IN THE SUPREME COURT

FOR THE STATE OF FLORIDA

CITY OF CASSELBERRY,

Petitioner,

v. CASE NO. 66,155

ORANGE COUNTY POLICE BENEVOLENT ASSOCIATION and FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION,

Respondents.
_____/

ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION RENDERED BY THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

BRIEF OF RESPONDENT, ORANGE COUNTY POLICE BENEVOLENT ASSOCIATION, ON JURISDICTION

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STATEMENT OF THE CASE

Petitioner is the City of Casselberry ["City"]. Respondents are the Orange County Police Benevolent Association ["OCPBA"] and the Florida Public Employees Relations Commission ["PERC"]. This brief on jurisdiction is filed by Respondent OCPBA in response to the City's Jurisdictional Brief.

This case involves a dispute between the OCPBA and the City over whether a city may lawfully insist, to the point of impasse, upon excluding contractual dispute regarding discipline and demotion of police officers from the contract's grievance and arbitration machinery established in accordance with §447.401, Fla. Stat.. The opinion of the 1st District Court of Appeal, inter alia, held that the City could not lawfully insist upon the exclusion of those disputes under the facts before it.

The City has filed a petition and jurisdictional brief to this Court alleging that the Court has jurisdiction to review that decision because:

(1) The decision "expressly" construes two provisions of the Florida Constitution within the meaning of Article 5 §3(b)(3) and Appellate Rule 9.030(a)(2)(A)(ii); and

(2) The decision "affects" a class of constitutional or state officers within the meaning of Article 5 §3(b)(3) of the Constitution and Appellate Rule 9.030(a)(2)(A)(iii).

The OCPBA contends in this brief that the Court does not have discretionary jurisdiction to review the opinion of the 1st District Court of Appeals because it does not "expressly"

either "construe" a constitutional provision within the meaning of the Constitution, or "expressly affect" a class of "state or constitutional officers."

The OCPBA further contends that even if the Court determines that it does have jurisdiction to review the decision, it should nevertheless decline to exercise its discretion to accept jurisdiction.

While the OCPBA generally accepts the facts set forth in the City's Jurisdictional Brief, nevertheless it disagrees with the City's assertion at Page 2 that "the issue" of the unfair labor practice charge filed by the OCPBA was whether the City committed an unfair labor practice by its conduct "when Casselberry had a Civil Service Ordinance presently in effect." Contrary to the City's suggestion, the City's Civil Service Ordinance and its effect was only one among several defenses raised by the City to the charge; and the decisions of neither the Hearing Officer nor PERC were turned on that basis. Indeed, the First District Court of Appeals correctly noted that neither the Hearing Officer nor PERC even addressed that argument. (op. note 6)

ARGUMENT

I. The Court lacks discretionary jurisdiction because the decision does not "expressly construe" a provision of the State or Federal Constitution.

Prior to the 1980 amendment to the Florida Constitution, the Supreme Court had mandatory appellate review of decisions of

District Courts of Appeal which construed a provision of the State or Federal Constitution. The 1980 amendments made this review discretionary, and further restricted review to those decisions which "expressly" construed constitutional provisions.

The OCPBA contends that the decision for which review is now sought does not "expressly construe" constitutional provisions within the meaning of Article 5 and the Appellate Rule. In Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973) this Court had occasion to discuss and extensively analyze the meaning of the word "construe" for jurisdictional purposes.[1/] That issue was whether the decision for which direct appeal was sought pursuant to the pre-1980 constitutional provisions "construed" such provisions within the meaning of the Article V.

In its opinion, the Court indicated that its prior decision in Armstrong v. City of Tampa, 106 So. 2d 407 (Fla. 1958) precluded review of decisions on the basis that they did not "construe" a constitutional provision unless the decision undertakes:

> ". . . to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." Ogle, 273 So. 2d at 392

[1/] Although the decision took place prior to the 1980 amendments, nevertheless the jurisdictional effect of what constitutes a construction of the Constitution was identical to that here.

The Court continued that this construction precluded jurisdiction where the decision did not:

> ". . . discuss, explain or refer to any constitutional provision." (id)

Later, in Dykeman v. State, 294 So. 2d 633 (Fla. 1974) the Court further elaborated that:

> "There must be an express ruling by the trial court"[2/] which explains, defines, or overtly states a view which eliminates some existing doubt as to a constitutional provision . . ." 294 So. 2d at 635

In the decision for which review is sought, the only "construction" of the City's defense under Article 3 §14 of the Florida Constitution (providing for the establishment of civil service boards by municipalities) was to read it in "para materia" with Article I §6 of the Constitution's 1968 revision, and to reject the City's defense on that basis as unreasonable:

> "Reading the two constitutional provisions and para materia, we do not believe that Article III §14, can reasonably be construed to deny the collective bargaining protections sought by the appellant in this case at bar which protections are guarenteed under Article I, §6." (op. 8)

In so doing, the First District did not "explain, define, or otherwise eliminate existing doubt arising from the language or terms of a constitutional provision" within the meaning of Ogle and Armstrong, supra; rather, the District Court merely

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[2/] Which, of course, applies equally to District Courts of Appeal.

rejected that the City's contention that Article III §4 had any effect upon its decision.

