IN THE SUPREME COURT
STATE OF FLORIDA

HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, INC., ET AL.,	:	
Petitioners,	:	
v.	:	Case No. 68,336
HILLSBOROUGH COUNTY AVIATION AUTHORITY, ET AL.,	:	
Respondents.	:	

/

BRIEF OF RESPONDENT
HILLSBOROUGH COUNTY AVIATION AUTHORITY

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PRELIMINARY STATEMENT

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

Petitioner Hillsborough County Governmental Employees Association, Inc. "HCGEA"

Petitioner Hillsborough County Police Benevolent Association, Inc. "HCPBA"

Petitioner Florida Public Employees Relations Commission "the Commission" or "PERC"

Respondent Hillsborough County Aviation Authority "the Authority"

Respondent Hillsborough County Civil Service Board "Civil Service Board"

All references to the Appendix will appear in brackets as [A.____].

All references to the record will appear as (R.____).

STATEMENT OF THE CASE AND

STATEMENT OF FACTS

The Authority adopts the Statement of the Case and Statement of the Facts set forth in petitioner PERC's initial brief herein.

SUMMARY OF ARGUMENT

The certified question should be answered in the affirmative. The legislative history of Chapter 447 clearly establishes a legislative intent to accommodate chapter 447 with Civil Service laws, rules and regulations and achieve "peaceful coexistence" as described by this Court in City of Castleberry v. Orange County PBA, 482 So.2d 336 (Fla. 1986). PERC's argument fails to recognize the distinction between the right to collective bargaining and the right of a constitutionally established Board to ratify or reject provisions presented to it which seek to change or amend lawfully promulgated rules and regulations with which those provisions conflict. The construction of F.S. 447.309(3) adopted by the court below achieves the constitutional objective of both Article I, Section 6 and Article III, Section 14 by preserving the right to bargain collectively on the one hand while protecting Civil Service systems through the ratification process on the other, thus affirming the basic principle that the right to bargain collectively is the right to achieve as a group through a labor organization that which an individual may achieve, no more and no less. Any attack on a refusal to amend must be made on the grounds that the Civil Service Board abused its discretion or unlawfully exceeded its authority, a right preserved both to individuals and labor organizations, and PERC's presumption that the Civil Service Board would never amend its rules to accom-

modate a conflicting contractual provision is without foundation in the record and there is no evidence of nor allegation that the Civil Service Board rejected the proposed amendments in an arbitrary, capricious or otherwise unlawful manner.

What PERC seeks here is the effective removal of bargaining units from Civil Service systems, a result the legislature rejected, and one which finds no support in either a constitutional mandate or Chapter 447, Florida Statutes.

As to its second argument, and assuming that jurisdiction is proper, PERC ignores the fact that the Authority has an obligation to comply with the laws of the State and the decisions of its District Courts of Appeal. The Authority is not relieved of that obligation when PERC opines in another case in another jurisdiction that the constitutionality of those laws and mandates are suspect. Accordingly, the decision below should be affirmed.

ARGUMENT

I. SECTION 447.309(3) LAWFULLY REQUIRES THAT A CONFLICTING PROVISION OF A COLLECTIVE BARGAINING AGREEMENT IS OF NO FORCE OR EFFECT UNLESS AND UNTIL THE CIVIL SERVICE BOARD AMENDS ITS CONFLICTING RULE TO ELIMINATE THE CONFLICT.

The certified question here presented is actually composed of two parts. The first has to do with the intent of the legislature in its statutory accommodation of Civil Service Systems and the collective bargaining process. The second examines the constitutional propriety of the accommodation. The answer to the question begins in the legislative history of the Public Employees Relations Act.

