees on state property.

## **Madison Makes the News**

By Hearing Officer H. Lee Cohee, II

In a close two-to-one decision, the Commission ruled that the fire inspector for the City of Madison belonged in the fire/rescue bargaining unit. His stature as second in command in the fire department did not persuade the majority that he was a conflict supervisor. The inspector had no supervisory authority but that which he received from the chief when the chief was absent from the department. The absence of evidence to show that, in this small department, it was reasonable for the City to require the inspector to assist in the preparations for collective bargaining defeated the City's claim of managerial status for this employee. Similarly, prospective duty involving the union grievance process was deemed speculative and insufficient to satisfy the managerial criteria requiring a role in the administration of collective bargaining agreements.

Chair Donna Poole, dissenting, cited long-standing Commission precedent that eschews a mechanical application of the statutory managerial indicia in favor of an examination of a position's placement within the overall organization of the department to determine its managerial status. Here, it is asserted that such an examination supports the inspector's managerial status because he is second in command to the chief and substitutes for the chief when the chief is absent. In Chair Poole's view, the chief's declared intent to have the inspector assist him during collective bargaining warrants the inspector's managerial designation and entitles the chief to the inspector's confidential assistance.



## Career Service Cases

***Wilson v. Department of Financial Services, 22 FCSR 164 (2007); Warren v. Department of Juvenile Justice 22 FCSR 171 (2007).***

Appeals were dismissed as abandoned.

***Broussard v. Department of Corrections, 22 FCSR 165 (2007).***

Appeal of demotion of a correctional officer sergeant to the rank of correctional officer for allegedly knowingly submitting an inaccurate or untruthful timesheet and being untruthful when questioned about the timesheet was vacated where the employee did not intend to falsify the timesheet and provided an incident report regarding the inaccurate timesheet as ordered. Back pay awarded.

***Bryant v. Department of Children and Families, 22 FCSR 168 (2007).***

Dismissal of an economic self-sufficiency specialist for inability to perform assigned duties was affirmed where the employee was absent for almost 3 months, had exhausted her medical leave, and failed to prove that the agency failed to provide a reasonable accommodation. The employee presented no evidence regarding age discrimination.

***Herekar v. Department of Health, 22 FCSR 172 (2007).***

Dismissal of a dental executive director for inability to perform assigned duties was affirmed where the employee's temporary certificate to practice dentistry was suspended, the employee was not a licensed dentist, and the employee was unable to practice dentistry.

***Martin v. Department of Health, 22 FCSR 178a (2007).***

An appeal was dismissed where the agency reinstated the employee after erroneously dismissing her for failing to complete a probationary period to which she was not subject.

***Copeland v. Department of Children and Families, 22 FCSR 178b (2007).***

Dismissal of a unit treatment and rehabilitation specialist for poor performance for refusing to work an extra shift on three occasions was affirmed.

***Messier v. Florida Fish Wildlife Conservation Commission, 22 FCSR 187 (2007).***

Dismissal of a law enforcement officer for physical inability to perform assigned duties was affirmed. The agency located alternate duty work which the employee declined. Mitigation is not warranted where an employee is physically unable to perform assigned duties.

***Locklear v. State Attorney, 12th Circuit, 22 FCSR 189 (2007).***

Appeal of the dismissal of a judicial branch employee was dismissed for lack of jurisdiction.

***Beasley v. Department of Corrections, 22 FCSR 190a (2007); Harrell v. Department of Corrections, 22 FCSR 194 (2007).***

Appeals were dismissed for lack of jurisdiction where the agency rescinded suspensions.

***Sanon v. Department of Juvenile Justice, 22 FCSR 190b (2007).***

Dismissal of a juvenile justice detention officer for failing to follow agency policies and procedures regarding the handling a youth's personal property, negligently recording receipt of property he did not physically have in his possession, and failing to notify his supervisor of the missing property was affirmed.

***Robinson v. Department of Children and Families, 22 FCSR 193 (2007).***

Appeal was dismissed where the employee failed to appear at hearing.

