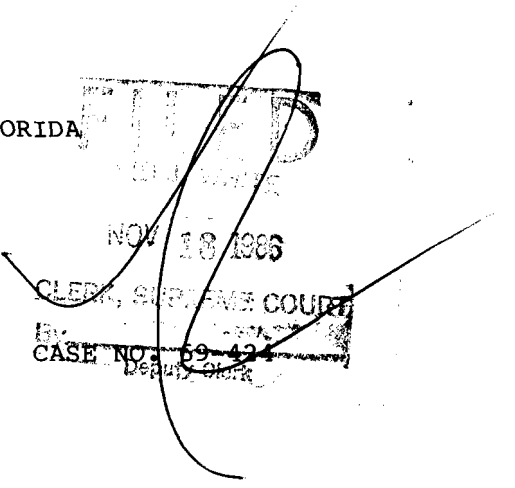
IN THE SUPREME COURT OF FLORIDA



ROBERT P. MORROW,

Petitioner,

v.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

FIRST DCA NO. BG-460

DEPARTMENT OF ADMINISTRATION, ETC.,

Petitioner,

v.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

CASE NO. 69,430

ON APPEAL FROM THE FLORIDA DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER DEPARTMENT OF ADMINISTRATION

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ON HUMAN RELATIONS

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STATEMENT OF THE CASE AND OF THE FACTS

The State of Florida, Department of Administration, Florida Commission on Human Relations ("Commission") accepts the statements of the case and of the facts as articulated by the First District Court of Appeal in its opinion:

> Morrow was employed continuously as a teacher in the Duval County school system from 1962 through June, 1983. He received tenured, or continuing contract, status in 1965. He reached age 70 in September, 1981. During the 1981-82 school year, Morrow was informed by school officials that in view of his having attained the age of 70, he would be subject to the provisions of Section 231.031, Florida Statutes, at the close of the school year. That section provides:
>
> > 231.031 Maximum age for continued employment of instructional personnel. Notwithstanding the provisions of s. 112.044, no person shall be entitled to continued employment in any instructional capacity in the public schools of this state after the close of the school year following the date on which he attains 70 years of age; however, upon recommendation of the superintendent, the person may be continued in employment beyond such date, subject to annual reappointment in the manner prescribed by law. Nothing contained herein shall apply to employment limited to substitute and part-time teaching.
>
> Subsequently, Morrow received an annual contract for the school year 1982-83 and continued teaching at Forrest High School. In April, 1983, Morrow was informed that he would not receive a contract for the ensuing 1983-84 school year.
>
> Morrow filed a complaint with the Human Relations Commission alleging an unlawful employment practice under Section 760.10, Florida Statutes. He claimed that he was not continued in employment solely because of his age. The School Board did not, and does not, dispute the fact that Morrow's age was the sole factor in not allowing him to continue teaching in the Duval County school system. In fact, it is not disputed that Morrow consistently received high performance evaluations throughout his teaching career, including his last year.

> Voluntary conciliation having failed, Morrow's petition for relief was referred by the Commission, pursuant to section 120.57, Florida Statutes, and Rule 22T-9.08(5) and 22T-8.16(2), Florida Administrative Code, to the Division of Administrative Hearings for the purpose of conducting an evidentiary hearing and submitting a recommended order.
>
> A hearing was held before the hearing officer who subsequently submitted a recommended order finding that the School Board had committed an unlawful employment practice under Section 760.10, and recommending that Morrow be awarded back wages and benefits and that the School Board be ordered to evaluate his request for continued employment without reference to his age. Essentially, the Commission's final order adopted the hearing officer's recommended order.

Duval County School Board v. State, ___ So.2d ___, 11 F.L.W. 1335 (Fla. 1st DCA 1986).

The School Board appealed the Commission's final order. On June 12, 1986, the First District Court of Appeal reversed, concluding that the School Board has the right, by virtue of the provisions of section 231.031, Florida Statutes, to refuse to rehire a teacher on an annual contract on the sole basis that such teacher has reached age 70. Id., ___ So.2d ___, 11 F.L.W. 1335.

The Commission moved for rehearing, which was denied on September 3, 1986. The appellate court certified the following issue of great public importance to this Court: "Does a county school board have the right by virtue of the provisions of section 231.031, Florida Statutes, to refuse to rehire a teacher on an annual contract on the sole basis that such teacher has reached age 70?" Id., ___ So.2d ___, 11 F.L.W. 1901.

