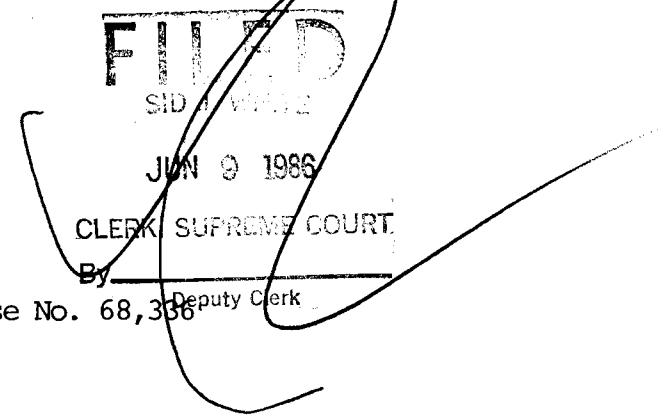
IN THE SUPREME COURT OF FLORIDA
STATE OF FLORIDA

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

REPLY BRIEF OF PETITIONER
FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION

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MISCELLANEOUS

## ARGUMENT I

SECTION 447.601 MANDATES THAT THE CONFLICT BETWEEN THE HILLSBOROUGH COUNTY CIVIL SERVICE ACT AND CHAPTER 447, PART II, BE RESOLVED IN FAVOR OF THE LATTER.

Section 447.601 is clear and unambiguous. While the Legislature did not intend that Chapter 447, Part II, become a wholesale replacement for civil service systems, if a conflict arose between a civil service statute and Chapter 447, Part II, the latter would prevail. City of Casselberry v. Orange County PBA, 482 So.2d 336 (Fla. 1986). Thus, extrinsic aids to statutory construction in order to discern the Legislature's intent are unnecessary. Rather, the primary issue in this case is whether there is a conflict between Chapter 447, Part II and the Hillsborough County Civil Service Act.

Both Respondents attempt to sidestep the statutory conflict issue by focusing their arguments on the differences between the collective bargaining agreements, negotiated and ratified by the Aviation Authority and the HCPBA and HCGEA, and the rules of the Hillsborough County Civil Service Board. Neither face up to the fact that the source of these differences is the overriding conflict between the Hillsborough County Civil Service Act and Chapter 447, Part II. On the one hand, the Civil Service Act requires the Board to establish and oversee the formulation of uniform wages, hours and terms and conditions of employment for the employees of numerous employers within Hillsborough County. On the other hand, Chapter 447, Part II, as in the private sector, envisions that wages, hours, and terms and conditions of employment for each bargaining unit of employees[1] will be established separately by collective

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1/ Typically, a public employer may be required to negotiate with several unions that represent certain segments of the employer's employees. These groups of employees are placed in bargaining units defined by the Commission in accordance with Section 447.307, Florida Statutes (1985).

bargaining negotiations between a single employer and the union selected by the bargaining unit employees to represent them. It is this conflict which was resolved in favor of the collective bargaining process by the enactment of Section 447.601. See 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) (Appendix to PERC Initial Brief).

Whether the establishment of uniform wages, hours, and terms and conditions of employment by an independent civil service board for employees of numerous employers is desirable or beneficial is not at issue. By enacting Section 447.601, the Legislature has made the policy choice that the collective bargaining process must be given priority to the extent of any conflict with a civil service system.

Further evidence of the Legislature's intent that civil service not override the collective bargaining process can be found in Chapter 110, Florida Statutes (1985). Sections 110.201 through 110.309 implement the requirement found in Article III, Section 14 of the Florida Constitution that the State establish a civil service system for its employees. Unlike the Hillsborough County Civil Service Act, Section 110.305 empowers the State Career Service Commission only with the authority to hear appeals of certain disciplinary actions.[2] The State Commission has no involvement in the setting of terms and conditions of employment for state employees. Rather, that authority is vested with the Department of Administration, the same entity that represents the

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2/ This function is consistent with Section 447.401 which provides employees with a choice between filing a career service appeal or a grievance under a collective bargaining agreement. See also City of Casselberry v. Orange County PBA, 482 So.2d 336 (Fla. 1986).

Governor in collective bargaining negotiations. § 110.201(4), Fla. Stat. (1985). Consequently, under the state model, the same entity that sets terms and conditions of employment for a single employer (the State) under career service also negotiates the employer's collective bargaining agreements. Thus, implementation of collective bargaining agreements to which the State is a party cannot be prevented by the State Career Service Commission. To insure that its intent was clear, the Legislature further enacted Section 110.105(5), Florida Statutes (1985), which provides:

> Nothing in this chapter shall be construed either to infringe upon or to supercede the rights guaranteed public employees under Chapter 447.