***Moore, Jr. v. Department of Corrections, Case No. CS-2007-105 (Aug. 8, 2007).***

Dismissal of a correctional probation senior officer for negligence for failing to investigate the absence of a violent offender and issuing a BOLO, failing to investigate an offender's curfew violation and timely file a report regarding same, and failing to conduct weekly drug screenings was affirmed. Mitigation was not warranted

where the seriousness of the conduct outweighed the employee's twenty-two year employment history, which was riddled with discipline, and the employee failed to prove disparate treatment.

***Winters v. Department of Corrections, Case No. CS-2007-099 (Aug. 13, 2007).***

Demotion of a sergeant to the rank of correctional officer for negligence and willful misconduct for improperly reacting to a potentially violent situation involving his subordinates and failing to inform the officer in charge of the escalation of the incident was affirmed. Mitigation was not warranted where the seriousness of the incident and a prior suspension outweighed the employee's twelve-year employment history.

***Richards v. Department of Corrections, Case No. CS-2007-135 (Aug. 20, 2007).***

Five-day suspension of a correctional officer sergeant for failing to follow written instructions and negligence for improperly administering a chemical agent on an inmate was affirmed. Mitigation was not warranted where the seriousness of the conduct outweighed the employee's fifteen-year employment history with three prior written reprimands, and the employee failed to prove disparate treatment.

***Jenkins v. Department of Corrections, Case No. CS-2006-300 (Sept. 4, 2007).***

Dismissal of a correctional officer for allegedly stealing money from his father and hitting him with a brick, resulting in the employee's arrest, was vacated where the criminal charges were dismissed, the father recanted his story, and the only evidence was a warrant affidavit that was hearsay. Back pay awarded.

***Jones v. Department of Corrections, Case No. BP-2007-010 (Relates to CS-2007-026) (Sept. 12, 2007).***

Back pay was awarded where the employee demonstrated an active good faith job search, notwithstanding her failure to provide documentation or seek public sector corrections work.

***King v. Department of Environmental Protection, Case No. CS-2007-111 (Sept. 13, 2007).***

Dismissal of a law enforcement captain for unbecoming conduct and violation of

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agency rules for allegedly sending incomplete background investigation reports to outside agencies and lying about the same was vacated where a credible handwriting expert could not state that handwriting on the transmittal envelopes was the employee's, and the agency's circumstantial evidence was inconclusive. Back pay awarded.

***Bernavil v. Department of Transportation, Case No. CS-2007-165 (Sept. 20, 2007).***

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

***Canoy v. Department of Corrections, Case No. CS-2006-069 (Sept. 24, 2007).***

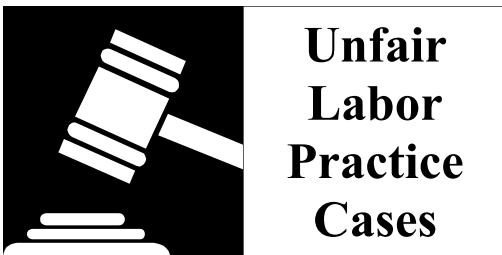
Appeal dismissed as apparently withdrawn or abandoned.

***Molina v. Department of Children and Families, Case No. BP-2007-008 (Relates to CS-2005-186 and BP-2005-020) (Sept. 26, 2007).***

Back pay and unreimbursed medical expenses were awarded.

***Rocha v. Department of Corrections, Case No. CS-2007-151 (Sept. 27, 2007).***

Ten-day suspension of a correctional officer sergeant for negligence for failure to maintain proper control over keys was affirmed. Mitigation was not warranted.



***Brevard County Tax Collector v. Coastal Florida Public Employees Association, 33 FPER ¶ 126 (2007).***

The Commission determined that the union did not commit an unfair labor practice when two managerial and one confidential employee actively supported the union's organizational drive because these employees had not been designated managerial or confidential at the time of their active support.

