IN THE SUPREME COURT OF FLORIDA

HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, INC., HILLSBOROUGH COUNTY POLICE BENEVOLENT ASSOCIATION, INC., and PUBLIC EMPLOYEES RELATIONS COMMISSION, Petitioners, vs. HILLSBOROUGH COUNTY AVIATION AUTHORITY and HILLSBOROUGH COUNTY CIVIL SERVICE BOARD, Respondents.	)	Case No. 68,336

ANSWER BRIEF OF RESPONDENT HILLSBOROUGH COUNTY CIVIL SERVICE BOARD

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PRELIMINARY STATEMENT

The parties to this appeal shall be referred to in this Brief as follows:

Respondent Hillsborough County Aviation Authority	"Authority"
Respondent Hillsborough County Civil Service Board	"Board"
Petitioner Florida Public Employees Relations Commission	"PERC"
Petitioner Hillsborough County Police Benevolent Association, Inc.	"HCPBA"
Petitioner Hillsborough County Governmental Employees Association, Inc.	"HCGEA"
HCPBA and HCGEA will be referred to collectively as	"the unions"

All references to the record will appear in brackets. Emphasis will be supplied unless otherwise noted.

STATEMENT OF THE CASE AND THE FACTS

The Board adopts the Statement of the Case and the Statement of the Facts set forth in the Initial Brief of PERC in this appeal.

CERTIFIED QUESTION

WHEN PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT WHICH HAS BEEN ENTERED INTO BY A PUBLIC EMPLOYER CONFLICT WITH CIVIL SERVICE RULES AND REGULATIONS AND THE GOVERNMENTAL BODY HAVING AMENDATORY POWER OVER THE CIVIL SERVICE RULES AND REGULATIONS REFUSES TO AMEND THOSE RULES AND REGULATIONS IN SUCH A MANNER AS TO ELIMINATE THE CONFLICT, DOES SECTION 447.309(3) APPLY TO CIVIL SERVICE RULES AND REGULATIONS AND THEREFORE GOVERN THE EFFECTIVENESS OF THE COLLECTIVE BARGAINING AGREEMENT?

SUMMARY OF ARGUMENT

The question certified by the Second District Court of Appeal should be answered in the affirmative. A thorough reading of Chapter 447, Part II compels the conclusions that (1) the Legislature deliberately sought to harmonize existing merit or civil service systems with public employee collective bargaining and that (2) the Legislature enacted §447.309(3), Fla. Stat., to provide a mechanism for resolving conflicts between negotiated terms of collective bargaining agreements and existing laws, ordinances, rules or regulations, including civil service laws, rules and regulations, over which the executive officer of the employing agency has no amendatory power.

The arguments offered by the Petitioners in support of their contention that §447.309(3), Fla. Stat., applies to all existing laws, ordinances, rules or regulations which conflict with negotiated collective bargaining terms other than civil service laws, rules and regulations should be rejected. That strained interpretation of §447.309(3), Fla. Stat., is contrary to the plain language of that provision, contrary to manifest Legislative intent, and inconsistent with well-settled principles of statutory construction. Finally, Petitioners have failed to demonstrate beyond all reasonable doubt that giving §447.309(3), Fla. Stat., its intended effect would render that provision facially unconstitutional. Section 447.309(3), Fla. Stat., which provides a necessary mechanism for resolving conflicts between negotiated

collective bargaining terms and existing laws, including civil service laws, but does not prevent public employers and public employee unions from bargaining about any subject, does not unconstitutionally abridge collective bargaining simply because it imposes an additional step and some additional uncertainty which does not exist in private sector bargaining.

ARGUMENT

I. THE SECOND DISTRICT COURT OF APPEAL HAS CORRECTLY INTERPRETED THE OPERATION OF SECTION 447.309(3)

A. The Florida Legislature Intended Civil Service Systems To Co-Exist With Public Employee Collective Bargaining

Earlier this year, this Court wrote; "chapter 447 was designed to peacefully co-exist with local civil service systems and was not intended to displace them." City of Casselberry v. Orange County Police Benevolent Association, 482 So.2d 336, 340 (Fla. 1986). There is ample evidence to support that conclusion.

For instance, Chap. 447, Part II, on its face, contemplates that civil service systems will co-exist with public employee collective bargaining. Section 447.209, Fla. Stat., protects the right of public employees to raise grievances concerning decisions by public employers which "have the practical consequence of violating ... any civil or career service regulation." Section 447.309(5), Fla. Stat., makes it unnecessary to include within a collective bargaining agreement "those terms and conditions of employment provided for in applicable merit and civil service rules and regulations." Section 447.401, Fla. Stat., provides that a public employee with a grievance "shall have the option of utilizing the civil service appeal procedure or a grievance procedure established under this section . . ."