At the time of the adoption of the Public Employees Relations Act in 1974, the employees of the Authority were, like many governmental employees statewide, subject to a Civil Service System. These systems, whose history dates back to the abuses of the spoils system in the Andrew Jackson era, were designed to protect governmental employees from potential abuses inherent in the political arena. Florida had long recognized the necessity for such systems. They were constitutionally recognized in the 1956 amendments to the Constitution of 1885 and, with the 1968 revisions, Article III, Section 14 was incorporated into the Constitution. That Section provides:

> By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created

> civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor and there may be authorized such boards as are necessary to prescribe the qualifications, methods of selection and tenure of such employees and officers.

The Authority had been established by the legislature in 1945 as an independent public body whose members are appointed by the Governor with the authority to raise revenues, enter into contracts, appropriate funds and generally administer the public aviation facilities in Hillsborough County. (Stip. of facts par. 4). Then, in 1969, by special act of the legislature, its employees became subject to the Civil Service System administered by the Hillsborough County Civil Service Board, another independent Board appointed by the Governor, with exclusive power to establish regulations dealing with rates of pay, hours of work and other working conditions. [Chapter 69-1211, Laws of Florida.] The statutory charge under which the Civil Service Board operates is to provide uniform wages, hours and terms and conditions of employment for all employees under its jurisdiction. This statutory grant of authority is common to other Civil Service Systems created under Article III, Section 14. [See also Chapters 85-424 and 82-301, Laws of Florida.]

The 1968 Constitution also provided, in its Declaration of Rights:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike. (Article I, Section 6, Florida Constitution.)

Prior to that time, public employees in Florida apparently did not possess the right to engage in true collective bargaining with their governmental employers (See: The Legal Obligations of Governmental Employers and Labor Organizations Under the Recognition-Certification Provisions of the Florida Public Employees Relations Act, 27 U.Fla. L. Rev. 705 [1975]. In 1974, following this Court's decisions in Dade County Classroom Teachers Assn., Inc. v.Ryan, 225 So.2d 903 (1969) and Dade County Classroom Teachers Assn. Inc. v. Legislature, 269 So.2d 684 (1972), the legislature addressed the issue of public employee collective bargaining and adopted the Public Employees Relations Act which, for the first time, established a structure whereby the constitutionally granted right to bargain collectively through a labor organization was implemented for public employees. In doing so, the legislature was particularly sensitive to the potential conflict between Civil Service Systems already in existence and collective bargaining agreements that would naturally flow from the passage of the Act. The conflict, then as now, arises from the concept of uniformity for all public employees embodied in a civil

service system as opposed to the desire of certain employees within that system to be treated differently from their peers through the collective bargaining process. The conflict is precipitated by the formation and recognition of a collective bargaining unit composed of a limited number of employees within a given civil service system.

The 1974 legislature had three alternative solutions available to it to resolve this conflict. The first was to devise a scheme whereby public employees under Civil Service Systems could not bargain with respect to matters within the purview of Civil Service. The second was to accomodate the two systems and the third was to exempt or declassify employees in certified collective bargaining units from the Civil Service System to which they otherwise belonged. The legislature clearly chose the route of accomodation.

The legislature's decision to accommodate the two systems is embodied in F.S. 447.601, which states:

> The provisions of this part shall not be construed to repeal, amend, or modify the provisions of any law or ordinance establishing a merit or civil service system for public employees or the rules and regulations adopted pursuant thereto or to prohibit or hinder the establishment of other such personnel system unless the provisions of such merit or civil service system laws or ordinances or rules and regulations adopted pursuant thereto are in conflict with the provisions of this part, in which event such laws, ordinances, or rules and regulations shall not apply, except as provided in §447.301(4).

It is this provision which sets the stage for the resolution of a conflict between a contractually negotiated provision and a Civil Service Rule or regulation. F.S. 447.309(3) appears to provide the resolution of such a conflict by the following procedure:

> (3) If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.

The issue is complicated, however, by F.S. 447.309(5), which provides:

> (5) Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided for in applicable merit and civil service rules and regulations.

