IN THE SUPREME COURT OF FLORIDA

CITY OF MIAMI, FLORIDA and FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION,	:	Case No. 69,469
Petitioners,	:	District Court of Appeal
v.	:	Third District
	:	Case No. 85-1040
FRATERNAL ORDER OF POLICE, MIAMI LODGE 20, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1907, AFL-CIO,	:	
Respondent.	:	

BRIEF OF PETITIONER
FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION

CHARLES F. McCLAMMA
STAFF COUNSEL
2586 SEAGATE DRIVE, SUITE 100
TURNER BUILDING
KOGER EXECUTIVE CENTER
TALLAHASSEE, FLORIDA 32399-2171
(904) 488-8641

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PRELIMINARY STATEMENT

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

Petitioner City of Miami: "City"

Petitioner Florida Public Employees Relations Commission: "PERC"

Respondent Fraternal Order of Police, Miami Lodge 20: "FOP"

Respondent American Federation of State, County and Municipal Employees, Local 1907, AFL-CIO: "AFSCME"

All references to the Appendix will appear in brackets as (A __).

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

All references to the supplement record will appear as (SR __).

STATEMENT OF THE CASE AND FACTS

This case arose from unfair labor practice charges filed in 1982 by the Fraternal Order of Police, Miami Lodge 20, and the American Federation of State, County and Municipal Employees, Local 1907, AFL-CIO against the City of Miami, Florida. The FOP and AFSCME contended the City had violated Section 447.501(1)(a) and (c), Florida Statutes (1983), by unilaterally, that is, without any negotiations, adopting an increase in the premiums paid by employees for certain medical benefits. (SR 1-2, 26-27)

Following PERC's determination that the charges were sufficient to establish prima facie statutory violations, the City moved to have PERC defer consideration of the charges pending resolution of the disputes pursuant to the contractual grievance arbitration procedures contained in the FOP and AFSCME collective bargaining agreements with the City. (SR 5-25, 55-76) Both the FOP and AFSCME opposed the requested deferrals.

By orders dated September 16, 1982, and October 5, 1982, (A 39-42; SR 90-91, 93-94) PERC concluded that the criteria for deferral to arbitration were met and granted the City's motions to defer. PERC expressly retained jurisdiction until after the conclusion of the arbitration in order to assure that the merits of the charges were resolved by arbitration.

AFSCME and the FOP sought review of the pre-arbitration deferral orders in the First District Court of Appeal. That court denied review finding "no departure from the essential requirements of the law, or that review of final agency action would not provide an adequate remedy." (R 1-2)

Thereafter, AFSCME, the FOP, and the City submitted to an arbitrator the question of whether their collective bargaining agreements authorized the City to apportion percentages of increases in the cost of medical benefits to employees. After a hearing, the arbitrator granted the FOP's grievance in part and denied it in part. AFSCME's grievance was entirely denied. (SR 188-209)

AFSCME and the FOP requested PERC to reinstitute the unfair labor practice charges. Various pleadings were filed and a hearing was held on the issue of whether the parties had contractually agreed to be bound by the outcome of arbitration proceedings. Ultimately, by order of April 18, 1985, the Commission concluded that the conditions necessary for deferral to an arbitration award had been met, that the arbitration award effectively disposed of the issues raised in the unfair labor practice charges, and therefore dismissed the charges. (R 390-407)

Following an appeal of PERC's order, the Third District Court of Appeal, in an opinion filed August 5, 1986, concluded PERC lacked authority to defer to arbitration and reversed the order under review, requiring PERC to consider the matter in a de novo hearing. (A 22-38; R 408-11)

PERC and the City of Miami moved for rehearing and clarification which motions were denied. The suggestion to the Court to certify was granted, and on September 15, 1986, the Third District Court of Appeal certified to this Court that the decision in the cause passes upon a question of great public importance, to wit:

Whether the Public Employees Relations Commission has authority under Chapter 447, Part II, to defer unfair labor practice charges to arbitration, and give final and binding effect to the arbitrator's contract interpretation.

