C/A 9-13-55

IN THE SUPREME COURT OF FLORIDA

CITY OF CASSELBERRY, Petitioner, v. ORANGE COUNTY POLICE BENEVOLENT ASSOCIATION and FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION, Respondents.	)	Case No. 66,155 Appeal from the First District Court of Appeal.

BRIEF OF AMICUS CURIAE HILLSBOROUGH COUNTY CIVIL SERVICE BOARD

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PRELIMINARY STATEMENT

Amicus Curiae Hillsborough County Civil Service Board adopts the statement of the facts and the statement of the case set forth in Petitioner City of Casselberry's Initial Brief.

Respondent Florida Public Employees Relations Commission will be referred to in this brief as "PERC." Amicus Curiae Hillsborough County Civil Service Board will be referred to in this brief as "the Board."

All emphasis is supplied unless noted otherwise.

INTEREST OF THE HILLSBOROUGH COUNTY CIVIL SERVICE BOARD

The Hillsborough County Civil Service Board was created pursuant to Chapters 69-1121 and 82-301, Special Laws of Florida. Under that law, the Board has exclusive authority to establish rules and regulations dealing with rates of pay, hours of work, and terms and conditions of employment for all classified employees of Hillsborough County. Pursuant to that authority, the Board has adopted rules and regulations governing the terms and conditions of employment for all classified employees of Hillsborough County.

In its Answer Brief in the instant appeal, PERC raises the issue of the proper relationship between Chapter 447, Part II, Laws of Florida ("PERA") and conflicting provisions in a merit or civil service statute or ordinance, and argues that the former preempts the latter: "Section 447.601 indicates the supremacy of Chapter 447, Part II over any conflicting provision in a merit or civil service statute or ordinance." (PERC's Answer Brief On the Merits, p.7).

This is the sole issue addressed in this brief. It is the Board's position that PERC's argument overlooks the clear legislative intent, expressed in Section 447.309, Fla.Stat., to harmonize local merit or civil service systems and the public employee collective bargaining scheme created in PERA in a fashion which was intended to, and in fact does, give the fullest play to both types of statutory schemes while preserving both.

This issue has been the subject of repeated litigation involving both PERC and the Board. The issue was first raised in a 1975 declaratory judgment action in the Thirteenth Judicial Circuit Court involving, inter alia, the Board and PERC. The Board's position in that case, that Section 447.309, Fla.Stat. expresses a clear legislative intent to allow civil service and collective bargaining to meaningfully coexist in the same jurisdiction, was the only position to prevail in the trial court. The trial court's ruling was upheld on appeal. Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority, 347 So.2d 801 (Fla. 2d DCA 1977).

The same issue was raised again in a 1982 declaratory judgment action in which the Board was a defendant. After PERC unsuccessfully attempted to intervene in that action, the lawsuit was dismissed on a procedural basis, and the merits were not reached.

The Board is presently an appellant in an appeal pending before the Second District Court of Appeal, Hillsborough County Aviation Authority, et al. v. Hillsborough County Governmental Employees Association, Inc., et al., Appeal No. 85-867. PERC is an appellee in that appeal. At the center of that appeal is the same issue; the proper relationship between public employee collective bargaining obligations under PERA and civil service laws, rules, and regulations. In that appeal, PERC maintains that Section 447.601, Fla. Stat. provides support for its position that employees who are covered by a civil service system

and who choose to have their wages, hours, and terms and conditions of employment determined by the collective bargaining process under PERA are exempt from applicable portions of existing civil service laws, rules and regulations. PERC's view, if adopted by this Court, would have the effect of systematically repealing civil service laws, rules and regulations each time collective bargaining under PERA resulted in an agreement that conflicted with existing civil service law, rules and regulations.

Since PERC has raised in this appeal the issue of the relationship between merit or civil systems and public employee collective bargaining rights, albeit in a much narrower context, the instant appeal provides this Court with a ready vehicle for addressing the proper relationship and interpretation of Sections 447.309 and 447.601, Fla.Stat. in the context of collective bargaining in a civil service jurisdiction. The decision of the Supreme Court in this case therefore may be dispositive of the issue presently pending before the Second District Court of Appeal. The Board submits this brief in order to present its position on this issue.