The enactment of the Hillsborough County Civil Service Act, Chapter 85-424, Laws of Florida, also evinces a clear legislative intent to preserve a uniformly administered personnel system in the presence of public employee collective bargaining. The Legislature saw fit, in enacting the Hillsborough County Civil Service Act, to grant authority to the Board to adopt a uniformly administered personnel program. Chapter 85-424, Section 7(3), Laws of Florida. There is a legal presumption that the legislature passes statutes with knowledge of prior existing laws.[1/] Since the Hillsborough County Civil Service Act has been reenacted twice since the passage of Chapter 447, Part II (Chapter 82-301, Laws of Florida and Chapter 85-424, Laws of Florida), with full knowledge of §447.309(3), Fla. Stat., and its judicial interpretations in Pinellas County Police Benevolent Association, Inc. v. Hillsborough County Aviation Authority, 347 So.2d 801 (Fla. 2d DCA 1977) and Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So.2d 1017 (Fla. 1st DCA 1983), it must be concluded that the Florida Legislature intended to preserve a uniform personnel administration system in Hillsborough County in the presence of public employee collective bargaining under Chapter 447, Part II.

The Florida Legislature's desire to preserve the viability of civil service systems in the presence of public employee collective bargaining is hardly surprising. Uniform personnel

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1/ State v. Dunmann, 427 So.2d 166 (Fla. 1983).

administration achieves several important societal and governmental objectives. "Setting up a civil service system for city employees aids in the smooth running of the city and thus increases the efficiency with which the city can render services to its citizens." City of Casselberry v. Orange Police Benevolent Association, supra at 339 n.2. "Civil service systems are based upon the notions that skilled people should be recruited for public service and that they should be rewarded according to what they do and not who they know."2/ The maintenance of a uniform pay and benefit system ensures equal pay for equal work, and further ensures that public employees are compensated on the basis of the value of their services to the public, and not on the basis of their political strength relative to that enjoyed by other public employees who happen to be represented by labor unions.

There is another, more immediate reason for the Legislature's conscious interest in preserving civil service systems. 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 such systems by the political subdivisions of the state. That constitutional provision manifests the judgment of the people of the State of Florida that uniform personnel administration is a desirable system for public employment.

2/ John A. Straayer, American State And Local Government, p. 367 (3rd Ed. 1984).

B. The Legislature Enacted Section 447.309(3) To Harmonize Collective Bargaining And Civil Service Systems

Not only is it clear that the Florida Legislature meant for civil service systems to co-exist with public employee collective bargaining, a thorough reading of Chapter 447, Part II in its entirety discloses that the Legislature considered in depth the relationship between civil service systems and the public employee collective bargaining scheme, and harmonized them in §447.309, Fla. Stat., in a fashion which was intended to, and in fact does, give full play to both types of personnel systems. This conclusion can best be illustrated by examining the comprehensive collective bargaining framework under Chapter 447, Part II.

Section 447.309, Fla. Stat., prescribes the parameters of a public employer's obligation to bargain collectively in good faith with representatives of a duly certified employee bargaining unit. Section 447.309(1), Fla. Stat., 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.

Section 447.309(1), Fla. Stat., 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, §447.309(1), Fla. Stat., 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), Fla. Stat., 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 §447.309(1), Fla. Stat., the collective bargaining agreement provisions cannot conflict with 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 §447.309, Fla. Stat. §447.309(1), Fla. Stat.

Sections 447.309(2) and (3), Fla. Stat., 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 Chapter 447, Part II.

Section 447.309(2), Fla. Stat., 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. The failure or refusal of the legislative body to appropriate sufficient monies to fund the negotiated collective bargaining agreement, regardless of the legislative body's motivation or good faith in doing so, does not constitute an unfair labor practice. §447.309(2), Fla. Stat.

Once bilateral ratification has taken place pursuant to §§447.309(1) and (4), Fla. Stat., and funding at some level has been secured pursuant to §447.309(2), Fla. Stat., 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, §447.309(3), Fla. Stat., 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. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the bargaining agreement shall not become effective.

Thus, §447.309(3), Fla. Stat., prohibits any term of a negotiated collective bargaining agreement 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, unless and until the appropriate governmental body having amendatory power (which includes, but is not limited to, civil service boards or commissions) has enacted and adopted the amendment and it has become effective.3/

3/ 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. Absent the approval of such agencies, the negotiated term cannot be given effect. See Boatwright v. City of (footnote continued)

Under §447.309(3), Fla. Stat., if any provisions 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 was 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 power."