Contrary to the Respondents' suggestion, the Commission's decision in this case is not a wholesale attack upon civil service systems. Instead, the viability of a particular civil service system in light of Section 447.601 depends upon how the system is structured. If it is structured like the State Career Service System where the independent commission is vested only with the power to hear employee appeals, then there is no conflict with the employees' right to collective bargaining protected by Chapter 447, Part II. In contrast, a structure that gives pervasive authority to an independent board to establish wages, hours, and terms and conditions of employment and which under the guise of uniformity may prevent implementation of a wide range of the subjects in ratified collective bargaining agreements conflicts with the right of public employees set forth in Chapter 447, Part II, implementing Article I, Section 6 of the Florida Constitution.[3]

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3/ The Commission has encountered only two other civil service systems structured similar to the Hillsborough County model, Escambia County and Santa Rosa County. See Southern Council of Industrial Workers v. School District of Santa Rosa County, 11 FPER ¶ 16065 (1985); Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶ 12395 (1981).

Citing the Second District Court of Appeal's decision in Pinellas County PBA v. Hillsborough County Aviation Authority, 374 So.2d 801 (Fla. 2d DCA 1977), both Respondents argue that the Hillsborough County Civil Service may violate employee collective bargaining rights if it can be proven that the Board's refusal to amend its rules to conform to a ratified collective bargaining agreement is an abuse of discretion. This argument is based upon the erroneous premise that the Civil Service Board has discretion to amend its rules in such a fashion. Again, the concept of uniformity mandated by the Civil Service Act prevents the Board, even if it so desired, from formulating rules that could accommodate differences in the collective bargaining agreements entered into by the employers within the Board's jurisdiction. This lack of discretion highlights the inherent conflict between this Hillsborough County Civil Service Act and Chapter 447, Part II.

When such a conflict arises, the Civil Service Act must give way to the collective bargaining process. A contrary determination would raise grave constitutional doubts concerning whether the Hillsborough County Civil Service Act abridged the Article 1, Section 6 rights of public employees in Hillsborough County who have chosen to be represented by a collective bargaining agent. All doubts should be resolved in favor of preserving the constitutionality of the Civil Service Act. Therefore, the Commission's determination that the Civil Service Board is without authority to block implementation of provisions in a collective bargaining agreement that conflict with the Board's rules, should be affirmed.

## ARGUMENT II

THE CONSTRUCTION OF SECTION 447.309(3) URGED BY THE RESPONDENTS IS CONTRARY TO LEGISLATIVE INTENT AND WOULD RENDER THE STATUTE UNCONSTITUTIONAL.

Respondents urge this Court to construe Section 447.309(3), Florida Statutes (1985), to grant civil service commissions, such as the Hillsborough County Civil Service Board, the pervasive authority to decide if individual public employers may implement the terms of ratified collective bargaining agreements that conflict with the board's rules and regulations. Such a construction is not only contrary to legislative intent, but would also create an abridgment of public employees' constitutional right to collectively bargain guaranteed by Article I, Section 6 of the Florida Constitution.

The Commission concedes that if Section 447.309(3) is read in isolation it is susceptible to the construction urged by the Respondents. However, it must be noted that this provision does not specifically refer to civil service. When read in pari materia with Section 447.601, which specifically references civil service, and 447.201, which sets forth the purpose behind Chapter 447, Part II, it is clear that the Legislature did not intend for a civil service commission to exercise domination over the collective bargaining process by preventing implementation of provisions already agreed upon by a public employer and a union representing public employees.[4] Moreover, if Section 447.309(3) is

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4/ Respondents rely on Section 447.309(5) to support their argument that Section 447.309(3) was intended to include civil service. To the extent that the Aviation Authority implies that Section 447.309(5) may be interpreted to bar from a collective bargaining agreement any terms covered by civil service, the statute would violate Article I, Section 6. See City of Tallahassee v. PERC, 410 So.2d 487 (Fla. 1982) (portion of Section 447.309(5) banning retirement and pensions from collective bargaining agreement is unconstitutional). Section 447.309(5) is best interpreted to provide merely that the parties are not required to include subjects covered by civil service in a collective bargaining agreement. Such a construction does not indicate that the Legislature intended to grant veto authority to a civil service commission over implementation of terms that the parties choose to include in a collective bargaining agreement.

susceptible to two constructions, one of which would violate Article I, Section 6 and one which would not, the Court is obligated to choose the interpretation that would render the statute constitutional. Florida State Board of Architecture v. Wasserman, 377 So.2d 653 (Fla. 1979).

