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CITATIONS OF AUTHORITY

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STATEMENT OF THE CASE

Section II of Petitioner's brief, which Petitioner labels "Nature of the Case" is inappropriately argumentative. Moreover, it contains mischaracterizations of the decisions of both PERC and the District Court, among which are the following examples:

Petitioner states that "PERC did not base its holding upon any difference between the federal labor law and the Florida Public Employees Relations Act." (Petitioner's brief page 5) However, a major difference between the two sets of laws, i.e. the absence of the right to strike in the Florida public sector, was expressly identified by the Commission as significant to its decision. United Faculty of Palm Beach Junior College v. Palm Beach Junior College, 7 FPER ¶ 12300 at 594-595 (1981).

Petitioner states that the Commission had "no basis for its decision in the language of the PERA" and that the decision was based "upon pure policy considerations." (Petitioner's brief page 5) However, the "bottom line" of the Commission's decision was that the waiver of impact bargaining provision which the Petitioner took to impasse "does not constitute a wage, hour, or term and condition of employment within the meaning of Section 447.309(1)." Id. at 596.

Petitioner states that the decision under review "establishes a new balance of power between public employers and represented taxpayers of the State of Florida. . . and public unions and represented employees on the other." (Petitioner's brief page 5-6) Such rhetoric is hardly appropriate for a section purporting to present the "nature of the case," and is even worse for being a distortion of reality. The decisions of PERC and the

District Court create no new balance of power, but rather maintain the balance carefully established by the Legislature when it enacted Chapter 447.

ARGUMENT

Petitioner's brief is replete with argument on the merits and conspicuously lacking in argument concerning jurisdiction for very good reason: There is no basis for this Court's jurisdiction. In its "Introductory Statement," Petitioner alleges two bases for jurisdiction. The first, that the District Court expressly construed Article I, Sec. 6 of the State Constitution, is not mentioned again in Petitioner's brief. The second asserted basis for jurisdiction is that the District Court's decision conflicts with Dade County CTA v. Ryan¹ and City of Tallahassee v. PERC.²

Petitioner's claim that the District Court construed Article I, Sec. 6 is totally without merit. Petitioner's failure to back up its bare assertion with any argument reveals its lack of substance. Indeed, nowhere in the decision does the District Court construe any constitutional provision. In fact, the District Court in this case mentioned the Constitution only twice. The first was when it quoted the following language from City of Tallahassee v. PERC, 410 So.2d 487, 490 (Fla. 1981): "Article I, section 6, permits regulation of the bargaining process but not the abridgement thereof." Palm Beach Junior College v. United Faculty of Palm Beach Junior College, 425 So.2d 133, 137 (Fla. 1st DCA 1982). Later, the District Court noted that the right to strike is "a right specifically denied the public employees in Florida by Article I, Section 6 of the Florida Constitution." Palm Beach Junior College v. United Faculty of Palm Beach Junior College, 425 So.2d at 139. These are far removed from the kind of explanation or definition of

1/ 225 So.2d 903 (Fla. 1969).

2/ 410 So.2d 487 (Fla. 1981).

the language or terms of the Constitution which constitutes "construal." Ogle v. Pepin, 273 So.2d 391 (Fla. 1973); Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958).

Petitioner's theory that the District Court's decision expressly and directly conflicts with Ryan and City of Tallahassee is similarly without foundation. The theory fails because it rests upon two incorrect premises. First, it requires one to accept that this Court, in Ryan and City of Tallahassee, required an absolute identity of law between the private sector and Florida public sector. City of Tallahassee clearly states this is not so:

[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 differences in the two situations require variations in the procedures followed.

City of Tallahassee v. PERC, 410 So.2d at 490-491.

Petitioner's theory also fails because it incorrectly assumes that the result in the private sector would be different than the result in the instant case. The District Court noted that it had "considered the [Appellant's] references to cases in the private sector, but [found] them distinguishable both on their facts and on the law upon which they were decided." Palm Beach Junior College v. United Faculty of Palm Beach Junior College, 425 So.2d at 138.

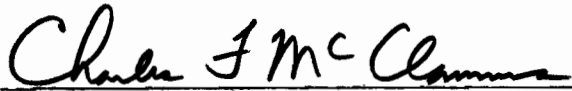
Petitioner has shown neither a construal of a provision of the Constitution nor an express conflict between the District Court's decision and decisions of this Court. Consequently, there is no ground for this Court to assert jurisdiction.

In the unlikely event that this Court finds it has jurisdiction, the Commission submits that the merits of the case do not warrant the Court exercising its discretion to hear the case. The Petitioner has seriously exaggerated the scope and consequences of the decisions herein. The District Court affirmed a Commission decision which found that a proposal which would waive a union's right to bargain over the impact of unspecified management decisions could not be taken to impasse. The Commission did not prohibit such a proposal, but found it not to be a mandatory subject of bargaining. As such, it was a predictable and logical extension of previous cases upholding the concept of impact bargaining. The decisions do not "outlaw" management rights clauses as mandatory bargaining subjects, as Petitioner asserts; the issue in this case was the propriety of a specific proposal, not management rights clauses in general. If given the chance, the Petitioner would be unable to argue successfully before this Court that the Commission and District Court had reached an incorrect decision on the merits.

CONCLUSION

The Commission respectfully submits that the brevity of this brief should not be interpreted as reflecting a lack of concern by the Commission for the matters at issue. Rather, it should be viewed as a reflection of the ease with which the issues may be resolved. Petitioner has shown neither that the District Court construed a provision of the Constitution nor that there is conflict between the District Court's decision and decisions of this Court. Consequently, there is no ground for this Court to assert jurisdiction.

Respectfully submitted,



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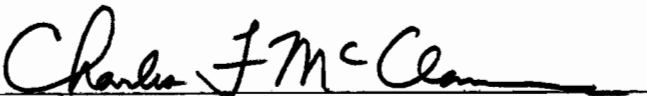
CFM/mmc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Appellee Public Employees Relations Commission has been sent by U.S. mail this 4th day of April, 1983, to the following:

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