PERC NEWS

Florida Public Employees Relations Commission

October—December 2001

2001: YEAR OF CHALLENGE, YEAR OF CHANGE

By Donna Poole, Chair

I seize the occasion of this final edition of the PERC News for 2001 as an opportunity to reflect on the challenges of the past year and the prospect of the new year before us.

First, however, I would like to recognize my fellow commissioners: Cassandra Jackson and Charles "Charlie" Kossuth. Charlie is a remarkable man who championed the rights of firefighters throughout this country for over forty years. He retired as a staff representative of the IAFF, and worked on union campaigns ranging from Hawaii to the U.S. Virgin Islands. Charlie is an easy-going individual and adds a very practical viewpoint to the Commission. Cassandra continues to serve the Commission with a vast knowledge of labor law gained from her years in practice representing counties. Commissioner Jackson serves ably in all aspects of her Commission duties, bringing both her legal expertise and compassionate concern to the resolution of the cases presented to us. It is my honor and my pleasure to work with these fine colleagues.

Now on to the year's highlights. First and foremost among the events of 2001 was the introduction and ultimate passage of the Governor's flagship initiative to reform state government through the Service First legislation. This is a groundbreaking reform to the Career Service System that had been in place virtually untouched for many years. Because the final version of this legislation has been thoroughly discussed in past issues of the PERC News, I won't review the nuances of the new law here. Suffice it to say that Service First redefines the relationship between the state and its employees to emphasize efficiency and accountability. As reflected by an article in this issue, the Commission continues to encounter and address new issues generated by the Service First legislation.

The stringent case processing timelines established by Service First have presented challenges to the Commission's staff as well as to the litigants and practitioners who appear before us. I am proud to report that the new timelines have been met or exceeded in every career service appeal filed with the Commission since the law took effect. I commend the Commission's staff for achieving this increased level of efficiency while maintaining the Commission's historically high standards for legal research and writing. I also commend and thank the parties and litigators who have appeared before the Commission this past year for their cooperation and support in this effort. Thank you all.

Although the advent of Service First necessarily focused much of the Commission's attention on its career service jurisdiction during the past year, the Commission's other varied areas of jurisdiction were not to be overlooked. Unfair labor practice charges; petitions to certify new bargaining units as well as those seeking

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to clarify, amend or decertify existing units; veteran's preference complaints; whistleblower actions; and drug-free workplace appeals continued to be heard and resolved by the Commission and its hearing officers. In the new year, we anticipate a potential explosion in representation cases depending on the Florida Supreme Court's answer to the question, certified by several district courts of appeal, of whether deputy sheriffs are categorically excluded from collective bargaining under Chapter 447. A number of cases stayed pending the supreme court's answer would be taken up again and numerous other new cases would, undoubtedly, be filed if the court answers the question in the negative.

The Commission also underwent an organizational shift in the past year. Consistent with Governor Bush's goal of redefining state government to run in a more business-like manner, the Department of Labor and Employment Security, in which the Commission has been administratively placed since its inception in 1975, is in the process of being abolished. Therefore, in July 2001, the Commission was transferred into the Department of Management Services, with the same autonomy that it has historically enjoyed.

Like the rest of state government, the Commission was called upon to tighten its belt a little in the past year, giving up two positions vacated by retiring employees. The Commission started in 1975 with forty-two employees and now has a staff of thirty-seven, notwithstanding various expansions of the Commission's jurisdiction in the interim. This staff reduction has not, however, slowed the Commission's case handling, thanks to an efficient organization and the tireless efforts of its staff.

Looking into the new year, I note that there is currently a legislative initiative to merge the Commission with other administrative law agencies, including the Division of Administrative Hearings, the Florida Commission on Human Relations, the Retirement Commission, and the Unemployment Appeals Commission. This proposal is very preliminary at present. We will keep you updated as events unfold.

All in all, we have much for which to be thankful. We appreciate your support and welcome your input. We are looking forward to continuing to serve you in 2002. My fellow commissioners and all of the Commission's staff join me in wishing all of you and your families a joyous and peaceful New Year.

The Settlement Torch Is Passed

Elizabeth "Bib" Willis, retired from the Commission in October after many years as the Commission's settlement officer. We wish Ms. Willis well in all her future endeavors.

Barry Dunn has assumed the duties of settlement officer. Mr. Dunn has been a hearing officer with the Commission for over ten years and is well versed in all areas of the Commission's jurisdiction. He is available to assist with mediation in state employee career service appeals, veteran's preference complaints, state employee whistle-blower appeals, state employee drug testing appeals, and unfair labor practice charges that have been found sufficient. Expect to receive a call from Mr. Dunn if you have one of these cases. In addition, any party can call Mr. Dunn for assistance in resolving issues in a representation case, even though a settlement officer is not appointed in those cases. He can be reached at (850) 488-8641, extension 127.

