

Chair Poole Reappointed

The Commissioners and staff of the Commission are pleased to announce that Chair Donna Maggert Poole has been reappointed by Governor Bush to a second term effective January 14, 2004 to January 1, 2008. This is Chair Poole's fifth appointment to the Commission. She was appointed by Governor Martinez as a Commissioner for a term from 1988 until 1992. Governor Chiles specially appointed her as a Commissioner in the mid-1990s. In 1999, Chair Poole was first appointed as Chair by Governor Bush to conclude the term of Chairman Lacy Mahon, Jr. Chair Poole then attained her first full four-year term as Chair in 2000.

University Boards of Trustees Are Not Successors to Florida Board of Education

By John G. Showalter, Hearing Officer.

In *Florida Public Employees Council 79, AFSCME and United Faculty of Florida v. Florida State University Board of Trustees* and *Florida Public Employees Council 79, AFSCME v. University of West Florida Board of Trustees*, 29 FPER ¶ 281 (2003), a majority of the Commission determined that individual university boards of trustees are not successor employers to the Florida Board of Education. In early 2003, AFSCME and the United Faculty of Florida (UFF) filed unfair labor practice charges against Florida State University Board of Trustees (FSU), University of West Florida Board of Trustees (UWF), and the Board of Governors (BOG) alleging that they unlawfully ceased dues deductions and failed to process grievances. The BOG was subsequently dismissed as a party. The hearing officers assigned to the cases determined that FSU and UWF were not successor employers. In the *FSU* case, the hearing officer concluded that FSU did not commit an unfair labor practice by ceasing dues deductions and failing to process grievances. Likewise, in the *UWF* case, the hearing officer determined that UWF did not unlawfully cease the collection of union dues for AFSCME. Once exceptions were filed, all three cases were consolidated before the Commission.

The Commission majority began its analysis by reiterating the Commission's decision in *In re Florida Public Employees Council 79, AFSCME*, 29 FPER ¶ 75 (2003), *appeal filed, sub nom, Florida Public Employees Council 79, AFSCME v. Public Employees Relations Commission and Florida Board of Governors*, Case No. 1D03-1190 (Fla. 1st DCA Mar. 25, 2003), wherein it held that each board of trustees is the public employer of the employees at its university pursuant to Section 447.203(2), Florida Statutes. Given that FSU and UWF are the public employers of the employees at their universities, the issue became whether FSU and UWF are "successor" employers to the Florida Board of Education (BOE).

Pursuant to *IBEW, Local 323 v. Lake Worth Utilities Authority and City of Lake Worth*, 11 FPER ¶ 16024 (1984), the successorship inquiry focuses upon the continuity of the enterprise after the change in ownership. Although the determination is based on the totality of the circumstances and is highly fact specific, certain factors are usually considered indicative of successorship. For example, retention of the predecessor's employees in the same jobs, operation of the same facilities, use of the same supervisors, and manufacture of the same type of product.

In both *FSU* and *UWF*, the hearing officers applied *Lake Worth* to the facts of their respective cases and determined that there was not substantial continuity between the BOE and the boards of trustees at FSU and UWF. For example, each board of trustees only received a fraction of the BOE's work force, each board of trustees only operated a fraction of the facilities previously operated by the BOE, and each only used a fraction of the supervisors employed by the BOE. Similarly, even though both boards of trustees were created to "produce" education, the differences in the scope and purpose of those activities reflects a discontinuity between the employers. The BOE is involved in producing an

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assorted variety of education from kindergarten through advanced graduate degrees. Moreover, the BOE's governance of post-secondary institutions involved managing institutions ranging from very small colleges to huge universities. The individual boards of trustees are exclusively focused on the particular educational goals and missions of their institution, which will vary dependent on the size and location of the university. Given these factors, the hearing officers determined that the boards of trustees were not successor employers to the BOE.

Based upon its review of the facts and the applicable case law, the majority agreed with the hearing officers and concluded that the boards of trustees are not successor employers for their employees who are included in certifications 218 and 730-33, the statewide university system bargaining units. The majority noted that in reaching this conclusion it did not overlook UFF's contention that federal precedent required that the issue of continuity be viewed from the perspective of the affected employees. *See, e.g., Fall River Dyeing and Finishing Corp. v. NLRB*, 107 U.S. 27 (1987); *International Union of Electrical, Radio and Machine Workers*, 604 F. 2d 689 (D.C. Cir. 1979); *Zim's Food Liner v. NLRB*, 485 F. 2d 1131 (7th Cir. 1976). The majority indicated that the Commission has not adopted that approach used by the NLRB and specifically determined that it was inappropriate to analyze the issue of continuity principally from the perspective of the affected employees at one of the new employers because of the differences between the private and public sectors.

The majority explained that successorship issues in the public sector generally occur as a result of statutory changes. For example, the change in employer from the BOE to the boards of trustees resulted from an amendment to Section 447.203(2), Florida Statutes. Public sector transfers, mergers, and consolidations rarely involve concerns unique to the private sector, such as rehabilitating a failing business or increasing profits. Instead, factors unique to the public sector drive such changes. By virtue of the legislature's determination that the individual boards of trustees were the public employers of the employees at their institutions, and other recent legislation affecting public education, it was evident that the intent was to decentralize the administration of the state university system to one accountable on an individual university level. This radical change in the method by which Florida administers educational services at its public universities would be ignored if the Commission were solely guided by the employees' subjective perspective.