(A 1)

SUMMARY OF ARGUMENT

The question certified by the Third District Court of Appeal should be answered in the affirmative. PERC has implicit authority to defer unfair labor practice charges to arbitration. That authority is derived chiefly from Section 447.401, Florida Statutes (1985), which requires each collective bargaining agreement to contain a procedure which resolves contract disputes through final and binding arbitration. Full de novo reconsideration by PERC of issues which have been resolved by an arbitrator effectively makes meaningless the statutory requirement that the arbitration be "final and binding." PERC's deferral policy is supported by decisions of similar state agencies, the National Labor Relations Board and the federal courts.

PERC has adopted standards for deferral over the past eight years, and recently promulgated rules for deferral (Rule 38D-21.011, Fla. Admin. Code), limiting the use of deferral to those cases where arbitration will effectively resolve the unfair labor practice charge. PERC retains jurisdiction of the unfair labor practice charge, and carefully scrutinizes the arbitration proceedings and award.

The unfair labor practice charges which were deferred to arbitration in the instant case involved whether contract provisions authorized insurance premium increases. These issues of contract interpretation were highly appropriate for deferral. The arbitrator's decision and award was reviewed by PERC, exceeded the standards for deferral, and was given conclusive effect by PERC. A de novo proceeding would be inconsistent with the requirement that the arbitrator's decision be final and binding.

I. WHETHER THE PUBLIC EMPLOYEES RELATIONS COMMISSION HAS AUTHORITY UNDER CHAPTER 447, PART II, TO DEFER UNFAIR LABOR PRACTICE CHARGES TO ARBITRATION, AND GIVE FINAL AND BINDING EFFECT TO THE ARBITRATOR'S CONTRACT INTERPRETATION.

PERC has the authority to defer unfair labor practice charges to arbitration. This authority, while not expressly stated within Chapter 447, Part II, is fairly implied and even necessarily implied from provisions of that law.

In Coca-Cola Company, Food Division v. Department of Citrus, 406 So.2d 1079 at 1081 (Fla. 1981), this Court noted that it had previously discussed in numerous cases when statutory authority may properly be implied:

> "The powers of this and similar agencies include both those expressly given and those given by clear and necessary implication from the provisions of the statute." City Gas Company v. Peoples Gas System, Inc., 182 So.2d 429, 436 (Fla. 1965). The implied powers attendant to those expressly given include those which are "indispensable or useful to the valid purposes of a remedial law", State ex rel. Railroad Commission v. Atlantic Coast Line R. Co., 60 Fla. 465, 54 So. 394, 397 (1911); those "necessary for the exercise of the [right] or the performance of the [duty]", Girard Trust Co. v. Tampashores Development Co., 95 Fla. 1010, 117 So. 786, 788 (1928); those "necessary to accomplish the [stated governmental purpose]", Hancock v. Karel, 127 Fla. 451, 173 So. 274, 276 (1937), citing Bailey v. Van Pelt, 78 Fla. 337, 82 So. 789, 792 (1919); and those "necessary to carry out the power or right and make it effectual and complete", Deltona Corporation v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969).

Central to PERC's implicit authority to defer to arbitration is Section 447.401, Florida Statutes (1985), which provides, in pertinent part:

> Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties. [Emphasis added.]

Thus, every public sector collective bargaining agreement in Florida must contain a grievance procedure ending in final and binding arbitration. The right to such a procedure is emphasized and protected elsewhere in Chapter 447, Part II. Sections 447.301(2) and (4) provide a right to be represented in grievances, and Section 447.501(1)(f) prohibits public employers from refusing to discuss grievances.

Deferral allows PERC to give effect to the arbitrator's disposition of a contract dispute pursuant to Section 447.401. Careful application of appropriate standards for deferral (which will be discussed in greater detail under Point II of this brief) at both pre- and post-arbitration stages assures that the basic rights granted under Chapter 447, Part II, are maintained.

The consequences of not deferring to an arbitration award are inconsistent with Section 447.401. Absent the authority to defer, PERC must hear and resolve unfair labor practice charges on issues already the subject of arbitration, with total disregard for the arbitrator's decision and award. If PERC's interpretation of the contract is like that of the arbitrator's, then, by coincidence

only, the arbitrator's decision remains "final and binding".[1] Full reconsideration of contract interpretation issues by PERC is tantamount to plenary review by an appellate court of an arbitrator's decision which "would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final." City of Boulder v. General Sales Drivers, 694 P.2d 498 (Nev. 1985), quoting from United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 at 596, 80 S.Ct. 1358 at 1362 (1960).

