IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,352

PALM BEACH JUNIOR COLLEGE BOARD OF TRUSTEES,

Appellant,

vs.

UNITED FACULTY OF PALM BEACH JUNIOR COLLEGE,

Appellee.

AMICUS CURIAE BRIEF OF THE FLORIDA POLICE BENEVOLENT ASSOCIATION, INC. ON BEHALF OF APPELLEE

Appeal Of Decision Of
The First District Court of Appeal
State of Florida
Case No. AF-17

GENE "Hal" JOHNSON
Counsel for Florida Police Benevolent Association, Inc.

- FLORIDA POLICE BENEVOLENT ASSOCIATION, INC. -
216 South Adams Street - Tallahassee, Florida 32301 - (904) 222-3329

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Tallahassee, Florida 32301
(904) 222-3329

GENE "Hal" JOHNSON
General Counsel

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PRELIMINARY STATEMENT

For purposes of this brief, the FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., adopts the statement of case and facts contained in the brief of Appellee, UNITED FACULTY OF PALM BEACH JUNIOR COLLEGE. Throughout the brief the Appellant, PALM BEACH JUNIOR COLLEGE BOARD OF TRUSTEES, will be referred to as the Board of Trustees, and the PUBLIC EMPLOYEES RELATIONS COMMISSION will be referred to as the Commission.

ARGUMENT

THE DECISION OF THE DISTRICT COURT AND THE PUBLIC EMPLOYEES RELATIONS COMMISSION FINDING THAT A BARGAINING PROPOSAL WHICH WAIVES THE RIGHT TO COLLECTIVELY BARGAIN CANNOT BE IMPOSED ON CERTIFIED BARGAINING AGENTS IS PROPER AND CONSISTENT WITH THE FLORIDA CONSTITUTION AND THE PUBLIC EMPLOYEES RELATIONS ACT.

If you can bear to hear the truths you've spoken,
twisted by knaves to make a trap for fools...

From the poem "If"
by Rudyard Kipling

Rudyard Kipling must have been an attorney because in the above quoted lines of verse he has captured the essence of many legal arguments. Clearly, Kipling's lines capture the essence of the legal argument advanced by the Board of Trustees in the instant case. Regardless of the "twists" in case law the Board of Trustees seeks to advance, the simple truth is that the right to bargain collectively in Florida is a constitutional right, and no employer should be permitted to force its employees to waive such a fundamental right in order to obtain the benefits of a collective bargaining agreement.

At the outset of a discussion of the legal issue involved in this case it is important to understand the goal the Board of Trustees seeks to achieve through its proposed management rights provision. That goal is the ability on the part of a public employer to unilaterally (without bargaining) alter "wages, hours, and other terms and conditions of employment" during the life of the collective bargaining agreement so long as the alteration is arguably the result of the exercise of a management right. In other words, the Board seeks to completely abrogate its obligation to bargain during the term of the bargaining agreement.

Since it is the Board of Trustee's goal to free itself to take unilateral action, it is important to understand current Florida case law on the issue of unilateral action. That law is well-settled: a public employer's unilateral alteration (without bargaining) of wages, hours or other terms and conditions of employment of a bargaining unit represented by a certified bargaining representative constitutes a per se violation of Sections 447.501(1)(a) and (c), Florida Statutes (1981). St. Petersburg Association of Fire Fighters, Local 747 v. City of St. Petersburg, 5 FPER ¶10391, aff'd 388 So.2d 1124 (Fla. 2d DCA 1980); Teamsters Local 444 v. City of Winter Haven, 5 FPER ¶10089, aff'd 379 So.2d 212 (Fla. 1st DCA 1979); Indian River CEA v. School Board of Indian River County, 4 FPER ¶4262 (1978), aff'd, 373 So.2d 412 (Fla. 4th DCA 1979); Palowitch v. Orange County School Board, 3 FPER 280 (1977), aff'd 367 So.2d 730 (Fla. 4th DCA 1979); and Pasco County CTA v. District School Board of Pasco County, 3 FPER 9 (1976), aff'd 353 So.2d 108 (Fla. 1st DCA 1977).

The prohibition against unilateral action by an employer regarding wages, hours, or other terms and conditions of employment of bargaining unit employees once a bargaining agent is selected, is commonly termed the status quo doctrine. The doctrine is premised on three fundaments of collective bargaining: (1) the obligation to bargain extends to all subjects within the meaning of the phrase "wages, hours and terms and conditions of employment;" (2) the duty of an employer to bargain on such subjects is absolute and not dependent upon the subjects being contained in a bargaining agreement, and (3) the bargaining table is the mandated forum for accomplishing all changes in the status quo respecting such subjects. See, Palowitch v. Orange County School Board, 3 FPER at 281-282, and Pasco County CTA v. District School Board of Pasco County, 3 FPER at 14.