The statutory designation of the boards of trustees as the public employers for the employees at their institutions created a factual scenario different than that presented by any other successorship case previously considered by the Commission. In previous cases, all of the employees removed from the bargaining unit at the predecessor employer were transferred into a single new employer. That new employer employed all the unit employees who were moved from the previous employer, it assumed responsibility for all facilities used by those unit employees, it used all the same supervisors, and it performed the same mission as the previous employer. In contrast, here the predecessor employer, the BOE, has been splintered into eleven new employers. As indicated by the hearing officers, only a fraction of the BOE's employees, supervisors, and facilities went to FSU and UWF. Similarly, the BOE's mission was very different from the mission of FSU and UWF. In this context, it would be illogical to conclude that there is continuity between the BOE and each individual university board of trustees.

The majority also noted that in resolving the continuity issue it was important to consider the historical way in which UFF became certified to represent the then board of regents' employees and the significant differences between the certification procedures in the National Labor Relations Act (NLRA) and Chapter 447, Part II, Florida Statutes. In Florida, an employer has no obligation to negotiate with the union until it is properly certified by the Commission. Here, an election was conducted in 1976 among the nine universities of higher learning that existed at the time and UFF was certified as the bargaining agent. However, as the unit covered the entire university system under the board of regents, the ballots were not counted by institution and there was no determination of majority status at the individual campuses.

Moreover, in evaluating the applicability of the private sector successorship doctrine, it is important to recognize that it merely created a presumption of continued majority support for the union. In the private sector, this presumption can be rebutted by objective evidence that this support has dissipated, such as by diminished dues deduction. This approach is not authorized in Florida's public sector. Given that there is no statutory mechanism for public employers to test majority status, the antiquity of the original election, that majority status was not determined at each individual institu-

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tion, and that the legislature has statutorily imparted autonomy for each institution, the majority did not believe it could reasonably presume that a majority of employees supported UFF at FSU and UWF. Thus, it could not effectively certify UFF without the sanctity of representation petitions and elections.

Dissent

Commissioner Kossuth dissented. By application of *Lake Worth*, Commissioner Kossuth believes that FSU and UWF are successor employers and have an obligation to maintain the status quo as determined by their contracts. In his opinion, to conclude otherwise would cast aside twenty-six years of labor relations history during which these employees had bargaining rights and contracts. According to Commissioner Kossuth, maintaining the status quo is even more compelling in the public sector where employees are prohibited from striking, yet are entitled to protection of the right to collectively bargain under Article I, section 6 of the Florida Constitution, and against the impairment of the right to contract under Article I, section 10 of the Florida Constitution.

The *FSU* and *UWF* cases have been appealed to the First District Court of Appeal, Case No. 1D03-4689.



Practice Pointers: Ex Parte Documents

By: William D. Salmon, Hearing Officer.

Florida Administrative Code Rule 28-106.104(2)(f) and (4) requires a party to indicate that a document sent to the Commission was also sent to the opposing party. A recent career service case brought to the Commission's attention the need to review its practice when a party files a document but does not indicate that a copy was sent to the opposing party.

Previously, when the Commission received a document without a certificate of service, the Clerk's Office would send the document to all parties along with a letter stating that further documents would not be considered unless there was proof of service on the other party. If the offending party filed another document without a certificate of service, the Clerk's Office continued to forward the document to the opposing party along with a letter stating that the documents would not be considered until it was properly served on the other party. A review of this practice led to the conclusion that unrepresented persons did not understand how to prepare a certificate of service or the ramifications of their actions.

This practice has been revised. Upon receipt of a document without a certificate of service, the Commission will continue to forward the initial document to the other party. However, the offending party is informed that it is their responsibility to provide all parties with copies of any document they send to the Commission. In addition, they are notified that a certificate of service must be included at the end

of any document that they send to the Commission. This letter includes the following example of a certificate of service:

I certify that a copy of this [insert name of document] has been (check one) mailed or delivered to all other parties on this _____ day of _____.

Print Your Name

Your Signature

The offending party is also warned that if the Commission receives another document that does not include a certificate of service, it will not be forwarded to the other party. Instead, the Commission will not consider the document as properly filed and it will be returned to the sender.

Thereafter, any documents filed by that party with the Commission that do not have a certificate of service are returned to the sender with the admonition that the documents have not been considered because they were improperly filed. A copy of the letter, but not the document, is sent to the opposing party.

Employee Organization Must Disclose Financial Information to its Members

By John G. Showalter, Hearing Officer.

In the case of *Rick Reed v. Florida Education Association*, Case No. CB-2003-002 (Fla. PERC Nov. 14, 2003), the Commission resolved several issues relating to the financial disclosure requirement in Section 447.305(5), Florida Statutes (2003), and its application to unions and private corporations formed by unions. Reed, an FEA member, filed an unfair labor practice charge alleging that the FEA refused to allow him to inspect its financial records and the records of the Florida Education Association Quality Public Education Corporation, Inc. (QPEC). Section 447.305(5) requires an employee organization to keep accurate accounts of its income and expenses and mandates that its accounts be open for inspection at all reasonable times by any member of the organization or the Commission.