There is an alternative illogical consequence of not recognizing the legislatively implied need for deferral. PERC is given wide discretion to remedy unfair labor practices in a manner which "will best implement the general policies expressed in [Chapter 447, Part II]." Section 447.503(6)(a), Fla. Stat. (1985). After conducting a full unfair labor practice proceeding, the Commission could, under such broad authority, conclude that the purposes of the law would best be served by requiring the parties to comply with the terms of an arbitrator's decision. The end result would be the same as if the Commission had deferred; the chief difference is the cost and delay attendant to full de novo proceedings. Such delays are inconsistent with the Legislature's statement of intent "that the Commission act as expeditiously as possible to settle disputes regarding alleged unfair labor practices." Section 447.503, Fla. Stat. (985).

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[1]If an arbitrator's award is enforced pursuant to Chapter 682, Florida Statutes (1985), and PERC resolves an unfair labor practice charge without deferring to the arbitrator's award, both cases could independently reach the district courts on review.

Deferral is not only necessary to give effect to specific provisions of Chapter 447, Part II, but also to give effect to the broad aims of that law. PERC was created "to assist in resolving disputes between public employees and public employers." Section 447.201(3), Fla. Stat. (1985). PERC views deferral as one means of accomplishing that purpose, recognizing that "[f]inal and binding resolution of disputes by a neutral arbiter chosen by the parties should more readily produce a solution acceptable to all." (R 396-97) Deferral also furthers the requirement "that the Commission act as expeditiously as possible to settle disputes regarding alleged unfair labor practices." Section 447.503, Fla. Stat. (1985). The legislative requirement that every collective bargaining agreement include a procedure for final and binding arbitration is a reflection of the policy which allows and encourages dispute resolution by application and interpretation of the contract without the necessity of intervention by PERC. Evidence of the legislative policy favoring arbitration may also be seen in other laws, e.g., the Florida Arbitration Code, Chapter 682, Florida Statutes (1985) and in court decisions. See, e.g., Fenster v. Makovsky, 67 So.2d 427 (Fla. 1953); Post-Tensioned Engineering Corp. v. Fairways Plaza Associates, 412 So.2d 871 (Fla. 3d DCA 1982), pet. for reh. denied, 419 So.2d 1197 (Fla. 1982).

Deferral to arbitration is widely practiced in other jurisdictions. PERC's counterparts in at least two states have express statutory authority to defer, e.g., California and Illinois.[2]

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[2]Cal. Gov't Code, Section 3514.J(a); Illinois Public Labor Relations Act, Section 11(i).

However, a number of other public sector labor agencies have adopted a policy of deferral while apparently lacking express authority, e.g. Massachusetts, Hawaii, New Hampshire, Vermont, Washington, and New Jersey.[3] PERC has undertaken extensive research to locate court decisions from the other states on the policy of deferral. This research has revealed remarkably few cases. As PERC noted in its final order, the Michigan Supreme Court is apparently alone in concluding that its labor agency lacks authority to defer. The Pennsylvania Commonwealth Court expressly declined to decide whether the Pennsylvania Labor Relations Board's deferral policy is authorized by law.[4] The Oregon Employment Relations Board's deferral[5] policy was approved

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[3]City of Cambridge and Cambridge Police Association, 7 MLC 2111 (Mass. LRC 1981) (A 103-105); Hawaii Nurses Association and George R. Ariyoshi, No. CE-09-41, Decision 104 (Hawaii PERB 1979) (A 108-115); State Employees' Association of New Hampshire v. New Hampshire State Prison and State Negotiating Committee, No. S-0317:2, Decision 80023 (N.H. PERLB 1980) (A 116-118); Local 881, IAFF v. City of Barre, Vermont, No. 78-108R (Vt. LRB 1979 (A 91-99); Public School Employees of Tumwater v. Tumwater School District No. 33, No. 2046-U-79-283, Dec. 936-PECB (Wash. PERC 1980) (A 100-102); Town of Harrison and Harrison Fireman's Benevolent Association, 8 NJPER ¶ 13051 (N.J. PERC 1982) (A 119-122; 121-124). [Copies of decisions included in Appendix.]