Based upon the question having been certified to be of great public importance, Morrow and the Commission filed timely appeals to this Court. The appeals have been consolidated.

SUMMARY OF THE ARGUMENT

In section 231.031, Florida Statutes, the Legislature provided that no person shall be entitled to continued employment in any instructional capacity in the public schools after the close of the school year following the date on which he attains 70 years of age. The individual may, however, be continued in employment beyond that date subject to annual reappointment.

The First District Court of Appeals construed section 231.031, Florida Statutes, not only as removing the affected teacher from tenured or continuing contract status to annual contract status, but also as giving the school board through the superintendent of schools the absolute right to terminate a teacher solely because he has reached 70 years of age.

Such a strained reading of section 231.031 is clearly erroneous where, as here, such action is impermissible under another statutory provision. The Human Rights Act of 1977 explicitly prohibits terminations premised upon age. Section 760.10, Fla. Stat.

This Court must construe section 231.031, Florida Statutes, in harmony with the Human Rights Act. Sections 231.031 and 760.10, Florida Statutes, can be reconciled by reading section 231.031 as providing for the automatic reversion of tenured or continuing contract teachers over the age of 70 to the status of annual contract teachers, while simultaneously requiring that the decision regarding whether to reappoint such annual contract teachers be made in accordance with all applicable law.

The contrary interpretation conflicts with the clear and unambiguous prohibition against age-based employment decisions, violative of section 760.10, Florida Statutes. In the absence of an equally clear and

unambiguous expression of legislative intent to the contrary, section 231.031, Florida Statutes, should not be construed so as to entirely exempt a class of individuals from the protections of a remedial statute.

Should this Court be unable to reconcile section 231.031 with the Human Rights Act, the Human Rights Act should prevail. Not only is it the most comprehensive state legislation regarding age-based employment decisions, but also chapter 81-109, Laws of Florida, amending section 760.10(8)(b), is the last clear expression of legislative will on the subject. By operation of chapter 81-109, the School Board is prohibited from involuntarily retiring its teachers on the sole basis that such teachers have reached age 70.

A COUNTY SCHOOL BOARD DOES NOT HAVE THE RIGHT, BY VIRTUE OF THE PROVISIONS OF SECTION 231.031, FLORIDA STATUTES, TO REFUSE TO REHIRE A TEACHER ON AN ANNUAL CONTRACT ON THE SOLE BASIS THAT SUCH TEACHER HAS REACHED AGE 70.

Morrow was employed continuously as a teacher in the Duval County school system from 1962 through June, 1983. He received tenured, or continuing contract, status in 1965. He reached age 70 in September, 1981. At the close of the school year, he became subject to the provisions of section 231.031, Florida Statutes, which provides:

> 231.031 Maximum age for continued employment of instructional personnel. Notwithstanding the provisions of s. 112.044, no person shall be entitled to continued employment in any instructional capacity in the public schools of this state after the close of the school year following the date on which he attains 70 years of age; however, upon recommendation of the superintendent, the person may be continued in employment beyond such date, subject to annual reappointment in the manner prescribed by law. Nothing contained herein shall apply to employment limited to substitute and part-time teaching.

Morrow received an annual contract for the school year 1982-83. In April, 1983, Morrow was informed that he would not receive a contract for the ensuing 1983-84 school year.

Morrow filed a complaint with the Commission on Human Relations alleging an unlawful employment practice under section 760.10, Florida Statutes, claiming that he was not continued in employment solely because of his age. Voluntary conciliation having failed, Morrow's petition for relief was referred by the Commission to the Division of Administrative Hearings for the purpose of conducting an evidentiary hearing and submitting a recommended order.

After conducting the evidentiary hearing, the hearing officer found that despite Morrow's excellent performance as evidenced by his annual

evaluations, Morrow did not receive an annual contract for the 1983-84 school year. The hearing officer found that this decision was based solely upon the fact that Morrow was over 70 years old without any comparison having been made relative to Morrow's performance with that of persons younger than 70 years of age in deciding who to employ on annual contract. Morrow v. Duval County School Board, 7 FALR 3892, 3895 (DOAH 1984).

The hearing officer rejected the School Board's interpretation of section 231.031, which gave the superintendent absolute discretion to dismiss teachers over 70 without regard to section 760.10, Florida Statutes. He reasoned that the first clause of section 231.031 removes tenured, or continuing contract, status for instructional personnel who have reached the age of 70 and that the second clause sets forth the manner in which such personnel having now lost their entitlement to continued employment may be considered for annual appointment.