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Public Employees Relations Commission
Koger Executive Center, Suite 100
Turner Building, 2586 Executive Drive
Tallahassee, Florida 32301-5032
(850) 488-8641
FAX (850) 488-9704

Donna M. Poole	Chair
Cassandra K. Jackson	Commissioner
Charles H. Kossuth, Jr.	Commissioner
Stephen A. Meck	General Counsel
Suzanne M. Choppin	Editor
Christi Gray Sundberg	Career Service Case Summaries
Lee H. Cohee, II	Labor Case Summaries
Lori-Ann Schifter	Designer

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To be placed on the PERC News mailing list, please call (850) 488-8641 or email suzanne_choppin@fdles.state.fl.us

Commission Enunciates Service First Mitigation Analysis

Following the Service First amendments the Commission retained jurisdiction to reduce an agency's selected penalty for a career service employee only where the appealing employee is a law enforcement or correctional officer, firefighter, or professional health care provider and "if [the Commission] makes specific written findings of mitigation." § 110.227(6)(c), Fla. Stat. (2001). However, its discretion to reduce penalties in those cases over which it retains mitigation authority is no longer limited to consideration of the four statutory mitigation criteria. The Commission addressed its mitigation authority pursuant to the Service First amendments in Sanders v. Department of Corrections, 16 FCSR 495 (2001).

The Commission emphasized the responsibility of its hearing officers to make thorough findings regarding all proffered mitigating circumstances, along with an analysis of the issues presented and a recommendation as to the ultimate finding of mitigation. The Commission announced that a de novo standard of review is applicable to the legal question of whether a particular circumstance is truly mitigating in nature. In contrast, the issue of whether a mitigating circumstance was established by the evidence presented is a question of fact to be reviewed for support by competent substantial evidence. Finally, because the legislature vested the Commission with the authority to make the ultimate mitigation determination, a hearing officer's assessment of the weight assigned to a mitigating circumstance in a particular appeal will be subject to de novo review by the Commission.

Further, the Commission announced a mitigation analysis that considers both circumstances that are mitigating in nature and those that are aggravating in nature, reasoning that only through consideration of both of these countervailing influences can it fairly judge whether a penalty is too severe under the circumstance of an individual employee's case. The Commission recognized that the balancing of the weight of mitigating circumstances against the weight assigned to aggravating circumstances present in a case is not an exact mathematical operation, but rather an analytic operation that requires the exercise of judgment and discretion.

In applying this analysis, the Commission defined a mitigating circumstance as an employee's record and any aspect of the circumstances of the offense that reasonably may serve as a basis for imposing a less severe penalty. Aggravating circumstances were defined conversely. The Commission made no attempt to catalog potential mitigators or aggravators, but did confirm the continued vitality of the prior four statutory criteria. In so doing, the Commission noted that these four circumstances are no longer limited by their statutory definitions and warned that, in looking to Commission precedent applying these mitigators, it is important to discern whether a particular ruling or analysis was dictated by construction of some aspect of a now-repealed definition. Where this is the case, the precedent will have no value unless the Commission has adopted that construction under Service First.

Specifically addressing the disparate treatment mitigator, the Commission receded from the analysis adopted in Lawrence v. Department of Health and Rehabilitative Services, 11 FCSR ¶ 292 (1996), recon. denied, 12 FCSR ¶ 099 (1997), aff'd, 708 So.2d 279 (Fla. 3rd DCA 1998), finding that ruling to no longer remain viable following the Service First amendments. Rather, the Commission held that an appealing employee may now establish a prima facie showing of disparate treatment by proving only that another employee engaged in comparable conduct yet received different treatment. Upon this showing, the burden will shift to the Agency to establish compelling facts justifying the distinction between the employees. The Commission noted that while this analysis no longer requires the appealing employee to prove disparate treatment through comparison to a "comparable" employee, differences in job duties and rank may justify differences in treatment.

In relation to an employee's record, the Commission held that the length and quality of an employee's employment record, if favorable, are mitigators. Likewise, a spotless disciplinary record is a mitigator. On the other hand, a record of prior discipline is an aggravator to be balanced against any proven mitigators. In considering the seriousness of an employee's conduct, the Commission held that the fact that an offense is not particularly serious in relation to the duties and responsibilities of the offending employee remains a valid basis for mitigation, while the fact that the offense is particularly serious is relation to those duties and responsibilities will serve as an aggravator.

The Commission also considered Sanders' argument that his lack of training should be considered in mitigation. While noting that lack of training may be a mitigator where it is proven that the conduct for which an employee was disciplined resulted from that lack, the Commission found that this mitigator was not established in the case at bar.