ISSUE PRESENTED

WHETHER SECTION 447.601, FLA. STAT. EVIDENCES A LEGISLATIVE INTENT THAT CHAPTER 447, PART II, LAWS OF FLORIDA SHOULD PREEMPT MERIT AND CIVIL SERVICE SYSTEMS

SUMMARY OF ARGUMENT

In this appeal, PERC raises a question of statutory construction concerning the effect of civil service systems on the collective bargaining process under PERA. PERC argues that Section 447.601, Fla. Stat. evidences a legislative intent that PERA should preempt conflicting provisions in existing civil service laws. In a separate appeal presently before the Second District Court of Appeal, PERC maintains, as corollary to that preemption argument, that terms of a public employee collective bargaining agreement take precedence over conflicting civil service laws, rules and regulations.

PERC's arguments advocate the repeal of existing civil service laws by implication. Under Florida law, repeal by implication will only be found where an irreconcilable conflict exists between the two statutes under review, demonstrating a legislative intent to repeal. There is no such irreconcilable conflict here. In fact, the Florida Legislature clearly provided in Section 447.309 for a statutory accommodation between public employee collective bargaining and civil service.

Moreover, the argument that Section 447.601, Fla. Stat. evinces a legislative intent to preempt merit and civil service systems reads far too much into this section and calls for a result at odds with well-established principles of statutory construction.

Therefore, this Court should reject PERC's argument and should give effect to the clearly expressed legislative intent to preserve the existence of merit and civil service systems and to harmonize such systems with the collective bargaining scheme under PERA.

ARGUMENT

SECTION 447.601 DOES NOT EVIDENCE A LEGISLATIVE INTENT THAT THE COLLECTIVE BARGAINING SCHEME UNDER CHAPTER 447, PART II SHOULD PREEMPT MERIT AND CIVIL SERVICE SYSTEMS

This appeal raises an important question concerning the impact of PERA on existing merit and civil service systems. PERC argues that Section 447.601, Fla. Stat. requires that conflicts between PERA and an existing merit or civil service statute or ordinance be resolved in favor of PERA: "Moreover, the Legislature has expressly preempted the subject matter of how a merit or civil service system shall relate to the provisions of Chapter 447, Part II. Section 447.601 indicates the supremacy of Chapter 447, Part II over any conflicting provision in a merit or civil service statute or ordinance." PERC's Answer Brief On The Merits, p.7. As a corollary to that argument, PERC maintains the position, in a separate appeal presently pending before the Second District Court of Appeal, that collective bargaining agreements reached under PERA effectively repeal portions of civil service laws, rules and regulations which conflict with such agreements. PERC's argument reflects a misunderstanding of the entire collective bargaining process embodied in PERA, and specifically in Section 447.309, Fla. Stat., a misapprehension of clearly expressed legislative intent and a misapplication of well-settled principles of statutory construction.

In the event that a conflict were to be found between the collective bargaining obligations under PERA and the requirements of an existing civil service law, PERC suggests that Section 447.601, Fla. Stat. requires that the terms of PERA take precedence over conflicting provisions of the civil service law. Under PERC's view, authority is effectively vested in public employers and public employees unions to repeal, through the process of collective bargaining, duly enacted civil service laws. This argument amounts to advocacy of repeal of existing civil service law by implication.

Repeals by implication are not favored under Florida law. State v. Dunmann, 427 So.2d 166 (Fla. 1983); Town of Indian Shores v. Richey, 348 So.2d 1, 2 (Fla. 1977) (". . . repeal of a statute by implication is not favored and will be upheld only where irreconcilable conflict between the later statute and earlier statute shows legislative intent to repeal."). The general principles of law on this subject are succinctly set forth in 49 Fla. Jur. 2d Statutes §213:

> The courts should, if at all possible, interpret two statutes in such a way as to preserve the force of both. They should if possible avoid such a construction as will place a statute in conflict with another valid statute covering the same general field, and if by any fair and reasonable construction they can be reconciled, both should be allowed to stand.