[4]In re: Appeal from Decision of the Pennsylvania Labor Relations Board. In the Matter of the Employees of the Port Authority of Allegheny County, Amalgamated Transit Union, 433 A.2d 578 (Pa. Cmwlth. 1981) (court, affirming board decision, concluded that case was not a deferral case when the board simply declined to relitigate the contract interpretation of the arbitrator but adopted the arbitrator's contract interpretation in adjudicating the unfair labor practice charge.)

[5]It is noteworthy that the Oregon Court does not use the word "deferral," but rather speaks in terms of "following" and "honoring" the arbitrator's decision. Deferral, as used by PERC, is synonymous with these words.

by the Court of Appeals in Siegel v. Gresham Grade Teachers Association, 574 P.2d 692 (Or. Ct. App. 1978). The court explained:

> In enacting the Public Employe [sic] Relations Act (PERA), ORS 243.650 et seq., the legislature made binding arbitration a favored means of dispute resolution, see ORS 243.706, 243.712(2)(c), 243.722(4), 243.742 and 243.762, because the availability of such an effective, expeditious and conclusive means of resolving labor disputes was deemed essential to the maintenance of harmonious labor relations in the public sector. See ORS 243.742. PERB's policy of adhering to arbitration decisions in subsequent related proceedings advances the legislative purpose and is therefore a proper exercise of its authority to administer the PERA.

Id. at 695. (citation omitted)

PERC's deferral policy is also in general accord with the policy of the National Labor Relations Board.♣ See Spielberg Manufacturing Co., 112 NLRB 1080, 36 LRRM 1152 (1955) (seminal post-arbitral deferral case under NLRA) (A 89-90); Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971) (seminal pre-arbitration deferral case under NLRA) (A 69-88). When relevant provisions of Chapter 447, Part II, and the NLRA are similar, decisions of the NLRB are "pertinent and instructive, where, as here, the case is one of first impression." School Board of Polk County v. PERC, 399 So.2d 520, 521-22 (Fla. 2d DCA 1981).

♣A recent comprehensive review of NLRB and court decisions may be found in Comment, "The National Labor Relations Board's Policy of Deferring to Arbitration," 13 Fla. St. U.L. Rev. 1141 (1986). Like the courts, commentators have been supportive of the policy of deferral. See e.g., Gregorich, "The NLRB and Deferral to Awards of Arbitration Panels," 38 Wash. and Lee L. Rev. 124 (1981); Nash, Wilder & Banov, "Collyer Insulated Wire: A Case of Misplaced Modesty," 49 Ind. L.J. 57 (1973); Cushman, "Arbitration and the Duty to Bargain," 1967 Wis. L. Rev. 612 (1967).

"Federal labor law decisions are persuasive but not binding authority for judicial interpretations of the PERA." Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, 475 So.2d 1221 at 1225 (Fla. 1985). Although the NLRA contains no specific provision authorizing or requiring[7] the NLRB to defer to arbitration, the federal courts have nevertheless given general and repeated approval to the NLRB's policy, albeit with occasional adjustments to the standards for deferral.[8] In NLRB v. Pincus Brothers, Inc. - Maxwell, 620 F.2d 367, 374 (3d Cir. 1980), the majority, in ruling that the NLRB abused its discretion by failing to defer to the arbitration award, said:

> As a result of both judicial and Board deference to arbitration awards, an arbitral result could be sustained which is only arguably correct and which would be decided differently in a trial de novo. The national policy in favor of labor arbitration recognizes that the societal rewards of arbitration outweigh a need for uniformity of result or a correct resolution of the dispute in every case.

In a footnote later in the same case, the court further stated:

> The dissent misconstrues the nature of the Board's deferral policy as a failure to exercise jurisdiction rather than the implementation of national labor policy expressed in section 203(d) and the Steelworkers trilogy. The Board does not decline to

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[7] "The Board is not required by statute to defer, . . . 'the Board's rules on deference, after all, are self-imposed although it has followed healthy hints from the Supreme Court.'" Liquor Salesmen's Union v. NLRB, 664 F.2d 318, 326 (2nd Cir. 1981) (citation omitted).