***Manatee Education Association, FEA, AFT, Local 3821, AFL-CIO v. School District of Manatee County, 33 FPER ¶ 135 (2007).***

The school district committed an unfair labor practice when it unilaterally assigned an additional duty hour to middle school teachers every seven days. However, the school district did not fail to bargain in good faith over the middle school teaching schedule and teacher planning time or engage in unlawful direct dealing.

***Owen v. School District of Pinellas County, 33 FPER ¶ 141 (2007).***

The Commission affirmed the General Counsel's summary dismissal where the charge lacked factual allegations from which it could be concluded that the employee's grievances and not other factors motivated the school district to transfer her. Mere proximate timing is insufficient to establish a reasonable inference that an adverse action was motivated by protected concerted activity.

***Kissimmee Professional Fire Fighters, I.A.F.F., Local 4208, 33 FPER ¶ 151 (2007).***

The charging party's request to withdraw its unfair labor practice charge was granted. The city filed an exception to the hearing officer's recommended order denying its request for attorney's fees and costs. The city argued that the charge was frivolous and groundless from the start and should not have been filed. Although the Commission may award fees in a case where the charge is withdrawn if there is sufficient evidence in the record to prove or disprove the allegations in the charge, the absence of an evidentiary record in this case precluded such a determination.

***Orange County Professional Firefighters, IAFF, Local 2057 v. Orange County Board of County Commissioners, 33 FPER ¶¶ 153 and 154 (2007).***

The charging party's motions to withdraw its unfair labor practice charges were granted.

***SEIU Florida Healthcare Union, Local 1999 v. Health Care District of Palm Beach County, 33 FPER ¶ 157 (2007).***

The Commission determined that the health district committed unfair labor practices by unlawfully conducting surveillance of the union's activities, making unlawful

promises of benefits to employees prior to the election and by issuing a written reprimand to an employee due to her union activities. The health district was ordered to pay to the union reasonable attorney's fees and costs for the portion of the charges upon which the union prevailed.

***Jax Airport Lodge 85 of the Fraternal Order of Police v. Jacksonville Aviation Authority, 33 FPER ¶ 162 (2007).***

Union's unfair labor practice charge was dismissed where it was untimely filed. The charging party's argument that the newly filed charge related back to a previously filed charge for the purpose of determining the six month statute of limitations period was rejected.

***Raven v. School District of Manatee County, Florida, Case No. CA-2007-059 (Aug. 20, 2007).***

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge because the Commission did not have jurisdiction to enforce alleged violations of Florida's child abuse statute, the charge failed to include a copy of the collective bargaining agreement, and the employee failed to request union representation for an investigatory interview.

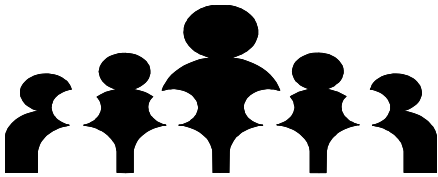
***Pasco County Professional Firefighters, Local 4420, International Association of Fire Fighters v. Pasco County Board of County Commissioners, Case Nos. CA-2007-001 and 007 (Sept. 26, 2007).***

The Commission determined that the county committed unfair labor practices by unilaterally changing the payroll processing procedures of employees represented by the union and withholding a general pay increase from unit members during the pendency of initial collective bargaining negotiations. The union was awarded reasonable attorney fees and costs for those portions of the charges upon which it prevailed.

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## Representation Cases



***International Union of Police Associations, AFL-CIO v. City of Port St. Lucie v. Coastal Florida Police Benevolent Association, Inc., 33 FPER ¶ 125 (2007).***

Consent election agreement seeking to represent a bargaining unit of sworn police officers was approved.

***Teamsters Local Union 385 v. St. Johns County Board of County Commissioners, 33 FPER ¶ 133 (2007).***

Representation-certification petition was dismissed where the union named the wrong public employer of the petitioned-for employees. The sheriff's office and not the county was the correct employer.