The hearing officer determined that the FEA is an employee organization within the meaning of Section 447.203(11), Florida Statutes (2003), and that the inspection requirement in Section 447.305(5) is not limited to those employee organizations which have registered with the Commission or seek to become a certified bargaining agent. Thus, the FEA committed an unfair labor practice by failing to permit Reed to inspect its accounts within a reasonable time after he made his request. The hearing officer also concluded that Reed was not entitled to inspect the accounts of QPEC because it is not an employee organization.

In its exceptions, the FEA asserted that it is not an employee organization because it has not registered with the Commission and has not sought to be certified as a bargaining agent for a unit of employees. Rather, its local affiliates register with the Commission and have become certified as bargaining

agents for numerous units. Nevertheless, employees who become members of a local FEA affiliate also become members of the FEA. The FEA then provides numerous employment-related services to the local affiliates, if requested. The Commission agreed with the hearing officer that these activities undertaken by the FEA in support of its local affiliates demonstrate that it is an employee organization within the meaning of Section 447.203(11).

The FEA next asserted that, even if it is an employee organization, the inspection requirement does not apply to it because it has never registered with the Commission or sought to become a certified bargaining agent. In resolving this exception, the Commission agreed with the hearing officer that Section 447.305(5) is plain and unambiguous and should not be read to mean that the inspection requirement only applies to employee organizations which are registered and/or certified. The Commission rejected the FEA's argument that it is illogical to require an employee organization which does not register or seek to become a certified bargaining agent to comply with the inspection requirement. The Commission noted that employees who join a local FEA affiliate also become members of the FEA, and that a portion of the dues paid by a member to the local affiliate is transmitted to the FEA. Thus, it is both logical and reasonable that FEA members, who contribute to the financial well-being of the FEA, would have the right to inspect the FEA's financial records.

The Commission next addressed Reed's contention that he should be allowed to inspect the financial records of QPEC, a corporation registered pursuant to Chapter 607, Florida Statutes (2003). QPEC was formed for the pur-

pose of conducting "any lawful business" permitted by law, and it is a vehicle for political advocacy whereby the FEA's officers can promote the FEA's cause within the political arena to its membership and the general public. The hearing officer determined that Reed was not entitled to inspect the financial records of QPEC because it is not an employee organization within the meaning of Section 447.203(11) but, rather, is a corporation formed to conduct the business of political advocacy.

The Commission agreed with the hearing officer that QPEC is not an employee organization. Thus, the plain language of Section 447.305(5) did not grant Reed the right to inspect its financial records. Furthermore, the Commission concluded, as a matter of policy, that it is not appropriate to allow Reed access to the financial records of QPEC, notwithstanding that the FEA and QPEC are closely related entities. The fact that these two entities share many features does not demonstrate that QPEC is an employee organization or detract from its existence as a separate registered corporation. The Commission noted that the legislature has not decreed in Chapter 447, Part II, Florida Statutes (2003), that it has the authority to require a corporate entity associated with an employee organization to also divulge its financial records to a member of the employee organization. By permitting such inspections, the Commission stated that it would be improperly expanding the scope of Section 447.305(5) and to require entities that are not employee organizations to open their financial records to individuals who are not members of such groups. Therefore, the FEA did not commit an unfair labor practice by failing to permit Reed to inspect the financial records of QPEC.

Chesnut II: The Back Pay Proceedings

In *Department of Corrections v. Chesnut*, 847 So. 2d 579 (Fla. 1st DCA 2003), the First District Court of Appeal dismissed the Agency's appeal of the Commission's order reinstating Chesnut to his position of assistant warden on the ground that the Commission's order was not final until the amount of back pay due Chesnut was determined. The Commission reassumed jurisdiction and conducted a back pay proceeding. The hearing officer applied the Commission's longstanding policy of requiring an improperly dismissed employee to make a good faith effort to find alternative employment to mitigate his damages. However, because of the unique nature of Chesnut's case, especially since he had been told he had no right to appeal to the Commission, the hearing officer applied a lenient interpretation to that policy. She allowed Chesnut nine months of back pay despite his having made only minimal efforts to find other work during that time. Thereafter, she denied any further back pay because Chesnut's evidence of a work search was vague and "fuzzy." Moreover, the hearing officer disallowed compensation for time Chesnut spent in a training class and time he spent caring for his mother rather than looking for work. In addition, the hearing officer ruled that the Agency was entitled to setoff the unemployment compensation Chesnut had received against any back pay award.

The hearing officer also concluded that once Chesnut found alternative employment at a significantly lower rate of pay, he still had an obligation to actively search for a better paying job. Since he did not do so, Chesnut was not entitled to be compensated for the difference between his old and new salaries. Finally, the hearing officer concluded that the period of back pay liability terminated when Chesnut, who had not been reinstated by the Agency at the time of the back pay proceeding, failed to timely petition the circuit court to enforce the Commission's order of reinstatement. This lack of due diligence caused the expiration of the liability period.