[8] Most often any disagreement by the federal appellate courts has been related to whether the NLRB properly applied its deferral standards or whether a particular kind of unfair labor practice charge was appropriately deferred.

> exercise jurisdiction when it defers to arbitration but it is accommodating the parties' choice of voluntary arbitration to the extent that the proceedings are fair and regular and the result is not clearly repugnant to national labor policy. Despite the representation of the dissent to the contrary, the Supreme Court accepted the principle of Board deference to arbitration awards in unfair labor practice disputes in Carey v. Westinghouse Corp., 375 U.S. 261, 270 n.7, 84 S.Ct. 401 at 408 n.7 (1964).

Id. at 375 n.18.*

In Carey v. Westinghouse Electric Corp., 375 U.S. 269, 271, 84 S.Ct. 401, 408 (1964), the Supreme Court said:

> [I]t is equally well established that the Board has considerable discretion to respect an arbitration award and decline to exercise its authority over alleged unfair labor practices if to do so will serve the fundamental aims of the Act.

And in William E. Arnold Co. v. Carpenters District Council, 417 U.S. 15, 17, 94 S.Ct. 2069, 2072 (1974), the Court quoted the following from Collyer Insulated Wire, 192 NLRB 837 at 843 (1971):

> We believe it to be consistent with the fundamental objectives of Federal law to require the parties . . . to honor their contractual obligations rather than by casting [their] dispute in statutory terms, to ignore their agreed-upon procedures.

As previously noted, the NLRA does not contain express authority for the Board's deferral to arbitration. Significantly,

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* *The Steelworkers trilogy mentioned by the court is a set of three landmark Supreme Court decisions which emphasize the central role of arbitration in the collective bargaining process. The cases are Steelworkers v. American Manufacturing Company, 363 U.S. 564 (1960); Steelworkers v. Warrior and Gulf Navigation Company, 363 U.S. 574 (1960); and Steelworkers v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

as this court noted in Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, 475 So.2d 1221 at 1225 n.5 (Fla. 1985), "arbitration is guaranteed to public employees by Section 447.401; there is no such provision in private sector labor law." This suggests there is even greater support for deferral to arbitration under Florida law than exists under federal law.

In sum, the Commission's deferral policy is implied from and necessary to make "effectual and complete" the statutory requirement that all collective bargaining agreements contain a provision for final and binding arbitration of contract disputes. Further, it is a policy which is consistent with the legislatively expressed purpose of assisting in the resolution of disputes, and finds near unanimous support in the decisions of other jurisdictions, both state and federal.

II. PERC HAS PROMULGATED APPROPRIATE STANDARDS FOR DEFERRAL.

PERC acknowledges that the certified question posited by the Third District Court of Appeal does not include the question of whether PERC's standards for deferral are proper. Although the authority to defer may be held to exist independently of whether appropriate standards for deferral have been adopted, a full understanding of the process of deferral may contribute to the realization that the deferral policy is a reasonably necessary one and consistent with the aims of Chapter 447, Part II.

PERC's earliest rules of procedure contained a provision authorizing deferral.[10] In 1977, however, PERC concluded for a short time that it lacked the authority to defer. Jackson County Education Association v. School Board of Jackson County, 3 FPER 276 (1977) (A 51-55).[11] Although never expressly overruled by PERC, Jackson County has been implicitly receded from in a long line of cases beginning in 1978. In City of Ocala v. IAFF, Local 2135, 4 FPER ¶ 4355 (1978) (A 43-44), PERC affirmed the General Counsel's dismissal of an unfair labor practice charge. PERC concluded there was no reason to decide the charge until a contract interpretation had occurred in accordance with procedures agreed to by the parties. PERC shortly thereafter conceded that the practice of dismissing charges upon deferral was ill-advised.

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[10]At that time, PERC's rules were embodied in Chapter 8H, Florida Administrative Code.

[11]The rationale of Jackson County is characterized as "questionable" in W. G. Vause, "PERC Deferral to Arbitration," 1982 Fla. B. J. 818.

In fact, the practice of dismissal was discontinued beginning with Orange County PBA v. City of Orlando, 6 FPER ¶ 11093 (1980) (A 45-46), wherein PERC retained jurisdiction to ensure that the arbitration proceedings met PERC's standards.