Career Service Cases

***Killins v. Department of Juvenile Justice*, 16 FCSR 474 (2001).**

Employee's dismissal for unnecessary use of force on a juvenile and for violating an agency operating procedure and safety practice affirmed. In its final order, the Commission stated that there is no due process right to a free transcript in a non-criminal administrative hearing and that it lacked the authority to declare Section 447.208, Florida Statutes, unconstitutional. The Commission also noted that in light of the hearing officer's finding that the agency did not condone Killins' conduct, it was unnecessary for the Commission to determine at this time whether condonation remains a viable defense in the wake Service First.

***Altman v. Department of Corrections*, 16 FCSR 479 (2001).**

Employee's appeal of voluntary resignation dismissed.

***Richman v. Department of Corrections*, 16 FCSR 482 (2001).**

Employee's five-workday suspension for sleeping on duty affirmed.

***Richardson v. Department of Corrections*, 16 FCSR 484 (2001).**

Employee's dismissal for applying unnecessary physical force to an inmate and for treating an inmate in a cruel or inhumane manner when, after handcuffing an inmate, he pushed him into a wall, affirmed.

***Perkins v. Department of Corrections*, 16 FCSR 486 (2001).**

Dismissal of a correctional officer for conduct unbecoming a public employee, by setting fire to his residence with the intent to defraud an insurance company, affirmed. The hearing officer's analysis includes a discussion of applicability of the exclusionary rule to Commission proceedings.

***Johnson v. Department of Juvenile Justice*, 16 FCSR 491 (2001).**

Appeal dismissed because the Commission lacks jurisdiction to review discipline of a select exempt employee.

***Crutch v. Department of Health*, 16 FCSR 492 (2001).**

Appeal of employee who had not attained permanent career service status at the time of her dismissal dismissed for want of jurisdiction.

***Brown v. Department of Transportation*, 16 FCSR 493 (2001).**

Employee's five-day suspension for rudeness, display of uncooperative or antagonistic attitude, actions, or behavior, and threatening, abusive, or offensive language or actions affirmed.

***Williams v. Department of Corrections*, 16 FCSR 505 (2001).**

Dismissal of a correctional officer for violation of a state statute, rule, directive, or policy statement and failure to maintain a professional relationship with an inmate affirmed where employee had a personal, romantic relationship with an inmate.

***Parrish v. Department of Corrections*, 16 FCSR 508a (2001).**

Appeal of demotion dismissed for want of jurisdiction where the agency rescinded the employee's demotion retroactive to the date the demotion action was taken.

***Doyle v. Department of Business and Professional Regulation*, 16 FCSR 508b (2001).**

On remand of back pay and attorney's fees cases from the First District Court of Appeal, the Commission accepted the parties' stipulations of $108,059.23 for back pay and $75,000.00 for attorney's fees and costs as required by the court's order.

***Cocalis v. Department of Transportation*, 16 FCSR 509 (2001).**

Employee's dismissal for inability to perform her assigned duties affirmed.

***Rivera v. Department of Juvenile Justice*, 16 FCSR 512 (2001).**

Employee's five-workday suspension for negligence affirmed where employee's conduct of watching television when he should have been observing juveniles allowed juveniles to engage in oral sex.

***Peagler v. Department of Children and Families*, 16 FCSR 515a (2001).**

Appeal of ten-day suspension dismissed where the agency rescinded the suspension and agreed to restore all pay and benefits due to the employee.

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***Rector v. Department of Corrections*, 16 FCSR 515b (2001).**

The Agency had cause to discipline a correctional officer for conduct unbecoming a public employee and willful violation of a statute and agency rules when the correctional officer pushed another correctional officer and, subsequently, pled guilty to a charge of misdemeanor battery. However, the Commission mitigated the correctional officer's dismissal to a thirty-day suspension because the correctional officer was provoked and harassed, she was employed for eleven years with no previous discipline, and the seriousness of the conduct was limited due to the location of the incident and absence of injury.

***Das v. Department of Revenue*, 16 FCSR 521 (2001).**

The agency incorrectly changed the date of an employee's proferred resignation. However, the employee was denied back pay as a remedy because the agency allowed her to remain on the payroll for an additional month to increase her disability pension benefits by completing twenty-three years of service, the employee attempted to remain on the public payroll at the expense of her co-workers while knowing that she would not be returning to work, and the employee was receiving disability retirement benefits.

***Ivey v. Department of Juvenile Justice*, 16 FCSR 525 (2001).**

Employee's five-day suspension for negligence affirmed. The employee failed to prepare a needs assessment and performance plan for a client within the timelines specified in an agency manual.