The paramount nature of the status quo doctrine has been long recognized by Florida's courts. As the Second District Court of Appeal stated in the Palowitch case, 367 So.2d at 731: "[U]unilateral action without bargaining ...would effectively gut the life of the statute providing for bargaining by public employees." Similarly, the First District Court of Appeal held in affirming the Commission's decision in the Pasco County CTA case that an employer's unilateral change in conditions of employment subject to negotiation is a clear violation of Section 447.501(1)(c). As the Court recognized in Pasco, since unilateral action constituted a circumvention of the duty to negotiate, it frustrates the objectives of the requirement of good

faith bargaining as much as a flat refusal to bargain. 353 So.2d at 126. Finally, and most significantly, the Commission, the Florida Courts and other jurisdictions acknowledge that where public employees are denied the right to strike, the duty of an employer in the public sector to refrain from unilateral action or actions designed to circumvent the bargaining process is greater than the similar duty of private sector employers. School Board of Orange County v. Palowitch, 367 So.2d at 731; Pasco County CTA v. District School Board of Pasco County, 3 FPER at 14, and Triborough Bridge and Tunnell Authority, 5 PERB ¶3064 (NY PERB 1972).

It is therefore clear that the status quo doctrine is fundamental to the collective bargaining process. It is equally clear that because of its fundamental nature, the doctrine has been staunchly protected by the Commission and the Florida Courts.

While the status quo doctrine has been staunchly protected by the Commission and the Florida Courts, there are exceptions to the doctrine. Those exceptions, which allow a public employer to take unilateral action, are: (1) a clear and unmistakable contractual waiver of the right to bargain over the specific employment matter in dispute; (2) exigent circumstances which require the employer to take immediate action, or (3) legislatively imposed action pursuant to Section 447.403(4)(d), Florida Statutes, through utilization of the impasse resolution machinery. See, Martin Education Association v. Martin County School Board, 5 FPER ¶10302, aff'd 390 So.2d 830 (Fla. 1st DCA 1980).

The Board of Trustees has "twisted" the status quo doctrine so as to portray it as a wholesale impediment to carrying out a public employer's management function. Such a portrayal is simply not true. The truth is that the doctrine constitutes a reasonable accommodation of competing interests. Where exigent circumstances are present or where negotiations over a specific subject of bargaining have been voluntarily waived, unilateral action may be taken by an employer; however, where there are no exigent circumstances and no clear and voluntary waiver of the right to bargain is present, the employer must utilize the statutorily prescribed procedures before altering terms and conditions of employment enjoyed by employees represented by a bargaining agent. See, Palowitch v. Orange County School Board, 3 FPER at 281-282.

Thus, in certain situations the constitutional right to bargain is paramount. In other situations, the right to bargain must yield to the needs of the public employer to take immediate action.

It is apparent that the Board of Trustees sees no need for the accommodation of interests encompassed in the status quo doctrine. Under its proposed management rights provision there are no competing interests. There is simply management's right to act and the bargaining agent's unequivocal and unqualified waiver of the right to bargain.

Significantly, under the Board of Trustee's legal theory, the bargaining agent need not voluntarily relinquish the constitutional right to bargain. The waiver can be imposed through legislative action pursuant to the impasse procedure. Then, if the bargaining unit employees desire to obtain the benefits of a bargaining agreement, they must waive their constitutional right to bargain collectively.

To find some basis for its legal argument, the Board of Trustees employs its second twist of legal precedent. The Board invokes several of this Court's decisions which rely on private sector labor precedence to define the right to bargain collectively in Florida. The Board of Trustees "twists" such reliance so as to "require" absolute, strict adherence to private sector labor precedence in the establishment of public sector labor law in Florida. Once again, that proposition is simply not true.

It is beyond argument that in Florida the right to bargain collectively has a totally unique status not enjoyed in other jurisdictions. In Florida, the right to bargain is a fundamental, constitutional right. Florida Constitution, Article 1, §6. As such, it cannot be denied or abridged in the absence of a compelling state interest. City of Tallahassee v. Public Employees Relations Commission, 393 So.2d 1147, 1150 (Fla. 1st DCA 1981), aff'd, 410 So.2d 487 (Fla. 1982).