(citations omitted).

Numerous cases stand for this proposition, including Mann v. Goodyear Tire & Rubber Co., 300 So.2d 666 (Fla. 1974); Sweet v. Josephson, 173 So.2d 444 (Fla. 1965); American Bakeries Co. v. Haines City, 180 So. 524 (Fla. 1938) and Alford v. Duval County School Board, 324 So.2d 174 (Fla. 1st DCA 1975).

In State v. Dunmann, supra, the Supreme Court cited with approval the following language from an earlier Supreme Court decision:

> While statutes may be impliedly as well as expressly repealed, yet the enactment of a statute does not operate to repeal by implication prior statutes, unless such is clearly a legislative intent. An intent to repeal prior statutes or portions thereof may be made apparent when there is a positive and irreconcilable repugnancy between the provisions of a later enactment and those of prior existing statutes. But the mere fact that a later statute relates to matters covered in whole or in part by a prior statute does not cause a repeal of the older statute. If the two may operate on the same subject without positive inconsistency or repugnancy in their practical effect and consequences, they should each be given the effect designed for them unless a contrary intent clearly appears.

427 So.2d at 168, quoting State v. Gadsden County, 63 Fla. 620, 629, 58 So. 232, 235 (1912).

In short, in order to justify a holding that provisions of PERA impliedly repeal an existing civil service law, there must first be shown a positive repugnancy between the two laws which cannot, by any fair and reasonable construction, be reconciled so as to give both laws meaning. On the face of PERA, there is no irreconcilable conflict between PERA and existing civil service

laws so as to evince a clear legislative intent to repeal existing civil service laws. Indeed, a thorough reading of PERA in its entirety discloses that the Florida Legislature considered in some depth the relationship between local civil service systems and its own collective bargaining scheme, and harmonized them in Fla. Stat. Section 447.309 in a fashion which was intended to, and in fact does, give full play to both types of statutory schemes.

To argue that there is an irreconcilable conflict between PERA and civil service is to ascribe a legislative intent to PERA totally at odds with what the statute provides. In enacting PERA, the legislature made a conscious attempt to accommodate civil service systems and public employee collective bargaining in a manner which preserves the existence of merit and civil service systems.[1] This conclusion can best be illustrated by examining the comprehensive collective bargaining framework under PERA.

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[1] The Florida Legislature's desire to preserve the viability of merit and civil service systems in PERA is hardly surprising. Article III, Section 14 of the Florida Constitution mandates the creation of a civil service system for state employees and provides for the creation of civil service systems by political subdivisions of the state. That consitutional provision represents the judgment of the people of the State of Florida that civil service is a desirable system for public employment. Florida courts have also recognized the benefits gained from merit and civil service systems, including the protection of employees from insecurity resulting from a political patronage system. See e.g., City of Clearwater v. Garretson, 355 So.2d 1248, 1249-51 (Fla. 2d DCA), cert. denied, 364 So.2d 885 (Fla. 1978).

Section 447.309, Fla. Stat. prescribes the parameters of a public employer's obligation to bargain collectively in good faith with a duly certified employee bargaining unit. Section 447.309(1) compels the chief executive of a public employer, or his representative, and the bargaining agent for the labor organization representing employees in a certified unit to meet at reasonable times and to bargain collectively in good faith concerning wages, hours and other terms and conditions of employment of the public employees within the certified bargaining unit. The mere existence of a civil service system does not prohibit collective bargaining on any subject.

Section 447.309(1) further specifies that any agreement reached by the negotiators be reduced to writing and signed by both the chief executive officer of the public employer and the bargaining agent of the labor organization. This execution does not bind the public employer and the labor organization involved. Further proceedings under the statutory scheme are necessary in order to achieve such binding effect. Specifically, Section 447.309 (1) goes on to state:

> . . . any agreement signed by the chief executive officer and the bargaining agent . . . shall not be binding on the public employer until such agreement has been ratified at a regularly scheduled meeting of the public employer and by public employees who are members of the bargaining unit, subject to the provisions of Subsections (2) and (3).