***Professional Fire Fighters & Paramedics of Martin County, Local 2959, International Association of Fire Fighters v. Martin County Board of County Commissioners v. Martin County Public Employees United, 33 FPER ¶ 134 (2007).***

Representation-certification petition was dismissed where the petitioner was not registered with the Commission pursuant to Section 447.305(1), Florida Statutes, the proposed unit included three classifications which were already part of another bargaining unit, and the unit appeared to be fragmented.

***Teamsters Local Union 769 Affiliated with the International Brotherhood of Teamsters v. Sheriff of Monroe County v. Florida State Lodge, Fraternal Order of Police, Inc., 33 FPER ¶ 138 (2007).***

Consent election agreement seeking to represent a bargaining unit of corrections deputies and sergeants was approved.

***Mershon v. Northeast Florida Public Employees, Local 630, LIUNA, AFL-CIO v. Columbia County Board of County Commissioners, 33 FPER ¶ 140 (2007).***

Petition to revoke the incumbent union's certification was dismissed where the petition was filed during the contract bar period contained in Sections 447.307(3)(d) and 447.308(1), Florida Statutes.

***Palm Beach County Police Benevolent Association, Inc., Chartered By The Florida Police Benevolent Association, Inc. v. Town of Jupiter Island, 33 FPER ¶ 144 (2007).***

Representation-certification petition seeking to represent a unit of rank-and-file public safety officers was granted.

***Bonita Springs Fire Control and Rescue District v. Bonita Springs Professional Fire Fighters, Local 3444, International Association of Fire Fighters, Inc., 33 FPER ¶ 145 (2007).***

Unit clarification petition seeking to add substantially altered and newly created classifications to a non-supervisory, non-professional civilian personnel unit was granted.

***Bonita Springs Fire Control and Rescue District v. Bonita Springs Professional Fire Fighters, Local 3444, International Association of Fire Fighters, Inc., 33 FPER ¶ 146 (2007).***

Unit clarification petition seeking to add several newly created classifications to a non-supervisory fire suppression unit and exclude a newly created supervisory position was granted.

***In Re Petition of Florida Police Benevolent Association, Inc. to amend Certification 1609, 33 FPER ¶ 147 (2007).***

The Commission granted an amendment to certification petition which sought to effectuate recently enacted legislation that provides for the creation of a separate bargaining unit of sworn law enforcement officers for any agency employing 1200 or more officers. In its order, the Commission removed officers employed by the Florida Highway Patrol from the statewide unit and created a new unit composed entirely of these employees.

***Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. City of Pembroke Pines, 33 FPER ¶ 148 (2007).***

Unit clarification petition seeking to clarify a unit of blue and white collar, non-supervisory employees to include classifications employed by a city charter school was granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Rockledge v. Coastal Florida Police Benevolent Association, Inc., 33 FPER ¶ 150 (2007).***

Consent election agreement seeking to represent a unit of police department employees in the classifications of police officer, police detective, police sergeant, communications officer and communications supervisor was approved.

***Teamsters Local Union 385 v. Sheriff of Nassau County, 33 FPER ¶ 155 (2007).***

Representation-certification petition seeking to represent a bargaining unit of deputy sheriffs granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Madison, 33 FPER ¶ 156 (2007).***

Representation-certification petition seeking to represent a bargaining unit of police officers granted.

***In Re Petition of St. Pete Beach Professional Firefighters Association, IAFF, Local 2266, to amend Certification No. 1206, 33 FPER ¶¶ 136 and 158 (2007).***

Amendment to certification petition seeking to substitute St. Pete Professional Firefighters for current bargaining agent was granted.

***Transport Workers Union of America, Local 291, AFL-CIO v. Miami-Dade County Board of County Commissioners v. Miami-Dade County, Florida, Employees Local 199, AFSCME, AFL-CIO, 33 FPER ¶ 159 (2007).***

The county reorganized its workforce to create a centralized call center for all public calls and inquiries. This involved moving some transit department employees represented by TWU to newly created positions in a bargaining unit represented by AFSCME. To compensate TWU for the loss

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of positions, the county agreed to provide various benefits to the transferred employees and paid TWU a sum of money to offset its potential loss of dues after the transfer. Thereafter, TWU filed a unit clarification petition seeking to have the Commission decide the proper placement of the new positions. The Commission determined that the new positions shared more of a community of interest with the AFSCME bargaining unit positions than with transit workers in the TWU unit.