***Merriex v. Department of Children and Families*, 16 FCSR 528 (2001).**

Employee's dismissal for willful violation of rules, regulations, or policies; client abuse; and inability to perform assigned duties reversed. The agency alleged that the employee failed to account for the whereabouts of a resident assigned to her group for thirty minutes and left her assigned duties without ensuring that the resident was safely inside the home. The agency did not have cause to discipline the employee because her actions were reasonable given all the circumstances and training she had been given. Employee was reinstated with back pay and benefits.

***Dickens v. Department of Juvenile Justice*, 16 FCSR 532 (2001).**

Appeal dismissed because the Commission does not have jurisdiction of adverse employment actions taken against the employee after he entered the select exempt service regardless of whether the action is taken in response to conduct that occurred when the employee's classification was still included in the career service system.

***Washington v. Department of Revenue*, 16 FCSR 537 (2001).**

Employee's dismissal for insubordination and disruptive conduct affirmed.

***Matlock v. Department of Revenue*, 16 FCSR 540 (2001).**

Appeal requesting that the Commission remove documents from the employee's personnel file and remove her supervisor from her supervisory position dismissed because the Commission does not have jurisdiction to provide the requested relief.

***Taylor v. Department of Revenue*, 16 FCSR 542 (2001).**

Employee's dismissal for misuse of state property and equipment affirmed. The Commission noted that in light of the hearing officer's finding that the Agency did not condone the employee's conduct, the Commission found it unnecessary to determine whether condonation remains a viable defense in the wake of Service First.

***Greenwade v. Department of Children and Families*, Case No. CS-2001-261 (Dec. 3, 2001).**

Motion to reopen employee's case and make a determination on all the issues raised in her appeal denied. The Commission has no rule authorizing the filing of a motion for reconsideration. The Commission's August 21, 2001, final order brought the administrative adjudicative process to a close.

***Culbreth v. Department of Business and Professional Regulation*, Case No. CS-2001-370 and CS-2001-371 (Dec. 4, 2001).**

Appeals of demotion and transfer dismissed where the agency rescinded both actions and the employee's benefits had not been affected by the unimplemented actions.

***Bohannon v. Department of Corrections*, Case No. CS-2001-352 (Dec. 5, 2001).**

A correctional probation officer supervisor's ten-workday suspension for failure to follow oral or written instructions by failing to monitor and report the lack of offender field supervision by his subordinates affirmed. Mitigation of the suspension was not warranted

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where the employee's lengthy employment record was outweighed by the seriousness of the offense and the employee's prior disciplinary record.

***Yates v. Department of Corrections*, Case No. CS-2001-329 (Dec. 6, 2001).**

Employee's dismissal for willful violation of rules, regulations, directives, or policy statements; unauthorized use of agency equipment (switchboard); failure to follow oral or written instructions; and giving false testimony affirmed where employee had two unauthorized conversations with a reporter about an event at the correctional institution and gave false testimony to an agency investigator. Motion to reopen the record to admit a timesheet denied.

***Rojas-Mariaca v. Department of Legal Affairs*, Case No. CS-2001-348 (Dec. 11, 2001).**

Employee's dismissal from the position of victim services program specialist for failure to meet the performance expectations of the duties and responsibilities of her position affirmed.

***White v. Department of Children and Families*, Case No. CS-2001-364 (Dec. 19, 2001).**

Employee's three-day suspension for unauthorized leave; leaving the work place without authorization; and willful violation of rules, regulations, or policies regarding security searches affirmed.

***Comer v. Department of Juvenile Justice*, Case No. CS-2001-347 (Dec. 27, 2001).**

Employee's dismissal from the position of senior juvenile detention officer for sleeping or inattentiveness while on duty affirmed where employee played solitaire on a computer for forty-five minutes with her back turned to a group of juvenile detainees she was assigned to supervise. The Commission noted that deficiencies in the Agency's predetermination procedures were not relevant issues because the employee failed to show that her ability to defend herself was prejudiced. The Commission also noted that the fact that a witness is compelled to testify against his will does not negate his testimony, but may be a consideration in evaluating his credibility. Finally, the Commission stated that the agency is entitled to have a representative present in the hearing room throughout the hearing, even if that representative is also a witness.

***Henderson v. Department of Children and Families*, Case No. CS-2001-340 (Dec. 31, 2001).**

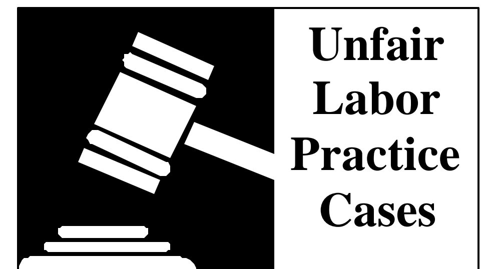
Employee's dismissal for willful violation of rules, regulations, or policies affirmed where the employee failed to perform the light duty, sit-down work assigned to her.