On the basis of the legislatively mandated collective bargaining scheme found in §447.309, Fla. Stat., it would appear that resolution of any potential conflict between collective bargaining terms and existing civil service laws, rules or regulations has been anticipated and provided for in the language of §447.309(3), Fla. Stat., thereby ensuring the continued viability of both civil service systems and public employee

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(footnote continued from previous page)
Jacksonville, 334 So.2d 339, 344 (Fla. 1st DCA 1976) ("The requirement that employers and bargaining agents of employees engage in collective bargaining does not authorize an agreement that is in disregard of other laws.").

collective bargaining.[4/] Failure to give §447.309(3), Fla. Stat., its natural, intended effect would negate the clear Legislative desire to preserve and harmonize civil service systems with public employee collective bargaining. Therefore, this Court should adopt the Second District Court of Appeal's interpretation of §447.309, Fla. Stat., and should answer the certified question in the affirmative.

4/ That conclusion was apparently shared by the District Court below: "We are not necessarily inclined to agree that a statute, such as Section 447.309(3), could not represent an expression of policy, properly within the legislative sphere, to harmonize collective bargaining agreements with civil service laws and regulations." Hillsborough County Aviation Authority v. Hillsborough County G.E.A., 482 So.2d 505, 508 (Fla. 2d DCA 1986).

C. The Construction Of Section 447.309(3) Urged By Petitioners Is Fundamentally Unsound And Inconsistent With Legislative Intent

1. Section 447.601 does not apply to conflicts between civil service laws and collective bargaining terms.

Petitioners contend that §447.309(3), Fla. Stat., applies to conflicts between collective bargaining agreement terms and all laws, rules and regulations except civil service laws, rules or regulations. Petitioners insist that §447.601, Fla. Stat., governs conflicts between negotiated bargaining terms and civil service laws, rules and regulations.5/

Petitioners' reliance upon §447.601, Fla. Stat., as support for their contention that terms of collective bargaining agreements automatically preempt conflicting civil service laws, rules and regulations, is misplaced. In fact, such reliance is contrary to the literal wording of §447.601, Fla. Stat.

On its face, §447.601, Fla. Stat., does not apply to conflicts between civil service laws, rules or regulations and collective bargaining terms. Instead, it applies solely to conflicts between civil service laws, rules and regulations and the statutory provisions of Chapter 447, Part II. As the District Court below pointed out:

> Nor does Escambia refer to other differences in the wording of sections 447.309(3) and 447.601. For example, section 447.309(3)

5/ See e.g. Unions' Brief, p. 16 ("The procedure established by PERC for the resolution of conflicts between provisions of a collective bargaining agreement and civil service rules is based on Section 447.601, Florida Statutes.").

> refers to a "provision of a collective bargaining agreement . . . in conflict with any law, ordinance, rule, or regulation. . . " (emphasis added), whereas section 447.601 refers to a conflict between "the provisions of any law or ordinance establishing a merit or civil service system" and "the provisions of this part" (emphasis added), to wit, the provisions of the Public Employees Relations Act.

Hillsborough County Aviation Authority v. Hillsborough County G.E.A., supra at 508 (emphasis in original). See also City of Casselberry v. Orange County Police Benevolent Association, supra at 339.

If the Florida Legislature had intended §447.601, Fla. Stat., to allow collective bargaining agreement terms to automatically displace existing civil service laws, rules and regulations, it easily could have included specific language to that effect in that statutory provision.6/ Because §447.601, Fla. Stat., does not contain such specific language, the construction of that provision urged by the Petitioners must be rejected, and the provision must instead be viewed as a general repealer clause intended to supersede any civil service laws which expressly or impliedly proscribe the organizational and collective bargaining conduct provided for under Chapter 447, Part II.

6/ Other state legislatures have seen fit to enact statutes which specifically provide that public employee collective bargaining agreement provisions supersede civil service regulations. See e.g. Hawaii Rev. Stat. § 89-10(d) (1976); Wis. Stat. Ann. § 111.93(3) (1984); Conn. Gen. Stat. Ann. § 7-474(f) (1970); Me. Stat. Ann. Chap. 26 § 969 (1970).

2. The construction urged by Petitioners would result in an unlawful delegation of the Legislature's lawmaking function to union and management negotiators.

Article III, Section 1 of the Florida Constitution provides, in part, that "[t]he legislative power shall be vested in a legislature of the State of Florida . . .." It is well-settled in Florida that delegation of the authority to make law is an unconstitutional abdication of legislative power. In Adoue v. State, 408 So.2d 567 (Fla. 1981), this Court stated:

> The delegation doctrine is grounded on the constitutional maxim that the legislature has the sole authority and responsibility to make the laws . . . . Unless the constitution otherwise authorizes, the legislature cannot delegate this responsibility to any other person or body.