The Commission rejected an attempt by Chesnut to re-open the record for more evidence, denied Chesnut's request for compensation for room and board that Chesnut sought due to his loss of low-rent housing on the prison grounds, and adopted the hearing officer's recommended order with one minor modification regarding Chesnut's age. Under the statute in effect at the time of Chesnut's dismissal, the Commission was authorized to award attorney's fees to an employee if the employee is sustained. Noting that Chesnut demanded \$211,000.00 plus interest yet was awarded less than \$41,000.00 plus interest, and that the Agency prevailed on the issue of lack of work search and other issues litigated, the Commission joined in the hearing officer's conclusion that Chesnut did not prevail on the issues litigated at hearing. Hence, the Commission did not award Chesnut fees or costs for litigating the amount of back pay. *Chesnut v. Department of Corrections*, 18 FCSR 315b (2003). The Agency has now appealed the Commission's order reversing Chesnut's dismissal to the First District Court of Appeal, Case No. 1D03-4525.

Commission Adopts FAX Procedures

By: June M. Farrell, Clerk of the Commission.

The Commission has adopted the following procedures relating to transmission of orders and receipt of documents via facsimile (FAX). When all parties to a case have FAX numbers on file with the Commission, orders will be transmitted by FAX along with a notice containing the following language: Pursuant to the Uniform Facsimile Signature of Public Officials Act, Section 116.34, Florida Statutes, this order is being issued to you by facsimile delivery. You will *NOT* receive a duplicate paper copy by mail. Accordingly, please retain this facsimile as your copy of the order. If you have encountered problems with the electronic delivery of the copy, please contact the Commission's Clerk at (850) 488-8641.

The Commission's facsimile machine will transmit and receive documents only during the Commission's office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays observed by the State of Florida. The facsimile machine will be off at all other times. You should be aware that the heaviest usage now takes place between 4:00 p.m. and 5:00 p.m. Therefore, to ensure that your entire document will be received, your transmission should be sent as early as possible in the business day.

The Commission will *not* accept by facsimile transmission documents requiring original or notarized signatures. All other documents will be accepted by facsimile. However, *FILINGS ARE LIMITED TO TEN PAGES PER DOCUMENT* so that others may also have access to our facsimile machine. When filing by FAX, please transmit two copies. Do not file the original document. Exceptions to those procedures will be made only under extreme circumstances and only with prior approval of the Clerk of the Commission.



Career Service Cases

***Martin v. Department of Transportation*, Case No. CS-2003-255 (Oct. 2, 2003).**

Dismissal of correctional officer senior inspector for failing to immediately report allegations of guns on a prison compound and for falsification of records affirmed. Mitigation not warranted.

***Lapham v. Department of Corrections*, 18 FCSR 303 (2003).**

Dismissal of correctional officer for failing to report information about inmates having firearms and for completing a false written statement affirmed. Mitigation not warranted. Appealed to 4th DCA, Case No. 4D3-4319.

***Dumas v. Department of Business and Professional Regulation*, 18 FCSR 307 (2003).**

Five-day suspension of regulatory specialist II for disruptive behavior, insubordination, lying, and use of threatening language vacated. Sharing of concerns with bureau director does not amount to a refusal to comply with the chain of command directive. Also, the information provided by the employee to senior management analyst regarding the director was not deliberately inaccurate. Additionally, even if statement "What goes around comes around" constituted a threat, the maximum penalty the agency could impose on the employee is a written reprimand. Back pay awarded.

***Patterson v. Department of Corrections*, 18 FCSR 311 (2003).**

Dismissal of correctional officer for having a personal relationship with an inmate by participating in telephone conversations involving personal information affirmed. Mitigation not war-

ranted. Employee failed to prove disparate treatment.

***White v. Department of Agricultural and Consumer Services*, 18 FCSR 315a (2003); *Morrison v. Department of Corrections*, 18 FCSR 333 (2003); *George v. Department of Corrections*, 18 FCSR 334 (2003); *Hall v. Department of Corrections*, 18 FCSR 335 (2003); *O'Lear v. Department of Corrections*, Case No. BP-2003-015 (Nov. 12, 2003); *Titus v. Department of Corrections*, Case No. BP-2003-017 (Dec. 15, 2003).**

Back pay cases closed because employees failed to file a back pay petition.

***Titus v. Department of Corrections*, 18 FCSR 322a (2003).**

Five-day suspension of correctional officer for sleeping on duty vacated. Back pay awarded.

***Uek v. Department of Highway Safety and Motor Vehicles*, 18 FCSR 326 (2003).**

Dismissal of license, fee, and tax auditor II for poor performance affirmed.

***Weems v. Department of Juvenile Justice*, 18 FCSR 324 (2003).**

Juvenile probation officer's reassignment to a different position and reduction in pay for inability to perform assigned duties affirmed.

***McDaniel v. Department of Corrections*, 18 FCSR 330 (2003).**

Dismissal of correctional officer for insubordination and willfully violating agency policy by failing to stay and work the next shift, affirmed. Mitigation not warranted.

***Connaughton v. Department of Children and Families*, 18 FCSR 332 (2003); *Kyle-Smith v. Department of Corrections*, Case No. CS-2003-331 (Nov. 5, 2003); *Gregory v. Department of Juvenile Justice*, Case No. CS-**

2003-359 (Dec. 11, 2003); *Hull v. Department of Juvenile Justice*, Case No. CS-2003-356 (Dec. 16, 2003).

Appeals dismissed because employees failed to appear at hearing.

***Bean v. Department of Transportation*, Case No. CS-2003-205 (Nov. 3, 2003).**

Dismissal of engineering technician for insubordination affirmed. Employee repeatedly refused his supervisor's direct order to prepare an explanatory e-mail.