***Berger v. Department of Health*, Case No. CS-2001-386 (Dec. 31, 2001).**

Employee's dismissal from the position of registered nurse for willful violation of rules, regulations, or policies; conduct unbecoming a public employee; and failure to maintain established security procedures affirmed where the employee engaged in off-duty domestic battery and transported records of confidential student medical information in the trunk of her car. When employee's short good employment record was balanced against seriousness of her offenses, mitigation was not warranted.

***Brown v. Department of Corrections*, Case No. CS-2001-377 (Dec. 31, 2001).**

Employee's five-workday suspension for sleeping on duty affirmed. Mitigation of the suspension was not warranted where the employee's disciplinary record and the seriousness of her misconduct weighed against mitigation and no factors favored mitigation.



Unfair Labor Practice Cases

***Coastal Florida Police Benevolent Association, Inc. v. City of Ormond Beach*, 27 FPER ¶ 32290 (2001).**

Probationary police officer's participation in protected, concerted activity in complaining to the City Commission about pay dispute was not a substantial or motivating factor in the City's decision to dismiss him. Rather, employee was dismissed for his poor attitude, improper comments, and failure to demonstrate an ability to work as a member of the police team. No award of attorney's fees warranted.

Gary C. Williams v. AFSCME

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***Florida Council 79*, Case No. BP-2001-012 (Relating to CB-2000-011) (Oct. 10, 2001).**

The First District Court of Appeal ordered AFSCME to show cause why its appeal of the Commission's order determining that AFSCME had breached its duty of fair representation by the arbitrary manner in which it processed Williams' grievance should not be dismissed. The court characterized the order appealed as a non-final order inasmuch as it did not resolve the issue of how much back pay was due Williams. AFSCME agreed. The Court then provided AFSCME with twenty days to obtain a final order disposing of the issue of back pay, which resulted in the Commission remanding the underlying unfair labor practice case to the hearing officer for back pay determination.

***Gary C. Williams v. AFSCME Florida Council 79*, Case No. BP-2001-012 (Relating to CB-2000-011) (Oct. 15, 2001).**

The Commission denied AFSCME's motion requesting that it withdraw its order remanding the case to the hearing officer because the Commission lacks authority to do so. The Commission determined the motion to be contrary to the ruling in Mathis v. Florida Department of Corrections, 726 So.2d 389 (Fla. 1st DCA 1999), and contrary to the Administrative Procedures Act which requires the development of a record for determining the amount of back pay after it has been awarded.

***Leon Szczepanski v. Fraternal Order of Police, Lodge #133*, Case No. CB-2001-024 (Nov. 7, 2001).**

The Commission transferred an unfair labor practice case to the General Counsel to perform a sufficiency review upon additional facts and allegations provided in an appeal of the General Counsel's summary dismissal, which the Commission treated as an amended charge.

***Professional Association of City Employees v. City of Jacksonville*, Case No. CA-2001-036; *City of Jacksonville v. Professional Association of City Employees*, Case No. CB-2001-009 (Nov. 7, 2001).**

The Commission recedes from a prior ruling that it would not accept a settlement agreement in an unfair labor practice case containing a provision stating that the Commission will retain jurisdiction over the charge to enforce the settlement agreement. Citing to Doyle v. Department of Business and Professional Regulation, 794 So.2d 686 (Fla. 1st DCA 2001), the Commission accepted the parties' settlement agreement but declined to be bound by the agreement's provision that it retain jurisdiction to enforce the parties' agreement. Enforcement lies in circuit court.

***Kirk Eriksen v. Sarasota County School Board v. Sarasota Classified/Teachers Association*, Case Nos. CA-2001-052 and CB-2001-017 (Nov. 16, 2001).**

The Commission affirmed the General Counsel's summary dismissal of the unfair labor practice charge. The Commission stated that it does not have the authority to intervene in a pay dispute between an employee and his public employer and found no evidence that the union's refusal to file a grievance for Eriksen breached its duty of fair representation nor did the union act unlawfully by failing to conduct a proper investigation of one of its officers. That portion of Eriksen's charge alleging that he was threatened by an agent of the union was dismissed in the absence of evidence that the alleged threat was motivated by Eriksen's participation in protected activity. Finally, Eriksen's charge that the union acted unlawfully by failing to provide him a copy of its records was dismissed because Chapter 447, Part II, Florida Statutes, does not require the union to supply Eriksen with a copy of the records he sought.

***Teamsters Local Union No. 769 v. Miami-Dade County Public Schools*, Case No. CA-2000-028 (Nov. 27, 2001).**

The Commission dismissed an unfair labor practice charge alleging that the school board refused to honor a settlement agreement of an employee's disciplinary action.