***Florida State Lodge Fraternal Order of Police, Inc. v. Sheriff of Santa Rosa County v. Florida Police Benevolent Association, Inc., 33 FPER ¶ 160 (2007).***

Consent election agreement seeking to represent a bargaining unit of certified correctional personnel in the positions of detention deputy and corporal approved.

***Madison Professional Firefighters, Local 4565 v. City of Madison, 33 FPER ¶ 161 (2007).***

Representation-certification petition seeking to represent a unit of firefighters and fire inspectors granted. The Commission determined that the fire inspectors shared a community of interest with firefighters due to their fire fighting certification and regular participation in firefighting activities.

***JEA Supervisors Association v. JEA, 33 FPER ¶ 163 (2007).***

Unit clarification petition seeking to include the newly created position of facility operations controller in a unit of non-professional supervisors was dismissed where the classification did not perform any supervisory duties.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Naples, Case No. RC-2007-038 (Aug. 20, 2007).***

Representation-certification petition seeking to represent a unit of lieutenants was dismissed where the Commission had previously determined that these individuals were managerial employees. Pursuant to the doctrine of res judicata, absent a showing of a change in circumstances, the Commission will not revisit a prior unit determination involving the same parties and issues.

***Hillsborough County Police Benevolent Association, Inc., D/B/A West Central Florida Police Benevolent Association v. Hillsborough County Aviation Authority, Case No. UC-2007-021 (Aug. 20, 2007).***

Unit clarification petition seeking to include the classifications of airport police corporal, evidence technician, and senior airport traffic specialist in a bargaining unit of law enforcement personnel granted.

***Local 4522, Big Corkscrew Professional Fire Fighters Association v. Big Corkscrew Island Fire and Rescue District, Case No. RC-2007-014 (Aug. 21, 2007).***

Consent election agreement seeking to represent a unit of rank-and-file certified fire suppression personnel approved.

***International Union of Police Associations, AFL-CIO v. City of Fellsmere v. Teamsters Local Union 769 affiliated with the International Brotherhood of Teamsters, Case No. RC-2007-028 (Aug. 21, 2007).***

Representation-certification petition seeking to represent a unit of city employees in the classification police officer and detective approved. The Teamsters' request to disclaim interest in representing the bargaining unit was granted.

***Indian Rocks Professional Firefighters' Association, IAFF, Local 3206 v. Pinellas Suncoast Fire and Rescue District, Case No. RC-2007-046 (Aug. 23, 2007).***

Commission dismissed representation-certification petition where the petition was not timely filed within the window period and failed to identify classifications to be excluded from the unit.

***Village of Tequesta v. Communications Workers of America, AFL-CIO, CLC, Case No. UC-2007-020 (Aug. 23, 2007).***

Unit clarification petition was dismissed where it sought to add sixteen employees to an equal number of employees in the existing unit. Expanding the unit by 100% created a question concerning representation that could only be resolved through an opt-in representation election or through the granting of a recognition-acknowledgement petition.

***In re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1373, Case No. AC-2007-018 (Aug. 29, 2007).***

Amendment to certification petition seeking to substitute SEIU as the bargaining agent for a unit of non-professional supervisory employees was granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Melbourne v. Coastal Florida Police Benevolent Association, Inc., Case No. RC-2007-040 (Aug. 29, 2007).***

Consent election agreement seeking to represent a bargaining unit of sworn law enforcement officers in the classifications of patrolman, sergeant, and lieutenant was approved.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Jacksonville Aviation Authority v. Jax Airport Lodge 85 of the Fraternal Order of Police, Case No. RC-2007-039 (Aug. 31, 2007).***

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

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1495, Case No. AC-2007-025 (Sept. 4, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of professional personnel was granted.