A reading of the statute without regard to the constitutional issue therefore leaves us with two alternatives. The first, provided by 447.309(3), would seem to indicate that the Authority and its labor organizations can agree on a provision, incorporate it in an agreement, and if it conflicts with a Civil Service Rule or regulation, it is of no force or effect unless and until Civil Service amends the conflicting rule. The second, which is provided by 447.309(5), is that any collective bargaining agreement

shall contain all of the terms and conditions of employment except those provided in Civil Service Rules and regulations, thereby eliminating the chance of conflict. This alternative is supported by the fact that while 447.309(3) contains no reference to Civil Service, 447.309(5) does and by the fact that another provision, Section 447.401, provides specifically for the establishment of a contractural grievance procedure in the collective bargaining agreement despite the existence of a similar Civil Service provision but resolves any conflict by providing the employee with a choice of the procedure he or she desires to pursue.

It was the existence of these alternatives, together with the union's position that the collective bargaining agreement ruled in the case of conflict that led the Authority in 1975 to initiate the Declaratory Judgment Action that ultimately resulted in the Second District's decision in Pinellas County PBA v. HCAA, 347 So. 2d 801 (Fla. 2d DCA 1977). There the court held that the legislature intended to accommodate the two systems through the route provided by 447.309(3), rejecting the argument that 447.309(5) was controlling. At the inception of this case, therefore the Authority was in the posture that the Second District Court of Appeal had interpreted the legislative intent to require that conflict resolution was controlled by 447.309(3) in a case in which the Authority, the Civil Service Board, PERC and both bargaining units were parties.

It was the Authority's reliance on that decision that precipitated this case, as the facts clearly demonstrate. PERC's ruling below is, simply stated, that by following the mandate issued by the Second District the Authority refused to bargain and therefore committed an unfair labor practice. Their rationale is that the construction endorsed by the Second District Court of Appeal is constitutionally defective and that the construction referred to in Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶ 12395 (Fla. PERC 1982), aff'd. 426 So.2d 1017 (Fla. 1st DCA 1983) is preferable. It should be noted that nowhere in either PERC's nor the Union's brief do they acknowledge that the rationale in Escambia is patently dicta, a fact that is painfully obvious from any objective reading of that decision. Here they argue what they think the law should be, not what it is.

Their constitutional argument is badly flawed and ignores not only this Court's decision in City of Castleberry v. Orange County PBA, 482 So.2d 336 (Fla. 1986) but fails to recognize the line of demarcation between the collective bargaining process and the ratification process.

As this Court recognized in City of Tallahassee v. PERC 410 So.2d 487 (Fla. 1982), key differences exist between the collective bargaining process in the private and public sectors. There this Court rejected a legislative attempt to prohibit bargaining over such subjects as retirement

benefits, but it specifically stated that in so holding it recognized that differences existed between the private and public sector which required variations in the procedures to be followed (at 490-491). The most obvious variation occurs in the ratification process, and this variation is a reflection of the vast differences between private and public employer structure, emphasized by public policy and constitutional considerations which are applicable to the latter but not the former.

In this case, had the Second District Court of Appeal ruled that 447.309(5) was controlling and prohibited bargaining over or inclusion in an agreement of provisions conflicting with Civil Service rules, their rationale may have been subject to the kind of attack mounted here by PERC and the unions. The Second District, however, rejected that approach and chose instead to approve not only bargaining over such subjects but inclusion in written agreements of those subjects as well.

Our focus therefore must turn to the Civil Service Board's right to ratify or agree to, by amendment of its rules, provisions of collective bargaining agreements which conflict with those rules before they become effective. PERC and the unions argue that the Civil Service Board has no such right and that a collective bargaining agreement, without more, serves, in effect, to amend or obviate statutorily established Civil Service Rules and Regulations. Their

position has no support in either the Constitution or Chapter 447.