The hearing officer interpreted the phrase "annual reappointment in the manner prescribed by law" as encompassing the general law, including section 760.10, Florida Statutes, which makes it an unlawful employment practice for an employer to discharge or fail to hire an individual because of age. The Commission's final order adopted this interpretation. Morrow v. Duval County School Board, 7 FALR 3885, 3387-8, 3896-9 (FCHR 1985).

The First District Court of Appeal reversed. Under a constrained construction of section 231.031, Florida Statutes, the court concluded that the phrase "annual reappointment in the manner prescribed by law" refers to the procedural requirements of section 230.33(7) and not to the general law. It rejected the Commission's contention that section 231.031's first clause should be limited to tenured, or continuing contract, status, reasoning that

it is "continued employment" to which the 70 year old teacher is not entitled, not simply tenure or continuing contract status. In so holding, the court reasoned that the same phrase, "continued employment", appeared in both clauses of the section.

With respect to the phrase "annual reappointment in the manner prescribed by law," the Commission's broader interpretation is consistent with its commonly understood meaning. Hunt v. Chicago and Dummy Railway Co., 20 Ill.App. 282, 288-9 (Ill.App. 1986), where the court stated:

> Among the definitions of the word "prescribe" given by Webster, are these: "To give law; to direct; to dictate; to give as a guide, direction or rule of action;" either of which is quite as applicable to the unwritten as to the written law. We see, then, no difficulty in interpreting the constitutional provision that the attorney general shall perform such duties as may be prescribed by law, as meaning that he shall perform such duties as shall be prescribed by any law, statutory or otherwise, by which the duties of the attorney general, as that officer is known to our jurisprudence, are imposed and defined.

Moreover, such interpretation is consistent with similar phrases used throughout the chapter. Compare ss. 231.07 ("punishable as provided by law") and 231.45 ("as are provided by law") with s. 231.36(3)(a) ("as prescribed herein").

Similarly, the court's reading of section 231.031 as providing that teachers over 70 lose all substantive and procedural protections is overbroad. Had the Legislature intended that teachers over 70 could be discriminated against based on age, even as to annual contract status, it could have specifically provided so, as it did when it stated in section 321.04(4) that no highway patrol officer shall serve beyond the age of 62 "any provisions of the laws of this state to the contrary notwithstanding."

Instead, it said all such annual reappointments are to be in the manner set forth by law. The highway patrol provision was held violative of the federal Age Discrimination in Employment Act earlier this year. EEOC v. State of Florida, No. 84-7039-WS (N.D.Fla. Feb. 10, 1986).

As Judge Shivers pointed out in his dissenting opinion:

> First, I do not agree with my colleagues' view that the phrase "annual reappointment in the manner prescribed by law" refers to the procedural requirements of section 230.33(7), Florida Statutes, rather than to the provisions of section 760.10, Florida Statutes. Assuming that the phrase did refer to section 230.33(7) (which is a subsection of the section listing the duties and responsibilities of a school superintendent), that section contains no statutory exceptions to age discrimination. Thus, section 760 would apply to hiring under section 230.33(7) and it would remain discriminatory for a superintendent to refuse to recommend a teacher for an annual contract position, based solely on age.
>
> Second, I agree with the Commission's rationale that the exception to the application of section 112.044 applies only to the School Board's ability to remove a teacher from tenured status after reaching age 70, but that the denial of annual contracts for teachers over age 70, based solely on age, is prohibited by the anti-discrimination language in section 760.10(1)(a).

Duval County School Board v. State, ___ So.2d ___, 11 FLW 1335, 1336 (Fla. 1st DCA 1986).

The court's reliance on the repetition of the phrase "continued employment" in the first and second clause of section 231.031 to support its view that it is continuing employment to which the 70 year old teacher is not entitled, not simply tenure or continuing contract status fails to appreciate the significance of the word "entitled." The first clause prefaces "continued employment" with the word "entitled" ("no person shall be entitled to continued employment"), whereas the second clause reads "may

be continued." Nowhere in the second clause does the word "entitled" appear. This phraseology directly supports the Commission's interpretation that the first clause is limited to tenured, or continuing contract, status. Only tenured or continuing contract teachers have entitlement to continued employment. Board of Regents v. Roth, 408 U.S. 564 (1972); Gainey v. School Board of Liberty County, 387 So.2d 1023, 1029 (Fla. 1st DCA 1980).

