O/A 1-13-84

IN THE SUPREME COURT FOR
THE STATE OF FLORIDA

PALM BEACH JUNIOR COLLEGE
BOARD OF TRUSTEES,

Petitioner,

vs.

UNITED FACULTY OF PALM BEACH
JUNIOR COLLEGE,

Respondent.

Case No. 63,352
First District Court
of Appeals
Case No. [illegible]

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AMICUS CURIAE

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Amicus curiae, Manatee Junior College Board of Trustees (hereinafter called Manatee Junior College), files this brief pursuant to the Order of this Court September 13, 1983 and adopts and incorporates by reference the statement of the case and statement of facts as presented by the Petition in their Brief on Appeal. This brief is offered in support of the position of Petitioner, Palm Beach Junior College Board of Trustees.

ARGUMENT

IS THE CONCLUSIONS OF LAW AND ORDER OF PERC, AS AFFIRMED BY THE MAJORITY OPINION OF THE FIRST DISTRICT COURT OF APPEAL OVERLY BROAD SO AS TO EXCEED THE AUTHORITY OF PERC AND THUS MANDATE REVERSAL?

The First District Court of Appeals has affirmed the unauthorized and improper expansion by the Public Employees Relations Commission of the rights granted pursuant to Article I, Section 6, Florida Constitution as it relates to public employees. In the guise of a "policy decision" PERC has in effect amended the Constitution. The action of PERC is ultra vires and also a blatant usurpation of the duties and responsibilities of the Legislature and the people.

PERC has determined to offset the inability of public employees to strike by granting to public employees rights which are not held in the private section. PERC and the First District Court of Appeals' decision appear to have forgotten that public employees have many rights which counteract or balance the prohibition against striking. Not the least of these rights are the protections afforded public employees through established property interests in an expectation of continued employment, the prohibitions against lock-out and the inability to resort to the political process through the Legislature. Any disadvantage that PERC may perceive public employees to have is strictly a paper tiger. Regardless of the above, PERC should not be given the power to legislate its own laws to correct what it feels is an inadequate position for public employees.

The management rights clause which is at the heart of this appeal is clearly concerned with the terms and conditions of employment and thus is a mandatory subject of arbitration and Florida Statutes 447.403 must be followed. This Statute provides for a mediator or special master for resolution of impasses and the PERC determination usurps the power of this legislative enactment.

The Florida Supreme Court has directly dealt with the paramount legal issues involved in this appeal, though factually different, in both Dade County Classroom Teachers' Association, Inc., vs. Ryan, 225 So. 2d 903 (Fla., 1969) and City of Tallahassee vs. Public Employees Relations Commission, 410 So. 2d 487 (Fla., 1981). The Ryan case established and the City of Tallahassee decision reaffirmed the fact that public employees are entitled under the Constitution to the same rights regarding collective bargaining as are private employees, excluding the ability to strike, but, conversely, public employees are not entitled to any greater rights than private employees. The action by PERC has not only granted additional rights to public employees, but it has, simultaneously, denied a right to public employees which was previously existing.

The subtle denial of the previously existing right which public employees held is astutely and accurately reasoned by now Justice Leander Shaw in his dissenting opinion in this cause. PERC, under the guise of achieving efficiency and utility of effort, has mandated or imposed a contract upon not only the employer, but the public employee as well. PERC, in contravention of its own established purpose, has usurped the collective bar-

gaining process and imposed an agreement upon the parties in violation of Article I, Section 6, Florida Constitution. While PERC attempts to dilute this unconstitutional action by advancing the theory that the realities of the situation would have, more likely than not, produced the same or like contract under the same terms if PERC had not imposed it, the facts and inescapable conclusion of law is that PERC has acted in an unconstitutional manner. The plain fact of the matter is that PERC has imposed a contract upon both the public employee and the public employer in contravention of the Constitution. PERC's "remedy" as contained in its order cannot be avoided or distinguished from what it really is, a mandated contract imposed the parties by an administrative agency.

This Court has effectively and forthrightly addressed the use of "realities" regarding constitutional interpretation and in City of Tallahassee vs. Public Employees Relations Commission, 410 So. 2d at 490 addressed the impropriety of using "realities" as a standard for constitutional interpretation. This approach must be rejected. One of the purposes of a constitution is to prohibit and prevent any fervor or "public realities" from erroding fundamental rights.

