SUPREME COURT
STATE OF FLORIDA

HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, INC., HILLSBOROUGH COUNTY POLICE BENEVOLENT ASSOCIATION, INC., and PUBLIC EMPLOYEES RELATIONS COMMISSION,

Petitioners,

vs. CASE NO. 68,336

HILLSBOROUGH COUNTY AVIATION AUTHORITY and HILLSBOROUGH COUNTY CIVIL SERVICE BOARD,

Respondents.
_____/

REPLY BRIEF OF PETITIONERS HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, INC. AND HILLSBOROUGH COUNTY POLICE BENEVOLENT ASSOCIATION, INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

FLORIDA STATUTES

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	"P.E.R.C."
Petitioner Hillsborough County Police Benevolent Association, Inc.	"P.B.A."
Petitioner Hillsborough County Governmental Employees Association, Inc.	"G.E.A."
P.B.A. and G.E.A. will be referred to collectively as the	"Associations"

All statutory citations will be to the 1983 version of the Florida Statutes unless otherwise noted.

SUMMARY OF ARGUMENT

Ther are two possible interpretations of Section 447.309(3), Florida Statutes. The interpretation rendered by P.E.R.C. is constitutional. The interpreation suggested by Respondents is unconstitutional.

Respondents concede that under their suggested interpretation of Section 447.309(3) the civil service board will preempt collective bargaining on those wages, hours and terms and conditions of employment to the extent those items are regulated by civil service rules. Such an interpretation would render Section 447.309(3) unconstitutional as an abridgement of the fundamental right to collectively bargain since there is no compelling State interest to support such a restriction on the right to bargain. See, City of Tallahassee v. P.E.R.C., 393 So.2d 1147 (Fla. 1st DCA 1981) aff'd 410 So.2d 487 (Fla. 1981).

P.E.R.C.'s interpretation of Section 447.309(3) is constitutionally sound. It should be upheld by this Court.

ARGUMENT

IF SECTION 447.309(3), FLORIDA STATUTES, IS INTERPRETED TO APPLY TO CIVIL SERVICE RULES AND REGULATIONS, THEN THE PROVISION IS UNCONSTITUTIONAL SINCE IT ABRIDGES THE FUNDAMENTAL RIGHT TO COLLECTIVELY BARGAIN.

As this Court should recognize by now, there are two possible interpretations that can be given to §447.309(3), Florida Statutes. It can be construed as not applying to civil service rules and regulations as suggested by P.E.R.C. and the First District Court of Appeal and be constitutional. Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶12395 (1982), aff'd, 426 So.2d 1017 (Fla. 1st DCA 1983). Alternatively, it can be construed as applying to civil service rules and regulations as suggested by the Second District Court of Appeal in Pinellas County P.B.A. v. Hillsborough County Aviation Authority, 347 So.2d 801 (Fla. 2nd DCA 1977) in which case it is unconstitutional.

Obviously, the P.B.A. and the G.E.A. would urge this Court to accept the construction of §447.309(3) reached by P.E.R.C. and the First District Court of Appeal in the Escambia County case. Why? Because it is a workable, constitutionally sound construction of §447.309(3). It does not gut the life out of the collective bargaining process. It does not take away the determination of wages, hours and

other terms and conditions of employment for represented employees from their public employer and their bargaining representative. Stated simply, it does not abridge the right of public employees to bargain collectively.

It is equally as obvious that the P.B.A. and the G.E.A. would urge this Court to reject the construction of §447.309(3) suggested by Respondents. Why? Because it is not workable and not constitutional. It guts the life out of the collective bargaining process. It takes away the determination of wages, hours and other terms and conditions of employment for represented employees from their public employer as well as their bargaining representatives and gives it to a third party, a civil service board. Stated simply, it abridges the right of public employees to bargain collectively.

When one examines the briefs of the Respondents in this case, a crucial concession is found interlaced in the legal arguments. That concession is: to the extent that the wages, hours and terms and conditions of employment of represented employees are governed by civil service rules, Respondent's interpretation of §447.309(3) would remove final authority for the determination of such mandatory subjects of bargaining from the parties to the bargaining process and vest it in a civil service board. Thus, under Respondent's suggested interpretation

of §447.309(3), collective bargaining and a collective bargaining agreement on subjects covered by civil service rules and regulations are little more than a paper charade.

Article I, Section 6 of the Florida Constitution provides that the fundamental right to collectively bargain shall not be denied nor abridged. This Court has authoritatively construed the term "abridge" to mean "to curtail, to lessen, to diminish." Schermerhorn v. Local 1625 of Retail Clerks International Association, 141 So.2d 269 (Fla. 1962). While recognizing that any regulation of a fundamental right may constitute an abridgement, minimal intrusion on the right is permissible if "there is a rational basis for the abridgement which is justified by a compelling State interest." City of Tallahassee v. PERC, 393 So.2d 1147, 1148 (Fla. 1st DCA 1981) aff'd, 410 So.2d 487 (Fla. 1981) (Emphasis added).