Section 447.309(4) of the PERA specifies the procedures to be followed in the event that the agreement negotiated and signed by the chief executive and the union bargaining agent is not ratified by both the public employer and the affected employees. Assuming, however, that ratification takes place as contemplated in Section 447.309(1), such ratification cannot conflict with the provisions of an existing civil service law, or rules and regulations enacted pursuant thereto. The reason for this statutory consistency is the fact that the binding effect of a bilaterally ratified collective bargaining agreement is ". . . subject to the provisions of subsections (2) and (3)" of Section 447.309. Section 447.309(1), Fla. Stat.

Sections 447.309(2) and (3) both recognize that there is a difference in the public sector between who is required to negotiate and who has the power to implement what has been agreed upon in bargaining. Unlike private sector bargaining, the chief executive officer in the public sector does not know if his own legislative body will agree to fund the economic portions of a negotiated agreement or to make changes in existing laws or regulations. In recognition of the separation of powers enjoyed by various governmental bodies throughout the state, the Florida Legislature adopted a scheme to incorporate collective bargaining into the existing governmental process. Rather than displace the authority of governmental bodies who are empowered to approve

changes in existing laws, including civil service laws, the Legislature expressly provided a role for these bodies under PERA.

Section 447.309(2) deals with the means by which economic provisions of a presumably bilaterally ratified collective bargaining agreement will be funded. This section provides, however, that failure of the legislative body to appropriate such amounts as would be sufficient to fund the provisions of the collective bargaining agreement will not be an impediment to making the agreement effective, since under those circumstances the chief executive officer of the public employer is called upon to administer the collective bargaining agreement on the basis of the amounts appropriated by the legislative body.

Once bilateral ratification has taken place pursuant to Sections 447.309(1) and (4), and funding at some level has been secured pursuant to Section 447.309(2), the collective bargaining agreement becomes binding and effective as to both parties, unless any of its provisions ". . . is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, . . ." Should this circumstance arise, Section 447.309(3) dictates the following procedure:

> ". . . the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such laws, ordinances, rules or regulations."

Assuming a collective bargaining agreement between the public employer and an employee bargaining unit is negotiated, bilaterally ratified and funded, which includes provisions dealing with wages, hours and other terms and conditions of employment which differ from those in an applicable civil service law, there is no question but that an accommodation will have to be made, either in the collective bargaining agreement or in the civil service law.

However, there is absolutely no way in which this set of circumstances can result in an irreconcilable conflict, since the machinery for resolving such matters exists in Section 447.309(3), quoted above. And as the remainder of that Section states:

> Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the bargaining agreement shall not become effective.

Thus, Section 447.309(3), Fla. Stat. prohibits any term of a negotiated collective bargaining from going into effect which is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, until the appropriate governmental body having amendatory power (which includes, but is not limited to, civil service boards or commissions[2]) has enacted and adopted the amendment and it has

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[2] The Florida Legislature itself has therefore allowed for any number of State and local agencies, not limited to civil service, to review and either approve or disapprove a term of a collective bargaining agreement.

become effective. Accordingly, there is absolutely no way under the PERA in which a binding and effective provision of a collective bargaining agreement can exist side-by-side with a conflicting provision of a civil service law or its rules and regulations.

Under Section 447.309(3), if any provision of a ratified collective bargaining agreement between the public employer and an employee bargaining unit were to conflict with the rules and regulations of a civil service board, the chief executive officer of the public employer would be expected to submit to the civil service board (the "appropriate governmental body having amendatory power") a proposed amendment to said rules and regulations with the request that the board exercise its power to amend its rules and regulations to conform to the collective bargaining agreement. If language in the ratified collective bargaining agreement were in conflict with the language of the civil service law itself, the chief executive would submit the proposed amendment to the law to the Legislature of the State of Florida, which in that case would be the "appropriate governmental body having amendatory powers".