No matter how honorable the purpose or intent or what the realities of the particular case may be, PERC has, by administrative action, imposed a contract upon two separate and competent parties outside of the bargaining arena. The interplay and interface which is of such importance to collective bargaining between the parties has been replaced by the administrative order of PERC.

The essence of collective bargaining involves a delicate balance between the parties and even the most inobtrusive interjection by outside parties can offset this delicate balance. This Court in Dade County Classroom Teachers' Association, Inc., vs. Ryan, 225 So. 2d at 906, expressed the importance of this issue in a manner which can apply in the context of this argument, as follows:

> "A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers....."

The decision by PERC to impose a contract upon the parties in this cause has established an unsettling and potentially damaging precedent of great public concern to not only public employers, but public employees as well. This intrusion is but the first step from which further erroding by an administrative agency could occur in this context.

Justice Leander Shaw in his dissent raised the importance of "harmony" in the bargaining scheme as follows:

> "Harmony required that both parties be content with the bargaining agenda and the contract arising therefrom."

This harmony cannot be established when PERC has mandated or imposed a contract upon the parties. Justice Shaw in the dissent immediately recognized this problem and perceived the potential for abuse in this precedent set by PERC when he opined:

> "More seriously, in establishing the precedent that PERC's power to remedy an unfair labor practice includes the power to dictate the substantive terms of a contract to a party, PERC is acting ultra vires."

It is not the responsibility and duty under the Constitution for Chapter 447, Part II, Florida Statutes, for PERC to negotiate contracts for the parties and PERC's "remedy" in mandating the contract between the parties offers great potential for abuse and damage to the taxpayers of Florida, the public employers in Florida and the public employees of Florida.

CONCLUSION

Amicus curiae Manatee Junior College believes that management rights clauses are in keeping with precedents set by this Court and that such clauses are based upon sound consideration of public policy. Certainly the decision of the First District creates doubts and concerns in the minds of all public employees. It is for this reason that Manatee Junior College welcomes the opportunity to file this brief in support of reversal of the first District's ruling.

Since the administrative order of PERC imposes a contract upon two separate and competent parties and violates Article I, Section 6, Florida Constitution as it relates to public employees, the majority opinion of the First District Court of Appeal, in affirming the conclusions of law and order of PERC, is in error and should be reversed. Further, a finding should be had that Palm Beach Junior College Board of Trustees committed no unfair Labor practice and that PERC has no authority to attempt to enlarge the rights of public employees through administrative order.

Respectfully submitted,

HARLLEE, PORGES, BAILEY & DURKIN

By _____
RICHARD H. BAILEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by U.S. mail, upon Jesse S. Hogg, Esq., 121 Majorca Ave., Third Floor, Coral Gables, FL 33134; C. Anthony Cleveland, Esq., General Counsel, 208 W. Pensacola St., Tallahassee, FL 32301; Charles F. McClamma, Esq., PERC, 2600 Blair Stone Road, Suite 300, Tallahassee, FL 32301; W. Reynolds Allen, Esq. 609 W. Horatio St., Tampa, FL 33606; Richard F. Trismen, Esq., P.O. 1660, Winter Park, FL 32790; Richard, Nodine, Gilkey, Fite, Meyer & Thompson, 1253 Park St., Clearwater, FL 33516; Lorenz, Lungstrum & Heflin, P.O. Box 1706, F. Walton Beach, FL 32549; Matheny & Brewer, P.O. Box 6526, Titusville, FL 32780; Richard Wayne Grant, Esq., 209 N. Fefferson St., Marianna, FL 32446; Coffman, Coleman, Henley & Andrews, P.O. Box 40089, Jacksonville, FL 32203; J. Robert McClure, Jr., Esq., P.O. Drawer 190, Tallahassee, FL 32302, and Chester B. Griffin, P.O. Box 1270, Ft. Pierce, FL 33454; Marian P. McCulloch, Esq., 220 Madison St., Suite 1200, Tampa, FL 33602, this 3rd day of October, 1983.

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