As such, under the express language contained in section 231.031, teachers reaching the age of 70 lose this valuable right notwithstanding the protections of sections 112.044 and by analogy, section 760.10. Cf. Housing Authority of City of Sanford, 464 So.2d 1221 (Fla. 5th DCA 1985). Notwithstanding this loss of tenure, section 231.031 provides that teachers over the age of 70 are to be considered for employment on an annual contract basis in the same lawful manner as any other teacher. Accordingly, a school board does not have the right to refuse to rehire a teacher on an annual contract on the sole basis that such teacher has reached age 70 because such practice is expressly prohibited by section 760.10, Florida Statutes.

A. READING SECTIONS 231.031 AND 760.10, FLORIDA STATUTES, IN PARI MATERIA, THE COUNTY SCHOOL BOARD MAY NOT PREMISE ITS DECISION ON WHO TO SELECT FOR ANNUAL CONTRACT EMPLOYMENT ON THE AGE OF THE INDIVIDUAL APPLICANT.

The First District Court of Appeal's interpretation of section 231.031, Florida Statutes, renders section 760.10, Florida Statutes, inoperable with respect to public school teachers who have been denied annual reappointment based on age. This reading ignores one of the primary rules of statutory construction; that is, "the duty of a court to find for apparently conflicting statutes a reasonable field of operation which may preserve the force and effect of each statute and cause them to harmonize, if possible, by a fair, strict or liberal construction." Palmquist v. Johnson, 41 So.2d 313, 316 (Fla. 1949); Accord Mann v. State, 300 So.2d 666 (Fla. 1974). This is especially true where, as here, sections 231.031 and 760.10 relate to the same subject. Sanders v. State, 46 So.2d 491 (Fla. 1950).

The Human Rights Act of 1977 provides in pertinent part:

> (1) It is unlawful employment practice for an employer:
>
> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.
>
> (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.
>
> * * *
>
> (8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under

> ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:
>
> (a) Take or fail to take any action on the basis of religion, sex, national origin, age, handicap, or marital status in those certain instances in which religion, sex, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.
>
> (b) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of ss. 760.01-760.10. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged . . . .

The Commission has consistently interpreted the term "age" contained within the Human Rights Act as encompassing any age, birth to death. See Sims v. Niagara Lockport Industries, Inc., 8 FALR 3588 (FCHR 1986), and cases cited therein.

Federal courts have recognized that the Age Discrimination in Employment Act was not intended to preempt state laws which protect employees outside of the federal age class. See, e.g., Simpson v. Providence Washington Insurance Group, 608 F.2d 1171 (9th Cir. 1979), adopting opinion below, 423 F.Supp. 552 (D.Alas. 1976). Florida along with a few other states have chosen to provide their citizens with protections greater than those afforded by federal law. Effective January 1, 1987, section 231.031's express provision that teachers who reach age 70 will lose tenured status will violate the federal Age Discrimination in Employment

Amendments of 1986. Act of October 31, 1986, P.L. 99-592, ___ Stat. ___, generally effective January 1, 1987 (EPD 3713-3 through 3730). The amendments lift the federal law's current age 69 ceiling, so that workers aged 40 and older are protected from discrimination on the basis of age. The amendments also put an end to mandatory retirement with certain enumerated exceptions.

The Commission's interpretation is a fair reading of both statutes. It gives effect to section 231.031's express language by removing tenure for teachers who are 70 years of age while preserving the force of sections 231.031 and 760.10 which prohibit annual contract decisions being made in a discriminatory and unlawful manner:

> . . . In this case, Section 231.031, Florida Statutes, can be harmonized with Section 760.10, Florida Statutes, by reading the first clause of Section 231.031, Florida Statutes, as an automatic reversion of tenured teachers who attain the age of 70 to annual contract employees and be reading the second clause of Section 231.031 as prescribing the manner for annual reappointment.
>
> Nothing contained in Section 231.031, Florida Statutes, indicates any legislative intent that the annual reappointment decision respecting teachers who have attained the age of 70 may be based solely on those teachers' ages contrary to the Human Rights Act of 1977. The statute rather provides that such reappointment decisions must be made "in the manner prescribed by law."

Morrow v. Duval County School Board, 7 FALR 3885, 3888-9 (FCHR 1985).