This Court clearly recognized the constitutional viability of Civil Service Systems in City of Castleberry (at 339). Accordingly, an argument that Article I, Section 6 obviates Article III, Section 14 fails at its inception. The only constitutional question then becomes whether or not 447.309(3) as interpreted by the Second District Court of Appeal grants such unbridled discretion in the Civil Service Board that it abridges or eliminates the right to bargain collectively. An examination of 447.309(3) clearly establishes that such is not the case. To begin with, 447.309(3) requires the chief executive to submit a proposed amendment which embodies the conflicting provision to the Civil Service Board. Such proposed amendments are then the subject of a public hearing. At this point, the nature of what is and what is not collective bargaining comes into play.

In simplest terms, the collective bargaining right granted by Article I, Section 6 is the right to achieve, as a defined group acting through a lawfully designated labor organization, that which an individual has the right to achieve, no more and no less. (City of Tallahassee v. PERC, supra, Dade County Classroom Teacher's Assn., Inc. v. Ryan, supra.) It is obvious that a written agreement reached between an employer and a career service employee which conflicts with a Civil Service rule is not binding on a Civil

Service Board unless and until the Civil Service Board amends its rules to accommodate the agreement. This is true because by constitution and statute the Civil Service Board has the right to maintain uniform wages, hours and working conditions among the employees that it has been mandated to protect. This concept is not changed by the fact that the agreement was made with a group of employees acting through an agent, rather than with the individual employee. The individual employee or the group each retain, however, the right to attack, on a case by case basis, any unlawful exercise of authority or abuse of discretion, if they feel that grounds for such an attack exist as the result of adverse Civil Service Board action.

Here we have no evidence of nor allegation that the Civil Service Board rejected the proposed amendments in either an arbitrary, capricious or otherwise unlawful manner. Absent such a showing their ruling should be left undisturbed. On the other hand, to grant that which PERC and the unions urge here grants the unions and their employer private contractural amendatory authority over rules and regulations established by a constitutionally and statutorily approved process and neither the Constitution, the legislature nor this Court have ever approved such a procedure. Chapter 447 simply provides that the right to accept or reject such an agreement is preserved for the Civil Service Board, the legislative body or any other lawfully constituted entity

which makes laws, ordinances, rules or regulations over which the chief executive has no amendatory authority so long as the Civil Service Board, legislative body or other lawfully constituted entity acts within its statutory mandate. It is this process that this Court has called "peaceful coexistence" and it is in this forum where the conflict of statutorily and constitutionally endorsed uniformity and individual or collective desires are resolved. (City of Castleberry v. Orange County PBA, supra at 340.) Thus the right to bargain collectively through a labor organization is preserved in its classic public sector context, that is, in the context that agreements with an employer are subject to ratification by the legislative body, the Civil Service Board or any other lawfully constituted entity which has conflicting rules or regulations over which the Chief Executive has no amendatory authority.

PERC's entire argument must therefore rest on their presumption that the Civil Service Board will never agree to resolve a conflict in favor of a conflicting bargaining agreement. That argument is totally unsupported in the record and was specifically rejected in City of Tallahassee. What PERC and the unions actually seek here is to accomplish by judicial means that which the legislature rejected, that is, the effective removal of bargaining units from Civil Service Systems. It must look to the legislature for such a result for no support for that proposition exists in either a

constitutional mandate or Chapter 447. [See Public Employee Collective Bargaining in Florida - Past, Present and Future 1 Fla. St. U.L. Rev 26, pp. 34-40 (1973)]. Accordingly the certified question shouild be answered in the affirmative.

II. THE AUTHORITY DID NOT COMMIT AN UNFAIR LABOR PRACTICE BY THE ACT OF COMPLYING WITH THE MANDATE OF THE SECOND DISTRICT AND THE CIVIL SERVICE LAW.