Respondents attempt to negate the impact of their proposed construction of Section 447.309(3) upon the Article I, Section 6 rights of public employees by arguing that the statute does not affect the negotiation of a collective bargaining agreement, only its implementation. It is of course a gross distortion of the collective bargaining process to divorce the implementation of a collective bargaining agreement from the negotiation of that agreement.[5] See Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed. 2d 972 (1957). If employees can be consistently thwarted in establishing their wages, hours, and terms and conditions of employment through negotiations between their chosen representative and their public employer then the right to engage in collective bargaining, guaranteed by Article I, Section 6, is emasculated.

In order to justify this abridgment of collective bargaining rights guaranteed by Article I, Section 6, Respondents must demonstrate a compelling state interest. City of Tallahassee v. PERC, 393 So.2d 1147 (Fla. 1st DCA 1981), aff'd, 410 So.2d 487 (Fla. 1982); United Faculty of Florida, Local 1847 v. Board of Regents, 417 So.2d 1055 (Fla. 1st DCA 1982). This they have failed to do.

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5/ According such overriding importance to civil service may also chill the actual negotiation of a collective bargaining agreement. If the parties fear during negotiations that there is little or no likelihood that the civil service board will modify its rules, then the parties are prevented from engaging in the type of free discussion and give-and-take needed to arrive at a genuine agreement.

Contrary to the assertions of the Civil Service Board, civil service control over terms and conditions of employment is not a necessary restriction on employee bargaining rights resulting from the differences between the private and public sectors. If that were the case, then civil service would be mandatory for all political subdivisions throughout the State of Florida. There is no rational basis for restricting the collective bargaining rights of the Aviation Authority's employees by the Hillsborough County Civil Service Board and not restricting the rights of employees of other public employers within Hillsborough County who are not within the Civil Service Board's jurisdiction, such as employees of the City of Tampa. The same is also true for public employees of public employers outside of Hillsborough County that are not regulated by civil service.[6]

Civil service can also be easily distinguished from the provisions in Chapter 447, Part II, cited by the Civil Service Board as examples of the differences between the private and public sectors. These differences require the imposition of certain restrictions that are not found in the private sector. Most notably, Section 447.309(2), Florida Statutes (1985), provides for the funding of a collective bargaining agreement based upon the money appropriated by the legislative body of the public employer. Obviously, there is a compelling state interest in a procedure that accommodates the constitutional doctrine of separation of powers into the collective bargaining process. However, the effect of this restriction is minimized by Section 447.309(1) which requires the chief executive officer to consult with and represent the views of the legislative body throughout negotiations. Section 447.505, Florida

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6/ The Civil Service Board candidly admits that civil service weakens a union's ability to effectively represent public employees. See Civil Service Board Answer Brief at 12.

Statutes (1985), implements the Article I, Section 6 prohibition against public employee strikes. Section 447.403, Florida Statutes (1985), provides an alternative mechanism for resolving collective bargaining impasses in light of the prohibition against strikes. Thus, civil service cannot be compared to these restrictions on collective bargaining which are necessitated by the differences between the public and private sectors.

The Civil Service Board also presents a "floodgates" argument that the Commission's construction of Section 447.309(3) would permit collective bargaining agreements to override any conflicting state statute or local ordinance. On the contrary, in Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So.2d 1017 (Fla. 1st DCA 1983), the First District Court of Appeal quoted with approval the following language of the Commission's order in that case:

> It is our view that Section 447.309(3) was . . . never intended to operate as a wholesale impediment to collective bargaining, especially bargaining about such basic matters as wages and hours. This interpretation of Section 447.309(3) is further supported when read in pari materia with Section 447.601, Florida Statutes (1979). It seems clear from a reading of both statutes that Section 447.309(3) must be read as contemplating conflicts between collective bargaining agreements and laws or regulations other than laws and regulations relating to civil service systems.

426 So.2d at 1019, quoting Hotel, Motel, Restaurant and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶ 12395 at 872-73 (Fla. PERC 1981). The substantial degree of control the Hillsborough County Civil Service Board has over matters subject to collective bargaining differentiates this civil service system from some other isolated law or ordinance that may conflict with a particular provision in a collective bargaining agreement. Thus, the cases cited by the Civil Service Board concerning conflicts between state statutes

and provisions in collective bargaining agreements are inapposite to the issue now before this court.