Sections 231.031 and 760.10, Florida Statutes, can be reconciled by reading section 231.031 as providing for the automatic reversion of tenured or continuing contract teachers over the age of 70 to the status of annual contract teachers, while simultaneously requiring that the decision regarding whether to reappoint such annual contract teachers be made in accordance with all applicable law.

The contrary interpretation conflicts with the clear and unambiguous prohibition against age-based employment decisions, violative of section 760.10, Florida Statutes. In the absence of an equally clear and unambiguous expression of legislative intent to the contrary, section 231.031, Florida Statutes, should not be construed so as to entirely exempt a class of individuals from the protections of a remedial statute.

B. IF SECTIONS 231.031 AND 760.10, FLORIDA STATUTES, ARE CONSTRUED TO BE IN IRRECONCILABLE CONFLICT, SECTION 760.10 SHOULD PREVAIL AS THE LAST EXPRESSION OF LEGISLATIVE WILL OVER THE ISSUE OF FORCED RETIREMENT.

Section 231.031 took effect as currently written on October 1, 1980. Ch. 80-295, Laws of Fla., ss. 7,20. Section 760.10(8)(b), previously numbered 23.167(8)(b), took effect as currently written one year later on October 1, 1981. Ch. 81-109, Laws of Fla., ss. 1, 2.

The amendatory language contained in chapter 80-295 provided authority for instructional personnel past the age of 70 to be continued in employment in full-time positions. The statute previously authorized employment of such personnel only in substitute or part-time positions. The amendatory language contained in chapter 81-109 made it an unlawful employment practice under the Human Rights Act of 1977 for employees not otherwise protected by section 112.044 to be involuntarily retired on the basis of age. Section 231.031 specifically exempted the involuntary retirement of instructional personnel from the protections of section 112.044.

The effective date of the respective provisions as currently written determines which provision was last in point of time. See, e.g., State v. Ross, 447 So.2d 1380, 1382 (Fla. 4th DCA 1984), where the court stated:

> First, section 775.087(2)(a) is the latter promulgated statute. It took effect substantially as currently written on May 14, 1975 (Chapter 75-7, Senate bill no. 55). Section 397.12 first appeared in similar form in 1973 and took effect on July 1, 1973 (Chapter 73-350, House bill no. 1358). Thus, assuming-but without deciding-that the statutes conflict, section 775.087(2)(a) should prevail as the last expression of legislative will.

Thus, chapter 81-109, rather than chapter 80-295, was the last expression of legislative will since it is the later promulgated statute. The fact that

the legislature extended the time period for chapter 80-295's review pursuant to the Regulatory Sunset Act does not render it later in point of time for purposes of determining legislative intent. Ch. 82-242, Laws of Fla., ss. 28, 31. Cf. Drury v. Harding, 461 So.2d 104 (Fla. 1984), where the Court stated that when a statute is repealed and then substantially reenacted, its operation is deemed to be continuous and uninterpreted.

Inasmuch as chapter 81-109 was the last expression of legislative will in point of time with respect to the conflicting provisions contained in sections 231.031 and 760.10, the language contained in chapter 81-109 should prevail. Williams v. Hartford Accident and Indemnity Co., 382 So.2d 1216 (Fla. 1980); Askew v. Schuster, 331 So.2d 297 (Fla. 1976); Albury v. City of Jacksonville Beach, 295 So.2d 297 (Fla. 1974); State v. City of Boca Raton, 172 So.2d 230 (Fla. 1965); Sharer v. Hotel Corporation of America, 144 So.2d 813 (Fla. 1962); Speights v. State, 414 So.2d 574 (Fla. 1st DCA 1982); Kiesel v. Graham, 388 So.2d 594 (Fla. 1st DCA 1980); Mikos v. Ringling Bros.-Barnum & Bailey, 475 So.2d 292 (Fla. 2d DCA 1985); In re Sepe 421 So.2d 27 (Fla. 3d DCA 1982); State v. Ross, 447 So.2d 1380 (Fla. 4th DCA 1984).

This Court has recognized that "[a] general statute covering an entire subject matter, and manifestly designed to embrace all the regulations of the subject, may supersede a former statute covering a portion only of the subject, when such is the manifest intent . . . ." Sparkman v. State ex rel. Bank of Ybor City, 71 Fla. 210, 228, 71 So. 34, 39 (1916). Moreover, "when the legislature makes a complete revision of a subject it serves as an implied repeal of earlier acts dealing with the same subject unless an

intent to the contrary is shown." 361 So.2d at 143. Accord State v. Dunmann, 427 So.2d 166 (Fla. 1983).

