STATE OF FLORIDA

BEFORE THE SUPREME COURT

PALM BEACH JUNIOR COLLEGE BOARD OF TRUSTEES, Petitioner/Appellant, v. UNITED FACULTY OF PALM BEACH JUNIOR COLLEGE, Respondent/Appellee.	)	CASE NO. 63-352

RESPONDENT/APPELLEE'S

ANSWER BRIEF ON JURISDICTION

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

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CITATION OF AUTHORITIES

PRELIMINARY STATEMENT

Respondent/Appellee UNITED FACULTY OF PALM BEACH JUNIOR COLLEGE objects initially to the manner in which Petitioner PALM BEACH JUNIOR COLLEGE BOARD OF TRUSTEES has argued the merits of the case below in its jursdictional brief.[1] Throughout its statement of the "Nature of the Case," brief for Petitioner at 3-6, the Petitioner has done no more, in essence, than to state that it is displeased by the decision of the First District Court of Appeal, and to attempt to demonstrate that decision was incorrect.

Fla.R.App.P. 9.120 specifically provides that Petitioner's brief on jurisdiction must be "limited solely to the issue of the Supreme Court's jurisdiction...." It is therefore, clearly inappropriate for Petitioner Board to argue the merits of the substantive issues below at this time. Such arguments cannot provide a basis for the exercise of this Court's discretionary jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(ii) or (iv).

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[1] Petitioner/Appellant Palm Beach Junior College Board of Trustees will be referred to herein as "Petitioner" or "Board."

ARGUMENT

PETITIONER HAS FAILED TO DEMONSTRATE THAT THIS COURT HAS JURISDICTION PURSUANT TO FLA.R.APP.P. 9.030(a)(2)(A)(ii) OR (iv) TO REVIEW THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL SUB JUDICE.

Petitioner Board attempts initially to invoke the discretionary jurisdiction of this Court by asserting that the decision of the First District Court of Appeal expressly construed Article I, Section 6, of the Florida Constitution. It is noted to the Court that having made this contention, nowhere in its brief does Petitioner even attempt to support its assertion that Article I, Section 6, of the Florida Constitution has been expressly construed by the decision below. Moreover, it is clear that the First District Court of Appeal in the case sub judice did not, within the meaning of Fla.R.App.P. 9.030(2)(A)(ii), "expressly construe a provision of the state...constitution...." As stated by this Court in Ogle v. Pepin, 273 So.2d 391, 392 (Fla. 1973):

> [W]e must examine the key word, "construing." Did the district court's decision construe a constitutional provision? By definition it is apparent that some language is essential to construe a provision. In judicial terminology we defined "construing" in its constitutional sense in the case of Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958). As Armstrong puts it, an opinion or judgment does not construe a provision of the constitution unless it undertakes: (p. 409)

> "...to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision."

In the present case, it is clear that the First District Court did not expressly construe Article I, Section 6. Indeed, the only references to that constitutional provision appear on page 7 of the First District Court of Appeal's opinion, where it appears in a quotation taken from this Court's opinion in City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 987 (Fla. 1980), and on page 11 of the First District Court of Appeal's opinion, where the lower Court merely noted that public employees in Florida are denied the right to strike. Mere reference to a constitutional provision, repeating its obvious meaning, with which none of the parties disagree, can by no stretch of the imagination be interpreted as the construing of a constitutional provision, express or otherwise.

Additionally, Petitioner Board attempts to invoke the discretionary jurisdiction of this Court pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv) by contending that the decision of the First District Court of Appeal below expressly and directly conflicts with this Court's decisions in City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981) and Dade County Classroom Teachers Association, Inc. v. Ryan, 225 So.2d 903 (Fla. 1969). As will be demonstrated, below, such conflict does not exist between these decisions.

The Board refers to the statement of this Court in Dade County Teachers Association, Inc. v. Ryan, 225 So.2d 903, 905 (Fla. 1959), that, "with the exception of the right to strike, public employees have the same rights of collective bargaining as are granted private employees by Section 6." This Court quoted that portion of Ryan in City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487, 489 (Fla. 1981).

Petitioner Board in essence argues as follows: Ryan and City of Tallahassee, supra, stand for the proposition there can be no differences between the mechanisms of collective bargaining for private sector and public sector employees. Therefore, to the extent that the decision of the First District Court of Appeal sub judice recognized any difference between private and public sector employees, it is in express and direct conflict with Ryan and City of Tallahassee, supra.

Petitioner Board's conclusion is in error, however, because its premises are faulty. In City of Tallahassee, this Court specifically stated:

> [W]e do not mean to require that the collective bargaining process in the public sector be identical to that in the private sector. We recognize that the differences in the two situations require variations in the procedures followed.
>
> The Ryan opinion recognized that the collective bargaining process for public employees involves many special considerations, that it is not the same as in the private sector....

Id. at 490-92.

It is respectfully noted to the Court that the concern of its decisions in Ryan and City of Tallahassee was to safeguard the collective bargaining rights of public sector employees. The decision of the First District Court of Appeal is consistent with those goals, and to reiterate, is in no way inconsistent with these decisions.

In view of the above, Petitioner cannot successfully assert that the decision of the First District Court of Appeal sought to be reviewed "expressly and directly" conflicts with the prior decisions of this Court in Ryan and City of Tallahassee, within the meaning of Fla.R.App.P. 9.030(2)(A)(iv). Rather, the decision of the First District Court of Appeal is wholly consistent with those decisions.

In its jurisdiction brief, Petitioner Board of Trustees stated with regard to Ryan and City of Tallahassee, that, "[a]lthough these cases and their plain rule of parity were vigorously urged before both lower tribunals, neither saw fit to address the obvious conflict in terms." Brief for Petitionerat 7. The reason neither PERC nor the First District Court of Appeal addressed such a conflict in their decisions is clear. As noted above, no such conflict exists.

CONCLUSION

Petitioner Board has failed to demonstrate that this Court has jurisdiction pursuant to Article V, Section (b)(3), and Fla.R.App.P. 9.003(a)(2)(A)(ii) or (iv) to review the decision of the First District Court of Appeal in Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, Case No. AF-17 (December 3, 1982). Therefore, this Court should deny jurisdiction in the present case.

However, should this Court determine that jurisdiction is shown, then it is respectfully requested that the Court decline to exercise its discretionary jurisdiction. The decision by the First District Court of Appeal appropriately balances the conflicting interests of the parties to collective bargaining in the public sector, and should be allowed to stand.

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CERTIFICATE OF SERVICE

I HEEREBY CERTIFY that a true copy of the foregoing was mailed this 5th day of April, 1983 to Jesse S. Hogg, Esq., Hogg, Allen, Ryce, Norton & Blue, P.A., 121 Majorca Avenue, Third Floor, Coral Gables, Florida 33134 and Charles F. McClamma, Esq., Public Employees Relations Commission, 2600 Blair Stone Road, Suite 300, Tallahassee, Florida 32301.

C. ANTHONY CLEVELAND