***Maibach v. Department of Corrections*, Case No. CS-2003-253 (Nov. 3, 2003).**

Five-day suspension of correctional probation officer for failing to document attempted personal contacts in the case notes and for not violating the offender immediately when she was absent from her residence affirmed. Mitigation not warranted.

***McKinley v. Department of Juvenile Justice*, Case No. CS-2003-249 (Nov. 5, 2003).**

Appeal dismissed for lack of jurisdiction where employee's reassignment did not result in either a reduction in pay or a demotion.

***Derycke v. Department of Corrections*, Case No. CS-2003-248 (Nov. 14, 2003).**

Suspension of correctional officer for negligence, failure to follow oral or written instructions, willfully violating agency rules, failure to truthfully answer questions, and conduct unbecoming a public employee vacated. Primary witness's testimony was insufficient to prove the agency's case.

***Lewis v. Department of Juvenile Justice*, Case No. CS-2003-203 (Nov. 19, 2003).**

Dismissal of youth custody officer for failing to search juvenile prior to transporting him, failing to process evi-

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dence, and negligence affirmed. Mitigation not warranted.

Pittman v. Department of Corrections, Case No. CS-2003-234 (Nov. 19, 2003).

Dismissal of correctional officer sergeant for violating sexual harassment policy affirmed. Mitigation not warranted.

Hoppenbrouwer v. Department of Management Services, Case No. CS-2003-251 (Nov. 19, 2003).

Dismissal of senior clerk for excessive absences affirmed.

Love v. Department of Agriculture and Consumer Services, Case No. CS-2003-336 (Nov. 20, 2003).

Dismissal of fruit and vegetable inspector for not maintaining the required license in order to perform her assigned duties affirmed.

Gerrell v. Department of Environmental Protection, Case No. CS-2003-332 (Nov. 24, 2003).

Dismissal of park ranger for violating Agency computer use rules affirmed. Charge of perjury dismissed. Appeal pending. Appealed to 1st DCA, Case No. 1D03-5444.

Thomas v. Department of Corrections, Case No. BP-2003-011 (Nov. 25, 2003).

Agency ordered to pay employee \$2,619.85 in back pay. Employee not entitled to more back pay because he failed to conduct a job search with due diligence or maintain any documents to corroborate his job search.

Laughlin v. Department of Children and Families, Case No. CS-2003-334 (Nov. 25, 2003).

Dismissal of economic self-sufficiency specialist I for poor performance affirmed. Employee failed to complete 98% of recertification reviews

by the end of each month. Agency did not violate Americans with Disabilities Act because discipline process was initiated before employee notified agency of her disabilities.

Paez v. Department of Children and Families, Case No. CS-2003-337 (Nov. 25, 2003).

Dismissal of senior clerk-forensic for insubordination and conduct unbecoming a public employee affirmed. Employee failed to make corrections to an urgent letter before the close of business.

Dumas v. Department of Business and Professional Regulation, Case No. BP-2003-016 (Dec. 1, 2003).

Agency ordered to pay the employee \$506.00 in back pay.

Wright-Simpson v. Department of Corrections, Case No. CS-2003-219 (Dec. 3, 2003).

Dismissal of correctional probation specialist for failing to respond to questions regarding her official duties and for intentionally filing a false affidavit in federal court affirmed. Mitigation not warranted. Appealed to 4th DCA, Case No. 4D03-5034.

Wilkerson v. Department of Transportation, Case No. CS-2003-258 (Dec. 4, 2003).

Reduction in pay of operations maintenance support trades level III for negligence affirmed. Employee grabbed a subordinate's leg and lifted that subordinate into the air.

Hall v. Department of Corrections, Case No. CS-2003-254 (Dec. 8, 2003).

Dismissal of correctional officer for attempting to assist an inmate in obtaining a job change by falsifying the names of employees without their authorization affirmed. Mitigation not warranted because the seriousness of the employee's conduct and her prior disciplinary record outweighed her lengthy work history.

Cox v. Department of Juvenile Justice, Case No. CS-2003-265 (Dec. 8, 2003).

Dismissal of senior juvenile detention officer for failing to call for assistance when there was any potential of injury or riot and for not calling for medical attention affirmed.

Dunson v. Department of Corrections, Case No. CS-2003-320 (Dec. 8, 2003).

Appeal dismissed because employee misidentified the agency in which she was employed when she was dismissed from her employment.

Farmer v. Department of Children and Families, Case No. CS-2003-392 (Dec. 11, 2003).

Appeal of a proposed personnel action dismissed because it is a premature appeal over which the Commission does not have jurisdiction.

Tyre v. Department of Corrections, Case No. CS-2003-269 (Dec. 15, 2003).

Dismissal of correctional officer for failing to respond appropriately to assist fellow officers who were involved in a confrontation with an inmate affirmed. Mitigation not warranted.

Melendez v. Department of Corrections, Case No. CS-2003-347 (Dec. 15, 2003).

Demotion of correctional probation senior officer for substandard quality and quantity of work affirmed. Significant number of deficiencies found in employee's caseload. Mitigation not warranted.

Bocio v. Department of Health, Case No. CS-2003-378 (Dec. 23, 2003).

Appeal dismissed because employee did not attain permanent status as a career service system employee.

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Passino v. Department of Corrections, Case No. CS-2003-330 (Dec. 29, 2003).