***David Green, Mike Graham, and William Morgan v. Miami-Dade County*, Case No. CA-2001-057 (Nov. 30, 2001).**

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge as deficient. Charging parties failed to provide factual details underlying the charge, failed to reveal that they engaged in protected, concerted activity, and had no standing to bring a refusal to bargain charge against the county. The Commission refused to consider additional documents not provided to the General Counsel that were untimely filed.

Palm Beach County Police Be-

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***nevolent Association, Inc. v. City of Riviera Beach*, Case No. BP-2001-004) (Relates to AF-2001-002, AF-2001-003, AF-2001-004, BP-2001-002, BP-2001-003, CA-97-099 and RC-97-029) (Dec. 5, 2001).**

The Commission accepted a settlement agreement to pay back pay to a police officer.

***Palm Beach County Police Benevolent Association, Inc. v. City of Riviera Beach*, Case Nos. AF-2001-002, AF-2001-003, AF-2001-004 (Relates to CA-97-099, RC-97-029, BP-2001-002, BP-2001-003, and BP-2001-004) (Dec. 5, 2001).**

The Commission accepted the parties' settlement agreement to pay attorney's fees and costs.

***Geronia Frederick v. Professional Association of City Employees*, Case No. CB-2001-022 (Dec. 6, 2001).**

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge alleging that a successor certified bargaining agent breached its duty of fair representation by refusing to process a grievance that had been initiated by the predecessor bargaining agent prior to its decertification. Inasmuch as Frederick was not a member of the successor bargaining agent, the Commission agreed with the General Counsel that the successor organization had no duty to represent her under the proviso of Section 447.401.

***Palm Beach County Police Benevolent Association, Inc. v. City of Greenacres*, Case No. MS-2001-003 (Relates to CA-99-068) (Dec. 10, 2001).**

The Commission denied a motion for a new hearing pursuant to Florida Rule of Civil Procedure 1.540 because the rule does not apply to administrative bodies such as the Commission. Rather, the Commission considered the motion to be one to reopen the record. Applying its standards for considering such motions, the Commission dismissed it because the recanted testimony upon which it was based would not have affected the hearing officer's material factual determinations and because the testimony of other witnesses was not newly-discovered evidence.

***Professional Association of City Employees, Inc. v. City of Jacksonville*, Case Nos. CA-2001-059, CA-2001-064, CA-2001-065, CA-2001-068; *City of Jacksonville v. Professional Association of City Employees, Inc*, Case No. CB-2001-031 (Dec. 13, 2001).**

The Commission denied a motion to consolidate five unfair labor practice cases for hearing because the hearing would be unduly burdensome and involve unrelated issues and facts.

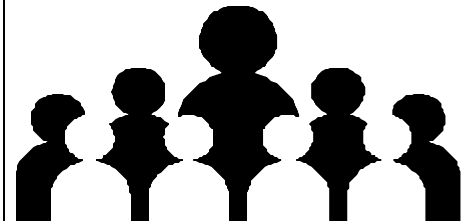
***Gary C. Williams v. AFSCME Florida Council 79*, Case No. BP-2001-012 (Relates to CB-2000-011) (Dec. 21, 2001).**

The Commission directs AFSCME to pay Williams almost $13,000.00 in back pay as damages incurred in breaching its duty to represent Williams fairly during the processing of his grievance.

***Marjorie B. Wardlow v. State of Florida, Department of Revenue*, Case No. CA-2001-063 (Dec. 21, 2001).**

The Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge because the charge failed to provide facts from]which to infer that the agency's cross-examination of Wardlow during an evidentiary hearing on a co-employee's disciplinary appeal resulted in any retaliation or discrimination against Wardlow in the workplace.

Representation Cases



***Southwest Florida Professional Firefighters, Local 1826, IAFF, Inc. v. Fort Myers Beach Fire Control District*, 27 FPER ¶ 32288 (2001).**

Order remanding case to hearing officer to develop record and decide whether District intended to fill the position of shift deputy chief in the foreseeable future.

In Re Joint Petition of Florida Board of Education and Florida

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***Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO to Amend Certification No. 732*, 27 FPER ¶ 32289 (2001).; *In Re Joint Petition of Florida Board of Education and Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO to Amend Certification No. 733*, 27 FPER ¶ 32291 (2001).**

Certifications amended to reflect the Florida Board of Education as the successor employer to the Florida Board of Regents.

***Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. City of Hialeah*, 28 FPER ¶ 33000 (2001).**

Unit clarification petition adding classifications that were inadvertently overlooked when the unit was defined granted.

***Professional Firefighters of Marco Island, Local 2887 v. City of Marco Island*, 28 FPER ¶ 33002 (2001).**

Unit clarification petition to include newly created position and delete position that no longer exists granted.