408 So.2d at 570 (citation omitted). Clearly, Article I, Section 6 of the Florida Constitution does not grant authority to public employers and public employee unions to make law; it merely authorizes employees to bargain collectively.

Under Petitioners' view, whenever a public agency and a public employee union agree upon a collective bargaining term which, prior to that time, had been controlled by a civil service law, the bargaining term would become effective immediately -- thereby amending or repealing the duly enacted statutory provision to the extent that it conflicted with the agreed-upon term. The ability of these parties to amend or repeal duly enacted statutory provisions through the mere negotiation and execution of a collective bargaining agreement, particularly where state career

service employees are involved, is clearly an unlawful delegation of legislative authority. Cf. Industrial Commission of Arizona v. C & D Pipeline, Inc., 607 P.2d 383 (Ariz. App. 1979) (state statute which made union wage scales absolutely determinative of prevailing rates on state public works projects found to be an unlawful delegation of legislative power to labor organizations and employers).7/ Thus, Petitioners' view that collective bargaining terms automatically displace conflicting civil service laws, rules and regulations would create, rather than resolve, a constitutional infirmity.

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See generally Ridgefield Park Education Association v. Ridgefield Park Board of Education, 393 A.2d 278 (N.J. 1978) (both state and federal doctrines of substantive due process prohibit delegations of governmental policy-making to private groups where there is a serious potential for arbitrary or self-serving action detrimental to third parties or the public good generally); Lake County Education Association v. School Board of Lake County, 360 So.2d 1280 (Fla. 2d DCA 1978) (just cause provision in collective bargaining agreement with respect to reappointment of nontenured teachers improperly transferred statutory authority vested in school board for reappointment of nontenured teachers to arbitrator); Public Employees Relations Commission v. District School Board of De Soto County, 374 So.2d 1005, 1014 (Fla. 2d DCA 1979)("...the legislature did not intend to permit a public employer to negotiate a collective bargaining agreement in which it relinquishes a statutory duty...").

3. The interpretation of Section 447.309(3) urged by Petitioners is contrary to well-settled principles of statutory construction.

Petitioners' assertion that §447.309(3), Fla. Stat., should be construed as not applying to civil service laws, rules or regulations runs directly contrary to well-settled principles of statutory construction. In the first place, such a construction contradicts the primary rule of statutory construction -- that legislative intent controls the construction of statutes and that such intent is determined primarily from the language of the statute. St. Petersburg Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1982); Thayer v. State, 335 So.2d 815 (Fla. 1976). Petitioners' proposed interpretation of §447.309(3), Fla. Stat., is in direct conflict with the literal language of that statute which, on its face, applies to ". . . any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power . . ." The use of the all-inclusive term "any" belies Petitioners' contention that the statute's application is limited to all rules "other than" civil service rules. See Wilson v. Crews, 34 So.2d 114, 118 (Fla. 1948) (the term "any" in the context of a constitutional amendment meant "one or all, one or more, indiscriminately of the total number"); State v. Steenhoek, 182 N.W.2d 377 (Iowa 1970) ("Any" is synonymous with "every" and "all."); Hime v. City of Galveston, 268 S.W.2d 543 (Tex. App. 1954) (same).

Secondly, Petitioners' proposed interpretation conflicts with the well-settled principle that, in construing a statute, a court must give effect to all statutory provisions and should construe related statutory provisions in harmony and not in conflict. See Villery v. Florida Parole and Probation Commission, 396 So.2d 1107 (Fla. 1981). See also State v. Rodriguez, 365 So.2d 157 (Fla. 1978). Section 447.309(5), Fla. Stat., provides that "[a]ny collective bargaining agreement...shall contain all of the terms and conditions of employment...except those terms and conditions provided for in applicable merit and civil service rules and regulations." Section 447.309(3), Fla. Stat., should be read in pari materia with §447.309(5), Fla. Stat. Since §447.309(5), Fla. Stat., specifically contemplates that civil service rules and regulations will survive the execution of a collective bargaining agreement, it must be concluded that the Legislature did not intend for collective bargaining terms to automatically displace conflicting civil service laws, rules and regulations, but instead intended to include civil service laws, rules and regulations within the process established by §447.309(3), Fla. Stat. for resolving conflicts between collective bargaining agreement terms and laws, rules and regulations over which the chief executive officer of the employing agency has no amendatory power.

Finally, Petitioners' contention that collective bargaining terms automatically preempt conflicting provisions in existing civil service laws effectively advocates the piecemeal repeal of existing civil service laws by implication. Repeals by

implication are not favored under Florida law. A repeal by implication will only be found where an irreconcilable conflict exists between two statutes. State of Dunmann, supra; 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 unreconcilable conflict between the later statute and earlier statute show legislative intent to repeal.")