Dismissal of correctional officer major for kicking inmates affirmed. Mitigation not warranted. Employee entitled to ten days of back pay because the Agency improperly invoked the statutory extraordinary dismissal procedure.

Representation Cases



Florida State Lodge, FOP v. City of Milton, 29 FPER ¶ 263 (2003).

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

ATU, Local 1577 v. Palm Tran and Palm Beach County, Case No. UC-2003-013 (Oct. 6, 2003).

Unit clarification petition dismissed because union's mistaken assumption regarding position's duties is not a sufficient basis to demonstrate that the position was omitted from the unit through inadvertence or misunderstanding.

Florida Regional Council of Industrial and Public Employees, Local Union 2081 v. Jacksonville Airport Authority, 29 FPER ¶ 270 (2003).

Recognition-acknowledgement petition for a bargaining unit of nonprofessional, nonsupervisory employees granted.

Florida PBA v. Sheriff of Collier County, 29 FPER ¶ 272 (2003).

Consent election agreement seeking to represent a unit of deputy sheriffs and corporals approved.

Apopka Professional Firefighters Association, Local 4277 v. City of Apopka, 29 FPER ¶ 275 (2003).

Nonsupervisory unit of firefighters approved. Lieutenants do not have a supervisory conflict of interest.

Florida State Lodge, FOP v. Charlotte County Sheriff's Office v. Florida PBA, 29 FPER ¶ 274 (2003).

Consent election agreement seeking to represent a unit of lieutenants and sergeants approved.

Florida State Lodge, FOP v. Orange County Sheriff's Office v. Florida PBA, 29 FPER ¶ 277 (2003).

Consent election agreement seeking to represent a supervisory unit of law enforcement personnel approved.

Transport Workers Union of America, Air Transport Division, Local 525 v. Canaveral Port Authority v. District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, 29 FPER ¶ 279 (2003).

Consent election agreement seeking to represent a wall-to-wall bargaining unit approved. District 2A's motion to disclaim interest granted.

In re St. Pete Beach Professional Firefighters Association, Local 2266, 29 FPER ¶ 280 (2003).

Petition to substitute St. Pete Beach Professional Firefighters Association, Local 2266, for St. Petersburg Association of Firefighters, Local 747 granted.

UFF v. FAU Board of Trustees, 29 FPER ¶ 286 (2003).

Unit of faculty employees approved. The Commission determined that FAU is not the successor employer, but rather a new employer.

UFF v. FSU Board of Trustees v. FSU Schools, 29 FPER ¶ 287 (2003).

Rank-and-file bargaining unit of school faculty approved. FSU and FSUS are joint employers of the employees in the proposed bargaining unit.

Unfair Labor Practice Cases

GSA of Florida/Office and Professional Employees International Union, Local 100 v. Miami-Dade County, 29 FPER ¶ 265 (2003).

County committed unfair labor practice by unilaterally altering the work schedule of protocol officers. Union awarded attorney's fees and costs of litigation. Appealed to 3rd DCA, Case No. 3D3-2907.

Professional Association of City Employees v. City of Jacksonville, Case No. CA-2003-050 (Nov. 14, 2003).

General Counsel's summary dismissal affirmed. Doctrine of res judicata prohibited union from raising a claim that could have been litigated in the prior unfair labor practice case.

Diez v. City of North Miami Beach, Case No. CA-2003-082 (Dec. 15, 2003); Thompson v. Palm Beach County School District, Case No. CA-2003-064 (Dec. 30, 2003); Thompson v. Palm Beach County CTA, Case No. CB-2003-023 (Dec. 30, 2003).

General Counsel's Summary Dismissals were affirmed. Charges were untimely filed.

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Professional Firefighters of Naples, Local 2174 v. City of Naples, Case No. RC-2003-124 (Nov. 3, 2003).

Representation-certification opt-in petition dismissed because the Commission cannot determine whether the petition has been timely filed where the petition discloses that there is an existing collective bargaining agreement, but does not provide the date on which the agreement expires.

Florida Regional Council of Industrial and Public Employees v. St. Johns County, Case No. RC-2003-075 (Nov. 4, 2003).

Consent election agreement approved. Opt-in election to be held to determine whether the majority of full-time employees in the classifications of crew chief I and II; groundskeeper; heavy equipment operator I and II; maintenance worker I, II, and III; nursery operator; park field coordinator; park staff coordinator; and technician I desire to be represented by the union.

In re Northeast Florida Public Employees, Local 630, LIUNA, Case No. MS-2003-002 (Nov. 6, 2003).

Petition seeking to disclaim interest in continuing to represent a wall-to-wall bargaining unit granted.

Florida State Lodge, FOP v. City of Pensacola, Case No. RA-2003-014 (Nov. 7, 2003).

Recognition-acknowledgment petition seeking to represent a bargaining unit of police sergeants granted.

Village of Palm Springs v. Palm Beach County PBA., Case No. UC-2003-018 (Nov. 19, 2003).

Unit clarification petition seeking to exclude public safety sergeants, ALS sergeants, and detective sergeants from the bargaining unit granted.

Florida Nurses Association v. FSU Board of Trustees, Case No. RC-2003-108 (Nov. 25, 2003).

Consent election agreement seeking to represent a unit of health care professionals approved.