***Florida Public Employees Council 79, Federation of State, County and Municipal Employees, AFL-CIO v. Washington County Board of County Commissioners, Case No. RC-2007-021 (Sept. 4, 2007).***

Consent election agreement seeking to represent a unit of full-time and regularly scheduled part-time administrative and clerical employees was approved.

***Teamsters Local Union 385 v. Sheriff of St. Johns County, Case No. RC-2007-033 (Sept. 4, 2007).***

Consent election agreement seeking to represent a unit of rank-and-file sworn deputy sheriffs was approved.

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***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 26, Case No. AC-2007-007 (Sept. 5, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-supervisory personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 401, Case No. AC-2007-012 (Sept. 5, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-professional, non-supervisory blue and white collar personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1202, Case No. AC-2007-016 (Sept. 5, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-supervisory blue and white collar personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1132, Case No. AC-2007-021 (Sept. 5, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-professional, supervisory operational services personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1493, Case No. AC-2007-023 (Sept. 5, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-supervisory, white collar personnel was granted.

***Teamsters Local Union No. 385 v. City of Edgewater v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. RC-2007-036 (Sept. 6, 2007).***

Consent election agreement seeking to represent a unit of police department personnel was approved.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 123, Case No. AC-2007-008 (Sept. 7, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of operational services employees was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 138, Case No. AC-2007-010 (Sept. 7, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of operational services personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 447, Case No. AC-007-013 (Sept. 7, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of operational services personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1211, Case No. AC-2007-017 (Sept. 7 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-supervisory, white collar personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1131, Case No. AC-2007-020 (Sept. 7, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of wall-to-wall personnel was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1255, Case No. AC-2007-022 (Sept. 7, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-supervisory professional employees was

granted.

***Teamster, Chauffeurs and Helpers, Local 79 v. Citrus County Board of County Commissioners, Case No. UC-2007-023 (Sept. 7, 2007).***

Unit clarification petition seeking to add the classifications of utilities construction technician, utilities construction technician II, and utilities construction specialist to a bargaining unit of rank-and-file employees was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 543, Case No. AC-2007-014 (Sept. 11, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-instructional employees was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 582, Case No. AC-2007-015 (Sept. 11, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of instructional aides was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1494, Case No. AC-2007-024 (Sept. 11, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of operational services employees was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 386, Case No. AC-2007-011 (Sept. 12, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-instructional supervisory employees was granted.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 1027, Case No. AC-2007-019 (Sept. 12, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of non-professional, non-supervisory employees

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***United Food and Commercial Workers Union, Local 1625, Chartered by the United Food and Commercial Workers International Union v. City of Keystone Heights, Case No. RC-2007-017 (Sept. 12, 2007).***

Consent election agreement seeking to represent a unit of wall-to-wall employees was approved.

was granted.

***Local 4575, Edgewater Professional Firefighters, International Association of Firefighters v. City of Edgewater, Case No. RC-2007-022 (Sept. 12, 2007).***

Consent election agreement seeking to represent a unit of rank-and-file fire suppression employees was granted.

***Teamsters Local Union 769 Affiliated with the International Brotherhood of Teamsters v. Martin County Board of County Commissioners v. Martin County Public Employees United, Case No. RC-2007-025 (Sept. 12, 2007).***

Consent election agreement seeking to represent a county-wide unit of non-supervisory, non-professional employees was approved.

***International Union of Police Associations, AFL-CIO v. Sheriff of Broward County v. Broward County Police Benevolent Association, Inc., Chartered by the Florida Police Benevolent Association, Inc., Case No. RC-2007-043 (Sept. 12, 2007).***

Representation-certification petition seeking to represent a unit of law enforcement officers was granted.

***AFSCME Local 1363 of the American Federation of State, County and Municipal Employees v. Miami-Dade County and Public Health Trust of Miami-Dade County, Case No. UC-2007-015 (Sept. 13, 2007).***

Unit clarification petition seeking to add the non-professional, non-supervisory employees of the Jackson North Medical Center to a bargaining unit composed of employees employed jointly by Miami-Dade County and the Public Health Trust of Miami-Dade County was granted.