II. The decision under review does not "expressly affect" a class of constitutional or state officers.

Strikingly absent from the City's Jurisdictional Brief is any contention that the decision "expressly" affects a class of constitutional or state officers. The most that can be said of the decision, assuming arguendo that the elected officials of the City constitute "constitutional or state officers" within the meaning of Article 5, is that the decision "inherently" affects them.

However, as in the case of construction of contitutional provisions, "inherent" effect is not enough. Armstrong, supra

Moreover, neither elected officials for the City of Casselberry nor its police officer employees are "constitutional" or "state" officers. Rather, they are merely municipal officers and employees of a municipality. Adoption of the City's view would essentially provide unlimited discretionary jurisdiction over any case involving the rights or obligations of a municipality, its officials and employees, directly contrary to the restrictive purpose of the 1980 constitutional amendments.

III. Even if the Court determines it possesses discretionary jurisdiction, it should decline to review the decision

The decision of the 1st District Court of Appeals is not in conflict with any decision of the Courts of this State, nor of

the Federal Courts and the Supreme Court of the United States in construing similar provisions under a parallel federal statute, the LaborManagement Relations Act. Rather, the decision is in complete harmony with prior decisions of the First District which this Court did not review (as set forth in the opinion); decisions of the Federal Courts which have considered the identical question in parallel contexts; prior decisions of the Public Employees Relations Commission; and competing provisions of the Florida Statutes.

The crux of the decision was merely to define that certain conduct of a party during collective bargaining negotiations constituted a violation of the Public Employees Relations Act, Part II of Chapter 447, Florida Statutes.

The City's expressed concern that provision of authority to a neutral arbitrator under a collective bargaining agreement to decide discharge and demotion disputes, as opposed to the City's Civil Service Board, will have a deleterious impact upon the City's ability to insure that only proper persons have the power to be police officers is totally devoid of merit. Rather, certification and training of police officers is directly regulated by the State of Florida, through the Criminal Justice Standards and Training Commission pursuant to Chapter 943 of the Florida Statutes. In addition, decisions of an arbitrator which could conceivably cause the City any concern are reviewable by the Circuit Courts pursuant to Chapter 682, Florida Statutes, the

Florida Arbitration Code.

Finally, as noted above, the 1st District Court of Appeal merely rejected the purported basis upon which the City seeks review of its decision (alleged conflict with Article III §14 of the Constitution) as having no application to its decision in the dispute before it, which turned on a construction of the provisions of Chapter 447, Florida Statutes. Thus, the question which the City is urging this Court to decide is, at best, of severely limited import to the merits of the decision itself; and the effect of the Court's rejection of the City's argument is to declare harmonious all provisions of the Florida Statutes and the Florida Constitution, contrary to the City's asserted conflict.

CONCLUSION

The OCPBA accordingly suggests that the Court does not have jurisdiction to review the decision of the 1st District Court of Appeals because:

(1) The decision does not "expressly construe" a provision of the State Constitution, and

(2) The decision does not "expressly affect" a class of "constitutional or state officers" within the meaning of Article V §3(b)(3) of the Constitution or Rule 9.030.

In the event the Court determines that it possesses discretionary jurisdiction, the OCPBA suggests that the Court should decline to exercise it because:

(1) The decision is in complete harmony with prior decisions of the Courts of this State, the Public Employees

Relations Commission, the Florida Statutes, and Federal Courts construing parallel federal provisions;

(2) The asserted basis for jusisdiction has extremely limited and merely tangential application to the merits of the decision; and

(3) The City's asserted concerns with the decision are baseless since both police officers and arbitrators are regulated by a state agency and the Circuit Courts pursuant to statutory provisions not material to the decision.

If this Court were to accept for review every appeal in which a public agency contends that its policy choices are involved, it would completely abrogate the clear intent of the framers and adopters of the 1980 constitutional amendment to Article V §3 who sought to severely restrict this Court's discretionary review.

It is therefore respectfully suggested that the City's petition to invoke this Court's jurisdiction should be denied.

I HEREBY CERTIFY that a true copy of the foregoing was mailed to Frank C. Kruppenbacher, Esq., SWANN & HADDOCK, P.A., P. O. Box 640, Orlando, FL 32802; and the Public Employees

Relations Commission, Twin Towers Office Building, 2600 Blair Stone Road, Suite 300, Tallahassee, FL 32301 this 5th day of January, 1985.

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