Florida PBA v. UWF Board of Trustees, Case No. RC-2003-106 (Nov. 25, 2003).

Consent election agreement seeking to represent a unit of sworn law enforcement officers approved.

Farnsworth v. Teamsters Local Union 385 v. Volusia County, Case No. RD-2003-006 (Nov. 25, 2003).

Petition to revoke certification of bargaining agent granted.

UFF v. FIU Board of Trustees, Case No. RC-2002-071 (Dec. 1, 2003).

Unit of faculty and other professional educational personnel approved. Department chairpersons possess a supervisory conflict of interest and are excluded. FIU Board of Trustees is not the successor employer to the Board of Education.

South Daytona Professional Firefighters, Local 3193 v. City of South Daytona, Case Nos. RC-2003-028 and UC-2003-005 (Dec. 3, 2003).

Representation-certification and unit clarification petitions dismissed because fire captains are managerial employees.

Florida PBA v. Sheriff of Columbia County, Case No. RC-2003-096 (Dec. 3, 2003).

Consent election agreement seeking to represent a rank-and-file unit of sworn correctional personnel approved.

Florida PBA v. Sheriff of Columbia County, Case No. RC-2003-103 (Dec. 3, 2003).

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

AFSCME, FPEC 79 v. Marion County Board of County Commissioners, Case No. RC-2003-090 (Dec. 4, 2003).

Unit of non-professional blue-collar employees approved. Customer service representatives and code enforcement officers are not appropriate for inclusion in the unit.

Hernando County Professional Fire Fighters, Local 3760, v. Hernando County Board of County Commissioners, Case No. RA-2003-019 (Dec. 8, 2003).

Recognition-acknowledgment petition seeking to represent a rank-and-file unit of certified fire fighters/emergency medical personnel granted.

Pinellas Lodge No. 43, FOP v. Pinellas County Sheriff's Office v. Pinellas County PBA, Case No. RC-2003-101 (Dec. 8, 2003).

Consent election agreement seeking to represent a unit of detective sergeants and detective lieutenants approved.

Coastal Florida PBA v. Brevard County Sheriff's Office, Case No. RC-2003-120 (Dec. 9, 2003).

Consent election agreement seeking to represent a unit of supervisory correctional personnel approved.

FOP v. Pasco County Sheriff's Office, Case No. RC-2003-094 (Dec. 11, 2003).

Petition seeking to represent a unit of sergeants and lieutenants approved.

Florida PBA v. FAMU Board of Trustees, Case No. RA-2003-020 (Dec. 15, 2003).

Recognition-acknowledgment petition seeking to represent a bargaining unit of rank-and-file law enforcement officers granted.

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Manatee County and Municipal Employees Local 1584, AFSCME v. Manatee County School Board, Case No. RC-2003-086 (Dec. 17, 2003).

Representation-certification opt-in petition dismissed because cafeteria managers have a supervisory conflict with their subordinates.

Health Care Workers Council of the United Steel Workers of America v. West Orange Healthcare District, Case Nos. RC-2003-110 and RC-2003-111 (Dec. 18, 2003).

Petitions seeking to represent units of professional and nonprofessional employees approved.

Teamsters Local Union 385 v. County of Volusia v. FOP, Case No. RC-2003-082 (Dec. 22, 2003).

A bargaining unit of deputy sheriff

I, deputy sheriff II, corporal, and sergeant approved.

Coastal Florida PBA v. City of Oviedo, Case No. RC-2003-107 (Dec. 22, 2003).

Consent election agreement seeking to represent a unit of police officers, police corporals, and investigators approved.

Okeechobee County Board of County Commissioners v. Okeechobee Fire Suppression and Rescue Association, Local #2918, Case No. UC-2003-019 (Dec. 22, 2003).

Unit clarification petition seeking to delete abolished captain/firefighter/paramedic classification granted.

Fort Lauderdale Police Lodge 31, FOP v. City of Fort Lauderdale, Case No. RC-2003-098 (Dec. 23, 2003).

Consent election agreement seeking

to represent a unit of police captains approved.



Mallor v. Miami-Dade County Board of County Commissioners, Case Nos. VP-2003-004 and -005 (Nov. 6, 2003); West v. School Board of Seminole County, Case No. VP-2003-001 (Dec. 4, 2003).

Veteran's preference complaints were dismissed because individuals hired by the employers were more qualified than veterans.

Elections Verified and Certifications Issued October 1 – December 31, 2003

Florida Regional Council of Industrial and Public Employees, Local Union 2081 v. Jacksonville Airport Authority, Case No. RA-2003-016; Certification 1437.

Coastal Florida PBA v. City of Lake Mary, Case No. EL-2003-068; Election 9/15 – 10/6/03; Union lost.

UFF v. FSU Board of Trustees, Case No. EL-2003-038; Election 10/7 - 8/03; Union won; Certification 1438.

Florida PBA v. Charlotte County Sheriff's Office v. Florida State Lodge, FOP, Case No. EL-2003-053; Election 9/19 - 10/13/03; PBA won; Certification 1439.

Florida State Lodge, FOP v. City of Pensacola, Case No. RA-2003-014; Certification 1440.

Coastal Florida PBA v. Indian River County Sheriff's Office, Case No. EL-2003-043; Election 9/24 - 10/15/03; Union lost.