In this case, a fair reading of the Human Rights Act of 1977, and specifically section 760.10(8)(b), indicates a clear intent to prohibit age discrimination unless age is related to job performance:

> However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged.

Similarly, although not part of the statute, the title is a valuable aid in sifting out the legislative intent behind its enactment. State v. Webb, 398 So.2d 820, 824 (Fla. 1984). As part of its title, chapter 81-109 states that the act "prohibit[s] involuntary retirement for reasons other than ability to perform a job." On the other hand, chapter 80-295 as interpreted by the lower court, authorizes involuntary retirement based solely on age. Inasmuch as chapter 81-109 specifically prohibits such age-based involuntary retirements, it has left chapter 80-295 inoperable.

Similarly, courts in other jurisdictions have repealed by implication certain special laws where later enacted antidiscrimination acts covered the subject matter of the earlier legislation. For example, in Dolan v. School District #10, 636 P.2d 825 (Mont. 1981), a tenured principal at a Montana elementary school received notification that, as a result of her being age 65, her services in the ensuing school year would cease. The principal filed a discrimination complaint with the state's fair employment practices agency.

The agency found that the statutory provision relating to involuntary retirement of all teachers and principals upon the age of 65 was an exception to the proscriptions against age-based discrimination contained in the fair employment practices law.

Upon review, the state district court reversed, holding that the retirement provision violated the equal protection and due process clauses of the state and federal constitutions and further that it was repealed by the subsequent enactment of the fair employment practices law.

The Supreme Court of Montana upheld the district court's ruling on the ground that the retirement provision for teachers was impliedly repealed by passage of the state's fair employment practices law:

> A fair reading of the "Human Rights Act" indicates an intention to prohibit age discrimination unless age is related to job performance. A mandatory retirement age could seldom, if ever, relate to job performance because of the variation in individuals. The statutes are therefore irreconcilably in conflict and the one later enacted must necessarily work a repeal of the former.

636 P.2d at 82.

Similarly, in Longacre v. State, 448 P.2d 832, 834 (Wyo. 1968), the Supreme Court of Wyoming struck down the statutory provision which states, "No female shall be employed as a bartender in a room holding a retail liquor license," reasoning that the state's fair employment practices law prohibiting sex-based employment decisions repealed the earlier statute:

> The title to the Fair Employment Practices Act gives every indication that its purpose is to prevent discriminating practices against females in all employments when they are qualified to hold a position. And where there is a manifest legislative intent that a subsequent general statute shall have universal application, it repeals by implication earlier laws dealing with only a small part of the same subject.

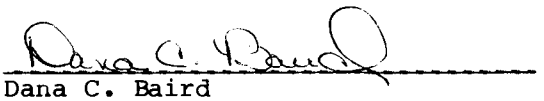
> If the legislature wishes to write an exception into its Fair Employment Practices Act, to except bartending from the provisions of such act, it will have to do so by further and specific legislative enactment. However, we have not in this case passed upon the question of whether a law prohibiting the employment of female bartenders would be constitutional, and that question would remain. (Citations omitted).

Should sections 231.031 and 760.10, Florida Statutes, be construed to be in irreconcilable conflict, section 760.10 should prevail as the last expression legislative will over the issue of forced retirement.

CONCLUSION

For the foregoing reasons, this Court should conclude that sections 231.031 and 760.10, Florida Statutes, read in pari materia, prohibit the School Board from refusing to rehire a teacher on an annual contract merely because the teacher has attained the age of 70 years. In so holding, the Court should reverse the opinion of the First District Court of Appeal and reinstate the order of the Commission.

Respectfully submitted,

BY: 

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COMMISSION ON HUMAN RELATIONS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document and appendix has been served by First Class United States Mail, postage prepaid, upon Robert J. Winicki, Esquire, Post Office Box 4099, Jacksonville, Florida 32201; Gerald A. Schneider, Esquire, William Lee Allen, Esquire, Gary E. Eckstine, Esquire, Neill W. McArthur, Jr., Esquire, City of Jacksonville, 1300 City Hall, 220 East Bay Street, Jacksonville, Florida 32202; Thomas W. Brooks, Esquire, Post Office Box 1547, Tallahassee, Florida 32302; and Leslie Holland, Esquire, FEA/United, 208 West Pensacola Street, Tallahassee, Florida 32301, this 18th day of November, 1986.

Attorney