Facially, there is no irreconcilable conflict between Chapter 447, Part II, Laws of Florida and civil service statutes such as Chapter 110, Part II, Laws of Florida or the Hillsborough County Civil Service Act. Such civil service statutes do not prohibit collective bargaining. Chapter 447, Part II does not, on its face, require that all wages, hours, and terms and conditions of employment for represented public employees be established exclusively through collective bargaining.8/ Nor does Chapter 447, Part II prohibit the co-existence of a merit or civil system with collective bargaining. In fact, as discussed in Part I, A and B of this brief, that Act manifests a clear Legislative intent to harmonize civil service systems with public employee collective bargaining.

In short, the interpretation of §447.309(3), Fla. Stat., proposed by Petitioners is based upon a misreading of §447.601, Fla. Stat., and is contrary to manifest Legislative intent as well

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8/ In fact, §447.309(5), Fla. Stat., makes it clear that collective bargaining is not the exclusive method of determining wages, hours, and terms and conditions of employment for public employees.

as well-settled statutory construction principles. In addition, Petitioners' view that negotiated collective bargaining terms automatically displace duly enacted civil service laws would result in an unlawful delegation of the Legislature's lawmaking function to union and management negotiators. The Petitioners' proposed construction of §447.309(3), Fla. Stat., should therefore be rejected.

II. GIVING SECTION 447.309(3) ITS INTENDED EFFECT DOES NOT RENDER THAT PROVISION UNCONSTITUTIONAL

In arguing that §447.309(3), Fla. Stat., should not apply to civil service laws, rules or regulations, Petitioners would have this Court conclude that a literal reading of §447.309(3), Fla. Stat., would render that statutory provision facially unconstitutional[9/] because a civil service board's ability to refuse to amend its rules or regulations to accommodate a conflicting collective bargaining term would constitute an abridgment of the public employees' right to collective bargaining. Any consideration of the constitutionality of §447.309(3), Fla. Stat., must necessarily begin with the legal presumption that, in the passage of any law, the Legislature acted with full knowledge of all constitutional restrictions and decided that they were acting within their constitutional limits and

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9/ The Second District Court of Appeal suggested in obiter dicta that under certain factual circumstances the refusal of a civil service board to amend one of its rules in order to accomodate a conflicting provision of a negotiated collective bargaining agreement may be so "arbitrary or unreasonable" as to raise a question about the constitutionality of §447.309(3), Fla. Stat., in its application --- as opposed to whether the provision is void on its face. Pinellas County Police Benevolent Association Inc. v. Hillsborough County Aviation Authority, 347 So.2d 801, 803 (Fla. 2d DCA 1977). The fact that a statute might be unconstitutionally applied in certain circumstances does not warrant a finding that the statute itself is unconstitutional. State v. Ecker, 311 So.2d 104 (Fla.), cert. denied, 423 U.S. 1019, 96 S.Ct. 455, 46 L.Ed.2d 391 (1975). In this instance, there are insufficient record facts to support a conclusion that the Board's refusal to amend its conflicting rules and regulations was arbitrary or unreasonable. Furthermore, this is not a theory which Petitioners have ever pursued.

powers and that all reasonable doubts are therefore to be resolved in favor of the constitutionality of the law. As this Court stated in Greater Loretta Improvement Association v. State ex rel. Boone, 234 So.2d 665 (Fla. 1970):

> When the Legislature has once construed the Constitution, for the courts then to place a different construction upon it means that they must declare void the action of the Legislature. It is no small matter for one branch of the government to annul the formal exercise by another of power committed to the latter. The courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said of the statute that it positively and certainly is opposed to the Constitution. This is elementary.

234 So.2d at 670.

To overcome a statute's presumptive constitutionality, the party challenging the validity of a statute must demonstrate beyond any reasonable doubt that the statute conflicts with the Constitution. Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981).

Here, considerable doubt exists that a literal reading of §447.309(3), Fla. Stat., would render that provision facially unconstitutional. In the first place, the right to collective bargaining simply is not a guarantee of the receipt of a negotiated contract term. Secondly, even assuming arguendo that §447.309(3), Fla. Stat., imposes a restriction on the right to collective bargaining, it is a reasonable restriction which is rationally related to valid state objectives.

A. The Right To Collective Bargaining Is Not A Guarantee That Bargained-For Terms Will Be Imposed

Chapter 447, Part II requires that a public employer bargain collectively following the certification of a bargaining representative for its employees. The right to collective bargaining simply means "the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith and to execute a written contract with respect to agreements reached ...." §447.203(14), Fla. Stat. The fact that provisions of the executed contract may or may not ultimately be implemented because of a civil service board's subsequent refusal to amend its conflicting rules or regulations does not, in any way, lessen the obligation of public employers and public employee bargaining representatives to bargain collectively.10/

10/ PERC itself has recognized as much:

> The practical effect of [Section 447.309(3)] is that a public employer which proposes or receives a proposal to make a change in a matter which falls within the ambit of the phrase "wages, hours, terms and conditions of employment" and which is controlled by a statute or rule must negotiate concerning the proposed change irrespective of that public employer's independent authority to implement the change. Its duty to negotiate is no different than that applicable when it possesses full authority to effectuate the fruits of negotiation. . .

Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737, AFL-CIO, et al. v. School Board of Escambia County, 6 FPER ¶ 11134 (1980) at p. 210.

In this case, §447.309(3), Fla. Stat., did not prevent the unions and the Authority from engaging in collective bargaining; in fact, the parties' bargaining was completed before the statute even came into play. Nor can Petitioners claim that the Board's ability to prevent the implementation of negotiated terms by refusing to amend its conflicting rules or regulations "chilled" the unions' ability to bargain over terms and conditions in conflict with the Board's rules and regulations. The fact that conflicting contract terms might not be implemented in the event the Board did not agree to amend its rules and regulations to accommodate the conflicting contract terms was well known to the parties before, during, and after negotiations. (Both collective bargaining agreements provide that the contract could be reopened "should, by final action of the highest authority having jurisdiction, contract provisions take precedence over conflicting civil service rules or regulations. . ." See Appendix). Obviously, that fact did not prevent the Authority and the unions from negotiating and agreeing on the conflicting contract terms.

The right to collective bargaining is not a constitutional guarantee of any specific employment term. If that were the case, negotiated terms of public employee collective bargaining agreements would always automatically displace conflicting laws. That simply is not so. See Boatwright v. City of Jacksonville, supra (a collective bargaining provision which is in conflict with a Florida statute is invalid). Under Petitioners' view, §447.309(3), Fla. Stat. would have to be declared unconstitutional

in its entirety, not merely to the extent that it pertains to civil service laws, rules or regulations. Moreover, other provisions of Chapter 447, Part II, notably §447.309(2), Fla. Stat.[11], would also be constitutionally defective under such a view.

In short, Petitioners' argument that §447.309(3), Fla. Stat., creates an unconstitutional abridgment of collective bargaining must be rejected because that argument is based upon the mistaken premise that the right to collective bargaining means the absolute right to have bargained-for terms implemented.

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[11] Section 447.309(2), Fla. Stat. expressly precludes renegotiation in the event that the legislative body disapproves funding for a collective bargaining agreement and provides that the legislative determination of the amount of funds to be appropriated for employee salaries and benefits is binding.

B. Even Assuming Arguendo That Section 447.309(3) Imposes A Restriction On Public Employee Collective Bargaining, It Is A Reasonable Regulation Of The Bargaining Process Which Is Rationally Related To Valid State Objectives

Petitioners' contention that a literal reading of Section 447.309(3) would render that provision facially unconstitutional is also premised upon the implicit assumption that public employees should be provided the identical treatment afforded under the private sector bargaining model:

> In this case, to construe Section 447.309(3) as the Second District Court of Appeal did in Pinellas County PBA may in fact create an abridgement of the right to bargain. If the statute were to be applied to civil service boards, such boards would have the ability to veto a wide variety of provisions in collective bargaining agreements on such critical matters as wages, hours, and other working conditions. In the private sector, there is no such third party entity which possesses such pervasive control over what an employer and a union may implement in a collective bargaining agreement.

PERC's Brief, p.23.

Petitioners ignore the fact that salient differences exist between public and private sector collective bargaining. In the public sector, the government is not only the employer, but also a political decisionmaker entrusted with making policy and allocating public resources on behalf of the people. Within the government's budget-making process, public employees constitute merely one of many interest groups; and a public employee union's demand for increased wages or benefits is directly adverse to every other interest group seeking funds. Accordingly, the

government's decisions regarding the allocation of public resources, including its decisions regarding the funding of public employee collective bargaining agreements, are inherently political decisions. See Abood v. Detroit Board of Education, 431 U.S. 209, 228, 97 S.Ct. 1782, 1796, 52 L.Ed 2d 261 (1977) (". . . decisionmaking by a public employer is above all a political process.")[12/]

There are other differences between public and private sector employee relations. In Abood V. Detroit Board of Education, supra, the United States Supreme Court wrote:

> A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense "essential" and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondingly less concerned that high prices due to costly wage demands will decrease output and hence employment.

12/ One well known commentator termed all major decisions in public employee bargaining as "inescapably political" ones, involving "critical policy choices." Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 U. Cinn. L. Rev. 669, 672 (1975).