Because of the fundamental nature of the right to bargain in Florida, it plainly differs from its private sector counterpart which is derived from statute. Thus, while private sector labor precedence is instructive with respect to the right to bargain in Florida, it clearly is not controlling. See, United Faculty of Florida, Local 1847 v. Board of Regents, 417 So.2d 1055 (Fla. 1st DCA 1982).

As previously stated, the Commission and the Florida Courts have uniformly recognized the status quo doctrine as being a fair and reasonable accommodation of competing interests. It balances an employee's fundamental right to bargain and an employer's fundamental need to manage. In particular situations, each right may be required to yield to the other.

The Board of Trustee's management rights provision forces the employees' right to bargain clearly beyond the point of yielding to an employer's management interest. The provision denies the employees' constitutional right to bargain. Furthermore, because the Board of Trustees has chosen to condition all contractual benefits on acceptance of the proposed management rights provision, it constitutes nothing less than a coerced, forced waiver of a fundamental right. Such a coerced waiver of a fundamental right cannot be countenanced by this Court.

CONCLUSION

In spite of the various twists in legal precedent the Board of Trustees seeks to employ in this case to support its legal position, its position must be recognized for what it is. It is an attack on the very heart of the collective bargaining process.

Obviously, constitutional rights may under certain circumstances be voluntarily waived, but under no circumstances should an entity be allowed to coerce or force the waiver of fundamental rights. That is the goal the Board of Trustees seeks to achieve through its proposed management rights provision.

This Court cannot sanction the Board of Trustees and assist it in achieving its unlawful goal. This Court should uphold the decision of the District Court.

Respectfully submitted,

GENE "Hal" JOHNSON
Counsel for Florida Police Benevolent Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Curiae Brief of the Florida Police Benevolent Association, Inc. On Behalf of Appellee has been furnished, by mail, to the following:

JESSE S. HOGG, Esquire
Hogg, Allen, Ryce, Norton & Blue
121 Majorca Avenue, Third Floor
Coral Gables, Florida 33134

JOSEPH D. MORENZ, Esquire
Lorenz, Lungstrum & Heflin
Post Office Box 1706
Fort Walton Beach, Florida 32549

W. REYNOLDS ALLEN, Esquire
Hogg, Allen, Ryce, Norton & Blue
609 West Horatio Street
Tampa, Florida 33606

MARIAN P. McCULLOCH, Esquire
Greene, Mann, Rowe, Stanton,
Mastry & Burton
220 Madison Street, Suite 1200
Tampa, Florida 33602

RICHARD H. BAILEY, Esquire
Harlee, Forges, Bailey & Durkin
1205 Manatee Avenue West
Bradenton, Florida 33505

CHESTER B. GRIFFIN, Esquire
Neill, Griffin, Jeffries & Lloyd
Post Office Box 1270
Fort Pierce, Florida 33454

RICHARD WAYNE GRANT, Esquire
Post Office Box 209
Marianna, Florida 32246

MICHAEL K. GROGAN, Esquire
JOANN M. BRICKER, Esquire
Coffman, Coleman, Henley & Andrews
Post Office Box 40089
Jacksonville, Florida 32202

STEPHEN M. BREWER, Esquire
Matheny & Brewer, P.A.
Post Office Box 6526
Titusville, Florida 32782

RICHARD F. TRUSMEN, Esquire
Baker & Hostetler
Post Office Box 1660
Winter Park, Florida 32790

VERNON TOWNES GRIZZARD, Esquire
Public Employees Relations Commission
2600 Blairstone Road, Suite 300
Tallahassee, Florida 32301

WILLIAM W. GILKEY, Esquire
Richard, Nodine, Gilkey, Fite, Meyer
& Thompson - 1253 Park Street
Clearwater, Florida 33516

J. ROBERT McCLURE, Jr., Esquire
Carlton, Fields, Ward, Emmanuel, Smith
& Cutler - Post Office Drawer 190
Tallahassee, Florida 32302

PAMELA L. COOPER, Esquire
Office of General Counsel, FTP-NEA
213 South Adams Street
Tallahassee, Florida 32301

RICHARD H. FRANK, Esquire
2124 West Kennedy Boulevard
Suite A
Tampa, Florida 33606

STEVEN A. BEEN, Esquire
208 West Pensacola
Tallahassee, Florida 32301

this 8th day of November, 1983.

GENE "Hal" JOHNSON