***In Re Petition of Florida State Lodge, Fraternal Order of Police Concerning City of Naples Mini-PERC*, 28 FPER ¶ 33003 (2001).**

Miscellaneous petition requesting that the Commission assume jurisdiction of future cases concerning bargaining units certified by the defunct mini-PERC granted.

***Seminole County Professional Firefighters, Local 3254, IAFF v. Seminole County*, 28 FPER ¶ 33006 (2001).**

Consent agreement for a unit of battalion chiefs approved. Assistant chiefs allowed to vote challenged ballots because their proposed exclusion from the bargaining unit as managerial employees rested solely upon stipulations of ultimate facts determined to be an insufficient evidentiary basis to support their exclusion as managerial employees.

***Local 1749, Amalgamated Transit Union, AFL-CIO, CLC v. Central Florida Regional Transportation Authority, d/b/a LYNX*, 28 FPER ¶ 33008 (2001).**

LYNX's motion for an on-site rather than a mail ballot election denied. Commission determines whether to conduct a mail ballot or an on-site election on a case-by-case basis. Factors it considers includes the number of employees, the number of work locations, the size of the employer's operations, the cost to the Commission and/or the parties, and whether the parties agree on the type of election to hold. Commission's decisions as to which type of election to hold are not rules.

***Laborers' International Union of North America, Public Employees, Local 678, AFL-CIO v. Greater Orlando Aviation Authority*, 28 FPER ¶ 33013 (2001).**

Unit clarification petition to include the classifications of ground transportation specialist and terminal operations specialist in a unit of operational services employees was denied because evidence was insufficient to conclude that classification was created after the unit was certified and the work performed was primarily administrative in nature.

***In Re Managerial/Confidential Status of the City of DeFuniak Springs*, 28 FPER ¶ 33015 (2001).**

Petition seeking the designation of secretary to the chief of police as a confidential employee granted.

***Patti King-Skinner v. AFSCME Council 79 v. City of DeFuniak Springs*, Case No. RD-2001-006 (Nov. 1, 2001).**

The Commission dismissed petition seeking to revoke the incumbent bargaining agent's certification because the showing of interest supporting the petition consisted of copies, rather than original, signatures and none of the signatures were personally dated.

***Fraternal Order of Police, Florida Labor Council v. City of Kissimmee*, Case No. RC-2001-052 (Nov. 6, 2001).**

The Commission dismissed petition seeking to represent a bargaining unit of police sergeants because petitioner was not registered.

***Florida Police Benevolent Association, Inc., Affiliated with the National Coalition of Public Safety Officers, a Division of the Communications Workers of America v. Sarasota County Sheriff's Office*, Case No. RC-2001-044 (Nov. 7, 2001).**

The Commission directed an election in a bargaining unit of correctional officers employed by the sheriff's office.

Florida Police Benevolent Association, Inc. v. State of Florida,

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***Governor Jeb Bush*, Case No. RC-2001-032 (Nov. 8, 2001).**

Petition seeking to represent a bargaining unit of special agent supervisors was dismissed as overly-fragmented.

***Ormond Beach Fire Fighters Association, IAFF, #3499 v. City of Ormond Beach*, Case No. UC-2001-048 (Nov. 8, 2001).**

Unit clarified to reflect personnel changes in the city's fire department.

***In Re Petition of Gulf County Education Association FEA-NEA to Amend Certification No. 40*, Case No. AC-2001-030 (Nov. 13, 2001).**

Certification amended to reflect a change in the name of the certified bargaining agent.

***Fraternal Order of Police, Florida Labor Council v. City of Kissimmee*, Case No. RC-2001-052 (Nov. 16, 2001).**

The Commission denied a motion to amend the representation petition because the motion was filed after the Commission had issued its final order dismissing the petition.

***Gulf County Education Association, FEA-NEA v. Gulf County School Board*, Case No. RC-2001-043 (Nov. 16, 2001).**

The Commission directed a representation election in a bargaining unit of the school board's non-instructional employees.

***Florida Police Benevolent Association, Inc., Affiliated with the National Coalition of Public Safety Officers, A Division of the Communications Workers of America v. Sarasota County Sheriff's Office*, Case No. EL-2001-047 (Relates to RC-2001-044) (Nov. 20, 2001).**

Upon consideration of the parties' assertions that the busy holiday season and events following September 11 may delay the results of a mail ballot election, the Commission granted a joint motion for an on-site election.

***Dade County School Administrators' Association, Local 77, AFSA, AFL-CIO v. School Board of Miami-Dade County, Florida v. Dade Association of School Administrators*, Case No. RC-2001-014 (Nov. 26, 2001).**

School assistant principals and vice-principals were determined to be managerial employees and, therefore, petition to represent them for the purpose of collective bargaining was dismissed. Appeal filed **No. 1D01-5140 (Fla. 1st DCA, Dec. 24, 2001)** .