431 U.S. at 227-228, 97 S.Ct. 1795. These differences between the public and private sectors necessitate restrictions on the public employee collective bargaining process which are not found in the private sector.13/

In enacting Chapter 447, Part II, the Florida Legislature apparently recognized that fundamental differences between the public and private sectors made it impossible to simply transpose the private sector collective bargaining model to the public sector. This Court has expressly recognized this proposition:

> In so holding, we 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. 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, and that rules and regulations are a necessity. . .

13/ See Wellington and Winter, Structuring Collective Bargaining In Public Employment, 79 Yale L. J. 805, 809 (1970) ("Since full collective bargaining by public employees may distort the political process, regulation and changes in the structure of bargaining, other than those imposed by law in the private sector, are necessary. The goal of such restructuring is to ensure that one particular interest group, public employee unions, does not gain a substantial competitive advantage over other interest groups in pressing its claims on government."); Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. 1156 (1974). ("Collective bargaining public employment is different from collective bargaining in private employment, for 'government is not just another industry.' . . . The introduction of collective bargaining in the private sector restructures the labor market, while in the public sector it also restructures the political processes.") (footnotes omitted).

410 So.2d at 490-91. See also Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority, 347 So.2d at 803 ("A public employee's constitutional right to bargain collectively is not and cannot be coextensive with an employee's right to so bargain in the private sector.") (footnote omitted).

Legislative limitations or restrictions upon the right to engage in collective bargaining are constitutional if they rationally relate to valid state objectives. See Department of Business Regulation v. National Manufactured Housing Federation, Inc., 370 So.2d 1132 (Fla. 1979) (Legislative limitations upon the exercise of the rights to contract and to pursue a lawful business, recognized under Article I, Section 2 of the Florida Constitution, are constitutional if they rationally relate to a valid state objective); Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 183 So. 759 (1938)(constitutional guarantees are not immune from reasonable limitations in the interest of common good).

Chapter 447, Part II imposes numerous restrictions on the public employee collective bargaining process. Section 447.203(3), Fla. Stat., operates to preclude various categories of public employees from engaging in organizing and collective bargaining activities. As discussed previously, §447.309(2), Fla. Stat., permits a legislative body to refuse to fund the provisions of a duly negotiated collective bargaining agreement and to bind the public employer and the union to a contract based upon a lower level of funding, free of the need to bargain further, or unfair

labor practice liability. Sections 447.403(4)(d) and (e), Fla. Stat., provide that, in the event of a bargaining impasse, the legislative body's final action automatically takes effect, even where the union members refuse to ratify the contract. Section 447.505, Fla. Stat., prohibits public employees from striking, even where the legislative body has imposed, pursuant to Sections 447.403(4)(d) and (e), Fla. Stat., contract terms not agreeable to the employees. Indeed, even the Florida Constitution itself imposes a substantial limitation on the public employee collective bargaining process by removing from public employees the right to strike -- a right which plays a fundamental part in private sector labor relations.

In the City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981), this Court stated that the imposition of restrictions upon the process of public employee collective bargaining, as opposed to a complete prohibition against bargaining on particular subjects, does not unconstitutionally abridge the right to collective bargaining:

> The former [statutory sections] regulate and limit various aspects of collective bargaining, providing an orderly procedure, and are a necessary and proper aspect of Chapter 447. The provisions deleted, on the other hand, did not simply regulate a particular aspect of collective bargaining -- they prohibited it entirely. Article I, section 6, permits regulation of the bargaining process but not the abridgement thereof . . .

410 So.2d at 490.

Similarly, the restriction imposed upon the collective bargaining process by §447.309(3), Fla. Stat., if any, is a reasonable "regulation of the bargaining process" which is rationally related to valid governmental objectives. In the first place, the maintenance of a uniformly administered merit or civil service system promotes efficient public administration. See City of Casselberry v. Orange County Police Benevolent Association, supra. "[T]he primary purpose of civil service is to enable state, county, and municipal governments to render more efficient services to the public by enabling them to obtain more efficient public servants." 15A Am.Jur.2d Civil Service §1 (footnotes omitted). Moreover, the existence of a constitutional provision mandating a civil service system for state employees and permitting the creation of such systems for political subdivisions of the state conclusively demonstrates that the benefit provided to the public welfare by civil service or merit systems is a valid state interest.