The second issue dealt with in this appeal has to do with whether or not the Authority committed an unfair labor practice by following the mandate of the Second District in Pinellas County PBA. To begin with, there is a serious question as to whether this Court should consider this issue at all, in view of the fact that this issue is not encompassed in the question certified by the District Court of Appeal and in view of the fact that, as to the unfair labor practice issue, the decision of the District Court of Appeal in Pinellas County PBA is not in conflict with the decision of the First District in Escambia or any other decision. Escambia affirmed PERC's ruling that the School Board had not committed an unfair labor practice by complying with a lower court's injunction barring implementation of a collective bargaining contract provision. The District Court in this case held that the Authority did not commit an unfair labor practice by similarly complying with its mandate in Pinellas County PBA. As this Court stated in Ansin v. Thurston, 101 So.2d 808 (Fla. 1985):

> We have heretofore point out that under the constitutional plan the powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed. Diamond Berk Insurance Agency, Inc. v. Goldstein, Fla., 100 So.2d 420; Sinnamon v. Fowlkes, Fla. 101 So.2d 375. It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.
>
> To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to beome intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy. [quoted with approval in Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982) at p. 21, but see Tillman v. State, 471 So.2d 32 (Fla. 1985)].

Assuming, arguendo, that this Court determines that jurisdiction is appropriate, then clearly the decision of the Second District should be affirmed. The "crime" for which PERC would convict the Authority is its compliance with the Second District's mandate in a case in which it not only was a party, but the Civil Service Board, PERC and both bargaining units were parties as well. The mere fact that the two units have changed bargaining agents in no way lessens the obligation of the Authority to follow the Second

District's mandate. (See, e.g., International Union United Aerospace and Agricultural Implement Workers of America v. Acme Precision Products, 515 F.Supp. 537 at 540 (E.D. Mich. 1981); Bolden v. Pennsylvania State Police, 578 F.2d 912 (3rd Cir. 1978).) Similarly, PERC ignores the Civil Service Law itself which provides:

> Any person who willfully violates any of the provisions of this act or of the rules of the board is guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine of not more than five hundred ($500.00), or by imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court. (at Sec. 19)

Having ignored these obvious constraints, PERC choses to characterise the Authority's compliance with Pinellas County PBA and the Civil Service Law as "voluntary" (Brief of Petitioner PERC at p.31) and in one verbal sweep implies a grant of immunity from the effects of refusing to comply with the decisions of this State's Courts of Appeal or Civil Service laws whenever PERC opines that such decisions or laws may be constitutionally questionable. The Authority chose not to rely on any such tenuous implication, recognizing instead its obvious obligation to comply with the law and the mandate, an act which is clearly obligatory and not voluntary.

Even should this Court answer the certified question in the negative, no refusal to bargain should be found, just as none was found in Escambia. As the District Court held below:

> It is true that while in Escambia the school board was under an injuction to not implement the

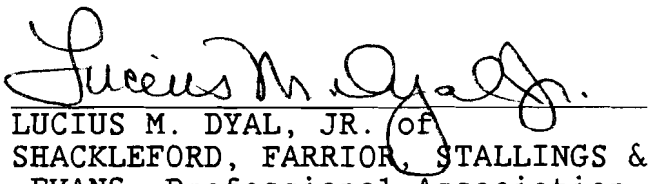
> collective bargaining agreement, in the case at hand the Authority simply followed Pinellas in not implementing the collective bargaining agreement. But that is a distinction without a material difference. In both cases the public employer followed the law and thereby did not commit unfair labor practice. (at p. 9).

Accordingly, should this Court assert jurisdiction over this issue, the District Court should be affirmed.

CONCLUSION

For the reasons set forth herein, the Authority requests that this Court answer the certified question in the affirmative and affirm the Court below, both as to its interpretation of §447.309(3) and its reversal of PERC's unfair labor practice determination.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent Hillsborough County Aviation Authority has been sent by U.S. mail this 1st day of May, 1986 to the following:

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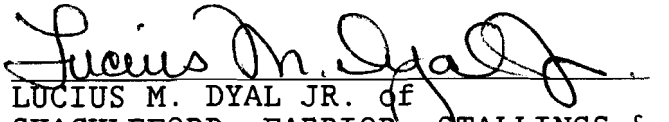

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