The interpretation of §447.309(3) advanced by the Respondents constitutes substantially more than a minimal intrusion on the right to collectively bargain. Not only does it constitute a clear impediment to the bargaining process, but it calls for the wholesale revision of the entire bargaining process. The civil service board, which currently has no statutory role in the bargaining process, becomes the "ultimate" employer. Under Respondent's interpretation, the civil service board will make the final decision on those wages, hours and terms and conditions of employment covered by its rules, regardless of whether or

not employees governed by the rules have elected to exercise their fundamental right to engage in collective bargaining. There is no statutory authority for such a revision of the bargaining process and certainly no private sector precedent to support it.

The actual consequences of the Respondent's suggested interpretaion of §447.309(3) are amply demonstrated by the record evidence in this case. The P.B.A. and the G.E.A. negotiated in good faith with the Authority over three basic terms of employment: layoff procedures, holidays and funeral leave. The Authority and the Associations reached agreement on these terms, then reduced the agreement to writing. The agreement was ratified by the employees and the Authority. All this was done in accordance with the statutory procedures. The Board rejected the agreement. Thus, the Association was left with a written agreement comprised of empty promises.

This absurd result is reached not because of any parties to the statutory bargaining process, but because of action of a third party. This absurd result is the actual consequence of the Respondent's suggested interpetation of §447.309(3).

The Board, in its brief, recognizes that its construction of §447.309(3) interferes with the fundamental right to bargain; however, it seeks to avoid the unconstitutional implications of such an admission

by arguing: (1) that a collective bargaining agreement is just a piece of paper; not a contract, and (2) that a local civil service board's desire for uniform benefits constitutes a "compelling State interest."

The Board's argument that a collective bargaining agreement is merely a piece of paper with no legal effect is nonsensical. To accept such an argument would turn a fundamental right guaranteed by the Florida Constitution into a mere exercise in the art of negotiations. The end of the bargaining process is a written contract containing the agreements reached and ratified by the employees and their employer. See, Section 447.203(14), Florida Statutes. It is a legal, enforceable document in the private sector and it is a legal, enforceable document in the public sector in the absence of some compelling State interest regulating its application. See, Section 447.401, Florida Statutes and Chapter 682, Florida Statutes, the Florida Arbitration Code.

The Board suggests in its brief that a local civil service board's "desire for uniformity" in wages and benefits among the employees under its jurisdiction constitutes the compelling State interest necessary to bring its interpretation of Section 447.309(3) within constitutional bounds. This suggestion is not only untrue, but demonstrates a basic misunderstanding of the collective bargaining process as set forth in Chapter 447, Part II, Florida Statutes.

An examination of the definitions of terms "public employer," "bargaining unit" and "legislative body," as well as the criteria required to be utilized by P.E.R.C. in defining a bargaining unit, evidences a legislative intent to recognize the distinctiveness of each individual public employer and its employees and to continue that relationship unaltered. See, Section 447.203(2), (8) and (10), Florida Statutes and Section 447.307(4), Florida Statutes. Furthermore, the collective bargaining process between a public employer and the representative of each bargaining unit of the employer (an employer may represent several different bargaining units) demonstrates a legislative recognition of the unique employment interests shared by a group of employees and an intent that a public employer deal with these groups on an individual rather than combined basis. See, Section 447.309(1), Florida Statutes.

It is respectfully suggested that the very purpose of Section 447.601, Florida Statutes, is to make clear that a "uniform" civil service system, whether it cover a single employer or multiple employers, shall not interfere or hinder the collective bargaining process between a public employer and each individual bargaining unit. As this Court has recently recognized, during collective bargaining negotiations, a public employer and certified bargaining agent may voluntarily agree to terms of employment consistent with the

rules of a civil service system. See, City of Casselberry v. Orange County P.B.A., 482 So.2d 336 (Fla. 1986). Section 447.601 makes it plain that this voluntary compliance may not be imposed by the civil service board unilaterally.

Based upon the foregoing, it is apparent that a local civil service board's "desire for uniformity" does not constitute a compelling state interest and is in fact contrary to the collective bargaining process. Thus, Respondent's interpretation of Section 447.309(3) is necessarily unconstitutional as an abridgement of the fundamental right to collectively bargain.

CONCLUSION

The Public Employees Relations Commission has interpreted and applied Section 447.309(3) in a manner that is constitutional and carries out the purpose of Chatper 447, Part II, Florida Statutes. This Court should approve that interpretation. As clearly demonstrated, to accept the interpretation of Section 447.309(3) suggested by Respondents would render that provision unconstitutional as an abridgement of the fundamental right to collectively bargain.

DATED this 6th day of June, 1986.

Respectfully submitted,

Gene Hal Johnson for
GENE "HAL" JOHNSON
Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail, to J. RONALD WIGGINTON, General Counsel, Hillsborough County Civil Service Board, 300 North Franklin Street, Tampa, Florida 33602; PETER W. ZINOBER, Esquire and RICHARD C. McCREA, JR., Esquire, Hillsborough County Civil Service Board, Post Office Box 3239, Tampa, Florida 33601; PHILLIP QUASHNICK, Esquire, Public Employees Relations Commission, Turner Building, Suite 100, 2856 Seagate Drive, Tallahassee, Florida 32301; LUCIUS M.DYAL, Esquire and MARK HANLEY, Esquire, Post Office Box 3324, Tampa, Florida 33601 this 6th day of June, 1986.

Of Counsel