In addition, any restriction imposed upon the collective bargaining process by §447.309(3), Fla. Stat., is also a reasonable restriction because it facilitates the integration of collective bargaining with the government's budget-making process. In the private sector, the entity responsible for negotiating with the labor union, is also directly responsible for funding collective bargaining increases. In the public sector, each employing agency is responsible for negotiating with its own employees, despite the fact that the "legislative body," as

defined by §447.203(10), Fla. Stat., (in this instance the Hillsborough County Board of County Commissioners) has the authority to authorize funds for the implementation of the collective bargaining agreement. All employees of a political body such as Hillsborough County are generally paid from a common budget funded by the same tax revenues.14/ The Hillsborough County Board of County Commissioners' task in determining the appropriate portion of public resources that should be allocated to each interest group, including each public employee bargaining group, is complicated by diffusion of bargaining authority to the management of each individual employing agency, as well as such factors such as restrictions on tax increases and budgetary timetables.15/

The uniformity afforded by a civil service system facilitates the legislative budget-making process by ensuring greater predictability of the labor costs which must be funded by the legislative body. The uniformity centralizes the government's collective bargaining decisions and allows for more efficient public administration. It allows the funding body to project the

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14/ The fact that the Authority generates its own revenues makes it an anomaly among public agencies. However, that does not alter the fact that the uniformity afforded by civil service systems facilitates the legislative body's policymaking and budgetmaking functions. Instead, it merely raises the issue of whether the Authority's employees should be covered under civil service - an issue not before this Court.

15/ See Summers, Public Employee Bargaining: A Political Perspective, supra at 1183-1189.

cost of proposed wage increases when granted to all unionized groups and measure the impact of that general increase on the total budget.16/

The uniformity afforded by civil service is rationally related to yet another legitimate state objective. It ensures equal, non-discriminatory treatment for all employees in a given job classification, regardless of which particular public agency they work for. Thus, two employees who are performing essentially similar functions for different employing agencies receive comparable compensation, and are not compensated differently due to variations in the political power wielded by their labor unions. The statement of policy contained in Chapter 85-424, Laws of Florida clearly indicates that a uniform personnel administration system is intended to compensate employees on the basis of their performance and ability. See Chapter 85-424, §1, Laws of Florida. See also §448.07(a)(2), Fla. Stat. (creating an absolute defense to a wage discrimination claim where the alleged pay disparity is pursuant to a merit system).

16/ Chapter 85-424 §13 requires the Board to submit proposed revisions to the classification and pay plans to each employing agency on or before March 31 of each year. By April 30, the Board is required to present a final recommendation, which takes into consideration responses received from each employing agency, regarding revisions to the classification and pay plans to the School Board or the Hillsborough County Board of County Commissioners. "The school board and the board of county commissioners must approve, amend or reject the amended pay plan for its classified employees by the date of adoption of its annual budget." Chapter 85-424 §13, Laws of Florida.

That civil service uniformity is rationally related to the realization of the goal of equal pay for equal work expressly recognized by a Delaware court in Laborers' International Union of North America, Local 1029 v. State, Department of Health and Social Services, 310 A.2d 664 (Del. Ch. 1973), aff'd, 314 A.2d 919 (Del. 1974). In ruling that the state could not be compelled to bargain collectively over certain matters covered by Delaware's Merit System, the Court stated:

> The Merit System has been instituted to create a uniformity of protection and treatment for public employees. The sections listed in section 5938(c) are those in which uniformity of treatment would seem most essential if the system is to have meaning, particularly those which attempt to deal with classification based on ability, equal compensation for commensurate ability and responsibility, promotions and time off from work with pay. If each agency is to bargain with the bargaining representative of its employees on such things as the amount of pay for holidays and double shifts worked, the amount of authorized leave with pay, the use of accumulative sick leave as additional vacation with pay, etc., then the obvious result will be to have employees of the same classifications receiving different compensation and different leave arrangements for different purposes based solely upon the agency they work for and the success of their collective bargaining representatives.

310 A.2d at 667. While it is undisputed that here, unlike in Delaware, the Authority and the unions are required to bargain regarding certain matters covered by civil service, the importance placed by the Delaware court upon the role of civil service in ensuring equal pay for equal work is equally applicable here.

In short, even assuming that §447.309(3), Fla. Stat., imposes additional regulation on the collective bargaining process, such regulation is rationally related to important governmental interests. Therefore, Petitioners' argument that §447.309(3), Fla. Stat., must be construed as not applicable to civil service laws, rules or regulations lest it be rendered facially unconstitutional should be rejected.

CONCLUSION

For the foregoing reasons, this Court should adopt the Second District Court of Appeal's interpretation of §447.309(3), Fla. Stat., and should answer the certified question in the affirmative.

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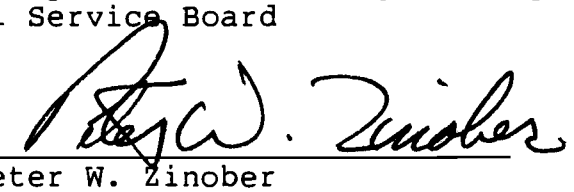
By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U. S. Mail this 12th day of May, 1986 to the following:

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