***Florida State University Board of Trustees v. Florida Nurses Association, Case No. UC-2007-025 (Sept. 13, 2007).***

Unit clarification petition seeking to modify current unit to reflect a consolidation in classifications resulting from FSU's implementation of a broadband pay band was granted.

***International Union of Police Associations, AFL-CIO v. Village of Pinecrest, Case No. RC-2007-024 (Sept. 17, 2007).***

Consent election agreement seeking to represent a unit of police sergeants was approved.

***In Re Petition of SEIU Florida Public Services Union, CTW, CLC, to Amend Certification No. 134, Case No. AC-2007-009 (Sept. 18, 2007).***

Petition seeking to substitute the Florida Public Services Union for the incumbent union as bargaining agent for a unit of rank-and-file non-instructional employees was granted.

***Teamsters Local Union 769 Affiliated with the International Brotherhood of Teamsters v. Village of Key Biscayne, Case No. RC-2007-052 (Sept. 18, 2007).***

Representation-certification petition was dismissed where the proposed unit was limited to the police dispatcher classification. Non-sworn single classification units are considered to be fragmented absent exceptional circumstances, a unique community of interest, or a conflict of interest justifying the fragmentation.

***Dade County Police Benevolent Association, Inc. v. Miami-Dade County Board of County Commissioners, Case No. UC-2007-024 (Sept. 18, 2007).***

Unit clarification petition seeking to include the classifications of animal services investigator and animal services investigator supervisor into a bargaining unit of rank-and-file law enforcement personnel was granted.

***JEA Supervisors Association v. JEA v. North Florida Public Employees, Local 630, LIUNA, AFL-CIO, Case No. UC-2007-007 (Sept. 20, 2007).***

Unit clarification petition seeking to include JEA personnel in the classification of water/wastewater/refuse treatment system coordinator into a bargaining unit of non-

professional supervisory employees was denied where the coordinator did not perform any supervisory duties. The Commission placed the position in the non-supervisory blue collar unit represented by Local 630.

***Miami Beach, Florida, Public Employees, Local 1554 of the American Federation of State, County and Municipal Employees v. City of Miami Beach, Case No. UC-2007-017 (Sept. 20, 2007).***

Unit clarification petition seeking to add several newly created classifications was granted.

***Hendry County Professional Paramedics and EMT's, International Association of Fire Fighters, Local 4520 v. Hendry County Board of County Commissioners, Case No. RC-2007-015 (Sept. 24, 2007).***

Representation-certification petition seeking to represent a unit of employees in the classifications of paramedic, emergency medical technician, and lieutenant paramedic was granted.

***Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Clay County, Case No. RC-2007-034 (Sept. 24, 2007).***

Representation-certification petition seeking to represent a unit of correctional personnel in the classifications of sergeant and lieutenant was granted.

***Pinellas Lodge 43, Fraternal Order of Police v. City of Pinellas Park, Case No. UC-2007-028 (Sept. 27, 2007).***

Unit clarification petition was dismissed where the classification sought for inclusion in the unit was in existence when the unit was certified.





## **33rd Annual Public Employment Labor Relations Forum**

The 33rd Annual Public Employment Labor Relations Forum will be presented in Orlando on October 18 and 19, 2007. Topics to be addressed include:

- How to Contain Pension Costs in an Era of Restricted Revenues
- PERC: 30 Years in 55 Minutes
- State Court Public Sector Law Survey
- 11th Circuit Employment Law Update
- Financial Urgency under Section 447.4095
- Making Funding Arguments to a Special Magistrate
- Bargaining Wages and Benefits in the Aftermath of the Property Tax Cuts
- FCHR Update
- Discipline and Termination of Public Employees
- First Amendment Cases in the Wake of *Ceballos v. Garcetti*
- Privileges, Exemptions, and Ex Parte Communications
- Ethics in Public Sector Mediation

The PERC presentation will feature a historical perspective provided by Hearing Officer H. Lee Cohee, II, looking back over his thirty-year career at PERC during which he has served as hearing officer, general counsel, and acting chairman. In addition, Frank Brogan, president of Florida Atlantic University, will be the keynote speaker at a luncheon on Friday.