The Civil Service Board's delegation argument merits little comment. Suffice it to say that Article I, Section 6 authorizes public employers and unions representing public employees to enter into collective bargaining agreements that may contain provisions that do not comport with the rules and regulations of the Hillsborough County Civil Service Board. The cases cited by the Civil Service Board are readily distinguished from this case. Industrial Commission of Arizona v. C & D Pipeline, Inc., 607 P.2d 383 (Ariz. App. 1979), dealt with unions and employers establishing wage rates for employees not represented by unions. Ridgefield Park Education Association v. Ridgefield Park Board of Education, 393 A.2d 278 (N.J. 1978), dealt with bargaining over management rights, not mandatory subjects of bargaining.

Finally, both Respondents consistently utilize such euphemistic phrases as, "reasonable restriction," "coexistence," "harmonizing," "full play," and "procedural" in attempting to downplay the effect of construing Section 447.309 (3) to allow the Civil Service Board the authority to prevent implementation of portions of a collective bargaining agreement upon the collective bargaining rights of public employees. The Court is urged to focus its attention upon the devastating impact such a construction would have upon the collective bargaining rights guaranteed by Article I, Section 6. Whether Section 447.309(3) can be characterized as dealing with substance or procedure is not the point. If the impact of the Civil Service Board's control over a collective bargaining agreement constitutes an abridgment of collective bargaining rights, then such control runs afoul of Article I, Section 6.[7]

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7/ By contending that civil service board approval of the terms in a collective bargaining agreement is part of the ratification process, the

A contrary result in this case might encourage public employers to establish themselves or seek the establishment by the Florida Legislature of civil service systems in order to diminish the rights of public employees to bargain collectively. Surely this was not the Legislature's intent when it enacted Section 447.309(3). Therefore, the question certified by the Second District Court of Appeal should be answered in the negative.

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7/ Continued.

Aviation Authority suggests that the Hillsborough County Civil Service Board may be a joint-employer with the Authority. At no time in these proceedings has the issue of joint-employer status been raised by the parties or considered by the Commission. However, the Civil Service Board does not exercise any of the indicia commonly associated with employer status, such as hiring, firing, and directing the work of emplolyees. See § 447.209, Fla. Stat. (1985).

## ARGUMENT III

### THE COMMISSION DID NOT ABUSE ITS DISCRETION IN FINDING THE AVIATION AUTHORITY COMMITTED AN UNFAIR LABOR PRACTICE.

The Aviation Authority's suggestion that the Court should not consider this issue is contrary to the well-settled proposition that this Court has the prerogative to consider all issues in the case before it, not just the issue presented in the certified question. E.g., Lawrence v. Florida East Coast Railway Co., 346 So.2d 1012 (Fla. 1977).

Concerning the merits of this issue, the Aviation Authority continues to erroneously characterize the unfair labor practice procedures in Section 447.503, Florida Statutes (1985), as penal in nature. As demonstrated in the Commission's initial brief, the finding of an unfair labor practice is remedial. Section 447.503(6)(a), Florida Statutes (1985), expressly authorizes the Commission to issue a remedial order only if it finds an unfair labor practice. In order for the Commission to provide a remedy for failing to fully implement the collective bargaining agreements at issue in this case, it was necessary for the Commission to find a technical unfair labor practice violation. If the Court agrees with the Commission on the answer to the certified question, but affirms the decision of the Second District Court of Appeal that no unfair labor practice occurred in this case, the result would be that the HCGEA and HCPBA would have a right to full implementation of their collective bargaining agreements without a means to enforce that right through the Commission.

The Aviation Authority's comparison of its reliance upon the decision of the Second District Court of Appeal in Pinellas County PBA v. Hillsborough County Aviation Authority, 346 So.2d 801 (Fla. 2d DCA 1977), with the employer's

reliance upon a mandatory injunction in Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So.2d 1017 (Fla. 1st DCA 1983), is inaccurate. There is a great deal of difference between interpreting an appellate decision for its stare decisis affect and following an order of a trial court mandating that a party refrain from engaging in certain conduct.

Accordingly, the Commission did not abuse its discretion in finding a technical unfair labor practice and directing the Aviation Authority to fully implement its collective bargaining agreements with the HCGEA and HCPBA.

## CONCLUSION

For the reasons stated in the Commission's initial brief and reply brief, the Commission requests this Court to answer the certified question in the negative and to remand this case to the Second District Court of Appeal with directions that the court enter an order affirming the Commission's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Petitioner Florida Public Employees Relations Commission has been sent by U.S. Mail this 6th day of June, 1986, to the following:

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