***Service and Business Workers of America, Local 125, USWA, TCU, AFL-CIO, CLC v. Town of Palm Beach Shores*, Case No. RC-2001-054 (Nov. 30, 2001).**

The Commission dismissed a petition seeking to represent a single classification of police dispatchers, finding that the unit requested was overlyfragmented.

***William Doering v. AFSCME Council 79 v. City of DeFuniak Springs*, Case No. RD-2001-007 (Dec. 6, 2001).**

The Commission directed an election to ascertain whether the employees desired to decertify their bargaining agent.

***Pinellas Lodge No. 43, Fraternal Order of Police v. City of St. Petersburg v. Pinellas County Police Benevolent Association, Inc.*, Case No. RC-2001-050 (Dec. 6, 2001).**

The Commission directed an election in a previously defined bargaining unit of police officers, identification technicians, and fingerprint technicians.

***Teamsters Local Union 769, Affiliated with the International Brotherhood of Teamsters v. City of Fellsmere*, Case No. UC-2001-052 (Dec. 7, 2001).**

Bargaining unit clarified to reflect retitling of employee classifications subsequent to certification.

***1115 Florida Division of 1119, SEIU, AFL-CIO, CLC v. Health Care District of Palm Beach County*, Case No. RC-2001-056 (Dec. 11, 2001).**

The Commission approved a consent election agreement for a unit of blue and white collar employees at the District's County Home and directed an election.

***City of Cape Canaveral v. International Union of Operating Engineers, Local 673*, Case No. RC-2001-050 (Dec. 19, 2001).**

Bargaining unit clarified to exclude newly-created positions possessing a supervisory conflict of interest with their subordinates and exclude an existing classification because it no longer has a community of interest with bargaining unit members.

Elections Verified October 1 – December 31, 2001

Fraternal Order of Police, Florida State Lodge and International Union of Police Associations, AFL-CIO v. Town of Jupiter v. Palm Beach County Police Benevolent Association, Inc., Case Nos. EL-2001-037 and EL-2001-039 (Relating to RC-2001-024 and RC-2001-026); Election Conducted 09/18/01 - 09/19/01 (Union [IUPA] Won)

Fraternal Order of Police, Florida State Lodge and International Union of Police Associations, AFL-CIO v. Town of Jupiter v. Palm Beach County Police Benevolent Association, Inc., Case Nos. EL-2001-038 and EL-2001-040 (Relating to RC-2001-025 and RC-2001-027); Election Conducted 09/18/01 - 09/19/01 (Union [IUPA] Won)

International Union of Police Associations, AFL-CIO v. City of Casselberry Police Department v. Central Florida Police Benevolent Association, Inc., A Chapter of the Florida Police Benevolent Association, Inc., Case No. EL-2001-036 (Relating to RC-2001-018); Election Conducted 09/05/01 – 09/26/01 (Union [Central Florida PBA] Won)

International Union of Police Associations, AFL-CIO v. City of Casselberry Police Department, Case No. EL-2001-033 (Relating to RC-2001-019); Election Conducted 09/05/01 – 09/26/01 (Union Won)

Joseph F. Going v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees (AFL-CIO) v. Polk County Board of County Commissioners, Case No. EL-2001-042 (Relating to RD-2001-004); Election Conducted 10/03/01 - 10/04/01 (Union Won)

Pinellas Park Firefighters Association, Local 2193 of the International Association of Firefighters, AFL-CIO v. City of Pinellas Park, Case No. EL-2001-041 (Relating to RC-2001-034); Election Conducted 09/20/01 - 10/11/01 (Union Won)

Florida Police Benevolent Association, Inc. v. City of Clermont, Case No. EL-2001-044 (Relating to RC-2001-041); Election Conducted 10/09/01 - 10/30/01 (Union Lost)

Ocoee Professional Firefighters, Local 3623 v. City of Ocoee, Case No. EL-2001-045 (Relating to RC-2001-037); Election Conducted 10/18/01 - 11/07/01 (Union Won)

Local 1749, Amalgamated Transit Union, AFL-CIO, CLC v. Central Florida Regional Transportation Authority d/b/a LYNX, Case No. EL-2001-043 (Relating to RC-2001-033); Election Conducted 10/25/01 - 11/15/01 (Union Won)

Seminole County Professional Firefighters, Local 3254, IAFF v. Seminole County, Case No. EL-2001-046 (Relating to RC-2001-038); Election Conducted 11/01/01 - 11/20/01 (Union Won)

Florida Police Benevolent Association, Inc., Affiliated with the National Coalition of Public Safety Officers, a Division of the Communications Workers of America v. Sarasota County Sheriff's Office, Case No. EL-2001-047 (Relating to RC-2001-044); Election Conducted 12/05/01 (Union lost)

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