The forum has been approved for 12 hours of general CLE credit and 2 hours of ethics credit.

## **Elections Verified and Certifications Issued**

*International Union of Police Associations, AFL-CIO v. Village of Key Biscayne*, Case No. EL-2007-016; Election 6/18 – 7/6/2007; Union won; Certification 1633.

*Local 3158, Destin Professional Firefighters v. Destin Fire Control District*, Case No. EL-2007-018; Election 7/5 – 7/26/2007; Union lost.

*In re Petition of Florida Police Benevolent Association, Inc., to Amend Certification 1609*, Case No. AC-2007-005; Order issued 7/30/2007; Certification 1609 amended, Certification 1634 created.

*Florida State Lodge, Fraternal Order of Police, Inc. v. University of North Florida Board of Trustees*, Case No. EL-2007-019; Election 7/17 – 8/7/2007; Union won; Certification 1635.

*Coastal Florida Public Employees Association v. Brevard County Tax Collector*, Case No. EL-2006-051; Election 8/9/2007; Union won; Certification 1636.

*Coastal Florida Public Employees Association v. Brevard County Tax Collector*, Case No. EL-2006-054; Election 8/9/2007; Union won; Certification 1637.

*Tribble v. Hillsborough County Police Benevolent Association, Inc., d/b/a West Central Florida Police Benevolent Association v. City of Auburndale*, Case No. EL-2007-020; Election 7/24 – 8/14/2007; Union lost.

*International Union of Police Associations, AFL-CIO v. City of Port St. Lucie v. Coastal Florida Police Benevolent Association, Inc.*, Case No. EL-2007-021; Election 8/16/2007; IUPA won; Certification 1638.

*Teamsters Local Union 769 affiliated with the International Brotherhood of Teamsters v. Sheriff of Monroe County v. Florida State Lodge, Fraternal Order of Police, Inc.*, Case No. EL-2007-022; Election 8/2 – 8/24/2007; Teamsters won; Certification 1639.

*Palm Beach County Police Benevolent Association, Inc., chartered by the Florida Police Benevolent Association, Inc. v. Town of Jupiter Island*, Case No. EL-2007-023; Election 8/14 – 9/5/2007; Union lost.

*SEIU Florida Healthcare Union, Local 1999 v. Health Care District of Palm Beach County*, Case No. EL-2006-053; Election 9/7/2007; Union lost.

*Florida State Lodge, Fraternal Order of Police, Inc. v. City of Rockledge v. Coastal Florida Police Benevolent Association, Inc.*, Case No. EL-2007-024; Election 8/23 – 9/13/2007; Coastal Florida PBA won.

*Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Nassau County*, Case No. EL-2007-017; Election 8/30 – 9/19/2007; Union lost.

*Teamsters Local Union 385 v. Sheriff of Nassau County*, Case No. EL-2007-025; Election 8/30 – 9/19/2007; Union lost.

*Florida State Lodge, Fraternal Order of Police, Inc. v. City of Madison*, Case No. EL-2007-026; Election 8/30 – 9/20/2007; Union lost.

*Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Santa Rosa County v. Florida Police Benevolent Association, Inc.*, Case No. EL-2007-027; Election 8/30 – 9/19/2007; FOP won; Certification 1640.

*Madison Professional Firefighters, Local 4565 v. City of Madison*, Case No. EL-2007-028; Election 9/6 – 9/26/2007; Union won.

*Florida State Lodge, Fraternal Order of Police, Inc. v. City of Melbourne v. Coastal Florida Police Benevolent Association, Inc.*, Case No. EL-2007-031; Election 9/27 – 9/28/2007; Florida State Lodge, FOP won.



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