On the basis of the legislatively mandated collective bargaining scheme found in Section 447.309, it would appear that resolution of any potential conflict between collective bargaining obligations under PERA and existing civil service laws has been anticipated and provided for in the language of PERA

itself, thereby insuring the continued viability of both laws in their entirety. Under the circumstances, it is highly unlikely that the provisions of Section 447.601 were intended by the Legislature to impliedly repeal any merit or civil service law.

The intent of the Legislature to accommodate civil service systems with the collective bargaining scheme under PERA is further evidenced by Section 447.309(5), Fla. Stat., which makes it unnecessary to include within a collective bargaining agreement the terms and conditions of employment "provided for . . . in applicable merit and civil service rules and regulations." Since Section 447.309(5), Fla. Stat. specifically contemplates that civil service rules will survive the execution of a collective bargaining agreement and will remain applicable to public employees, it must be concluded that the Legislature intended to include civil service laws, rules and regulations within the collective bargaining scheme under PERA.

Thus, PERC's reliance upon Section 447.601, Fla. Stat. for the proposition that, in enacting PERA, the Florida legislature repealed conflicting civil service laws must fail. An examination of PERA hardly reveals the "positive and irreconcilable repugnancy" between PERA and existing civil service laws required to demonstrate a legislative intent to repeal existing civil service laws. Instead, the Legislature clearly provided for a statutory accommodation between PERA and civil service.

Moreover, PERC's view conflicts with the well-settled principles of statutory construction that the Legislature is presumed to have intended to include all words, phrases, sentences and sections of a statute; that a statute must be read in its entirety to give effect, if possible, to every word, clause and sentence therein; and that statutory provisions should be read in harmony and not in conflict. See, Villery v. Florida Parole and Probation Commission, 396 So.2d 1107 (Fla. 1981) (where possible, the court must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another); State v. Rodriguez, 365 So.2d 157 (Fla. 1978) (The entire statute must be considered in determining legislative intent; effect must be given to every part of the section and every part of the statute as a whole).

Under these principles of statutory construction, Section 447.601 must be read in pari materia with Section 447.309 in order to give meaning to the entire collective bargaining scheme under PERA. In arguing that PERA preempts conflicting provisions in a merit or civil service statute or ordinance, PERC has failed to explain or take into account the way in which subparagraphs (3) and (5) of Section 447.309 are integrated into the entire scheme of collective bargaining set forth by the Florida Legislature in Section 447.309 of the Act. PERC overlooks the existence of the only two subsections of the collective bargaining provisions of the Act which speak specifically to the

way in which the Legislature envisioned public employee collective bargaining would be conducted in jurisdictions possessing merit or civil service rules and regulation. Reading Sections 447.601 and 447.309 in pari materia, including each reference to merit or civil service systems contained therein, the conclusion is inescapable that no conflict exists between the provisions of PERA and existing civil service laws and that the Legislature intended to accommodate public employee collective bargaining with merit and civil service systems.

CONCLUSION

Although Section 447.601 was intended by the Legislature to repeal any inconsistent provisions of civil service laws, it is a general repealer clause which must, in accordance with well-settled principles of statutory construction, yield to the clear Legislative intent to deal separately with the subject of public employee collective bargaining and the way in which that process would function in a jurisdiction with an existing civil service law. The solution to the problem of harmonizing public employee collective bargaining in a jurisdiction governed by a merit or civil service system must be found in Section 447.309(3) and (5). Failure to do so would negate the clear Legislative intent, evidenced by the aforementioned statutory provisions, to treat the subject of public employee collective bargaining comprehensively and exhaustively in one section of the Act.

Therefore, this Court should reject PERC's argument that Section 447.601, Fla. Stat. evidences a legislative intent to preempt merit and civil service systems and should instead give effect to the clearly expressed legislative intent to preserve the existence of merit and civil service systems and to harmonize such systems with the collective bargaining scheme under PERA.

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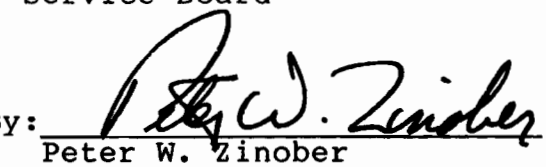
By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 3RD day of September, 1985, to the following:

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