IBOT, Local 385 v. City of Holly Hill v. Coastal Florida PBA, Case No. EL-2003-070; Election 9/25 - 10/16/03; Challenges determinative.

Douglas Coffman v. Florida State Lodge, FOP v. Town of Longboat Key, Case No. EL-2003-077; Election 10/1 - 22/03; Union lost.

Palm Beach County PBA v. Sheriff of Martin County, Case No. EL-2003-064; Election 10/9 - 30/03; Union won; Certification 1441.

Palm Beach County PBA v. Sheriff of Martin County, Case No. EL-2003-065; Election 10/9 - 30/03; Union won; Certification 1442.

(Continued from page 10)

Coastal Florida PBA v. Sheriff of Indian River County, Case No. EL-2003-078; Election 10/9 - 30/03; Union lost.

Florida PBA v. UWF Board of Trustees, Case No. EL-2003-066; Election 10/10 - 30/03; Union won; Certification 1443.

FPEC 79, AFSCME v. UWF Board of Trustees, Case No. EL-2003-067; Election 10/10 - 30/03; Union won; Certification 1444.

State Employees Attorneys Guild v. Jeb Bush, as Governor of the State of Florida, Case No. EL-2003-026; Election 10/15 - 11/5/03; Challenges determinative; Post-election petition pending.

Florida PBA v. Sheriff of Sarasota County, Case No. EL-2003-069; Election 11/6 - 7/03; Union won; Certification 1445.

Florida PBA v. Sheriff of Orange County v. Florida State Lodge, FOP, Case No. EL-2003-051; Election 10/23 - 11/13/03; PBA won; Certification 1446.

Florida State Lodge, FOP v. Sheriff of Santa Rosa County v. Florida PBA; Case No. EL-2003-074; Election 11/12/03; FOP won; Certification 1447.

Florida State Lodge, FOP v. Sheriff of Santa Rosa County v. Florida PBA, Case No. EL-2003-075; Election 11/12/03; FOP won; Certification 1448.

Coastal Florida PBA v. Sheriff of St. Johns County v. Florida State Lodge, FOP, Case No. EL-2003-072; Election 10/23 - 11/18/03; Unions lost.

Coastal Florida PBA v. Brevard County Sheriff's Office, Case No. EL-2003-054; Election 10/23 - 11/18/03; Union won; Certification 1449.

Coastal Florida PBA v. Brevard County Sheriff's Office v. Florida State Lodge, FOP, Case No. EL-2003-063; Election 10/23 - 11/18/03; PBA won; Certification 1450.

Coastal Florida PBA v. Brevard County Sheriff's Office v. Florida State Lodge, FOP, Case No. EL-2003-062; Election 10/23 - 11/18/03; PBA won; Certification 1451.

Hernando County Professional Fire Fighters, Local 3760 v. Hernando County Board of County Commissioners, Case No. RA-2003-019; Certification 1452.

Florida State Lodge, FOP v. Sheriff of Hernando County v. Florida PBA, Case No. EL-2003-081; Election 10/28 - 11/19/03; Unions lost.

Transport Workers Union of America, Local 525 v. Canaveral Port Authority v. District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, Case No. EL-2003-088; Election 11/20/03; TWUA won; Certification 1453.

Florida State Lodge, FOP v. City of Milton, Case No. EL-2003-083; Election 10/28 - 11/19/03; Union won; Certification 1454.

Pinellas County PBA v. Sheriff of Pinellas County v. Pinellas Lodge No. 43, FOP, Case No. EL-2003-076; Election 10/30 - 11/21/03; Unions lost.

Apopka Professional Firefighters Association, Local 4277 v. City of Apopka, Case No. EL-2003-085; Election 11/13 - 12/4/03; Union lost.

West Central Florida PBA v. Pasco County Sheriff's Office v. Florida State Lodge, FOP, Case No. EL-2003-079; Election 11/17 - 12/15/03; Runoff between PBA and No Organization required.

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West Central Florida PBA v. Pasco County Sheriff's Office v. Florida State Lodge, FOP, Case No. EL-2003-080; Election 11/17 - 12/15/03; Runoff between FOP and No Organization required.

Florida PBA v. Sheriff of Collier County, Case No. EL-2003-084; Election 11/19 - 12/16/03; Union lost.

Florida State Lodge, FOP v. Orange County Sheriff's Office v. Florida PBA, Case No. EL-2003-087; Election 11/19 - 12/17/03; Union lost.

Florida State Lodge, FOP v. Alachua County Sheriff's Office v. Florida PBA, Case No. EL-2003-073; Election 11/25 - 26/03; FOP won; Certification 1455.

Florida PBA v. FAMU Board of Trustees, Case No. RA-2003-020; Certification 1456.

Florida PBA v. Sheriff of Hernando County v. Florida State Lodge, FOP, Case No. EL-2003-055; Election 9/19 - 10/13/03; Runoff election; 11/6 - 12/3/03; FOP won; Certification 1457.

Florida State Lodge, FOP v. Charlotte County Sheriff's Office v. Florida PBA, Case No. EL-2003-086; Election 11/19 - 12/19/03; PBA won; Certification 1458.

UFF v. FSU Board of Trustees and FSU Schools, Case No. EL-2003-090; Election 12/18/03; Union won; Certification 1459.

UFF v. FAU Board of Trustees, Case No. RA-2003-021; Certification 1460.



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