In Dade County PBA v. City of Homestead, 7 FPER ¶ 12079 (1981) (A 16-19), PERC strongly reiterated its deferral policy. PERC declined to defer, however, because the issue raised in the charge, discrimination on account of protected concerted activity, "was not considered by the arbitrator and, further, was not within the authority of the arbitrator to resolve had it been presented." PERC has continued the practice of deciding the issue of deferral, when appropriately raised, on a case-by-case basis. See, e.g., Federation of Public Employees v. Broward County Sheriff's Department, 8 FPER ¶ 13116 (1982) (motion for pre-arbitration deferral denied) (A 14-15); Reedy Creek Fire Fighters Association v. Reedy Creek Improvement District, 8 FPER ¶ 131921 (1982) (pre-arbitration deferral granted) (A 60-62); Palm Beach County CTA v. School Board of Palm Beach County, 9 FPER ¶ 14329 (1983) (motion for pre-arbitration deferral granted) (A 58-59); Rijos v. State of Florida, 10 FPER ¶ 15058 (1984) (motion for pre-arbitration deferral denied) (A 69-70); Local 754, IAFF v. City of Tampa, 10 FPER ¶ 15129 (1984) (motion for pre-arbitration deferral granted) (A 47-48); Transport Workers Union Local 291 v. Metro Dade County, 11 FPER ¶ 16105 (1985) (motion for pre-arbitration deferral granted) (A 56-57); Rijos v. State of Florida, 11 FPER ¶ 16150 (1985) (partial deferral granted) (A 63-66); IBEW, Local Union 323 v. City of Lake Worth, 12 FPER ¶ 17067 (1986) (arbitration award given conclusive effect) (A 20-22).

It is noteworthy that, although various provisions of Chapter 447, Part II, have been amended during the past five years, the Legislature has not seen fit to change the law to restrict PERC's deferral policy. This demonstrates a degree of legislative acquiescence in PERC's policy. See State ex rel. Szabo Food Services of North Carolina v. Dickinson, 286 So.2d 529 (Fla. 1973), and Davies v. Bossert, 449 So.2d 418 (Fla. 3d DCA 1984).

On June 11, 1986, newly promulgated Florida Administrative Code Rule 38D-21.011 became effective.[12] That rule is the embodiment of PERC's deferral policy as it has evolved since 1978. PERC has maintained and continues to maintain that the absence of this rule at the time PERC deferred in the instant cases constituted no impediment to PERC's deferral.[13] As was argued in Point I, implicit authority for the policy (and, it follows also for the rule) exists in Chapter 447, Part II, and the existence of the rule is made known to this court merely to provide the most up-to-date expression of PERC's deferral policy.

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[12]A copy of this rule was filed with the Third District Court of Appeal by way of notice of supplemental authority served June 12, 1986. (A 6-9)

[13]The FOP and AFSCME argued in the appeal below that PERC's deferral policy constituted a prohibited means of rule-making. PERC disagreed, noting that pursuant to Section 447.207(6), Florida Statutes (1985), "[a]ny Commission statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to s. 447.307 or s. 447.503 shall not constitute a rule within the meaning of s. 120.52(15)."

A comparison of the Commission's deferral standards as stated in the unfair labor practice cases underlying the case now before the court[14] and Rule 38D-21.011 reveals no substantive differences. Both policy and rule reflect careful control by the Commission before and after the arbitration proceedings. The standards are such that only a relative few unfair labor practice charges are sought for and receive deferral. As noted in the brief to the Third District Court of Appeal, according to PERC records, of 71 unfair labor practice charges found sufficient by PERC's General Counsel in 1985, deferral was an issue in seven cases; deferral was granted in only four cases.

Deferral is not an abdication of PERC's responsibilities, nor does it deny parties access to the Commission's procedures. When deferral occurs, it is only after careful examination by PERC of the arbitration proceeding (see Rule 38D-21.011(4)(a)) and of the arbitration award (see Rule 38D-21.011(4)(b) and (c)). If the arbitration award does not resolve the issues raised in the charge, PERC does not defer. See Federation of Public Employees v. Broward County Sheriff's Department, 8 FPER ¶ 13116 (1982) (A 14-15); Florida Administrative Code Rule 38D-21.011(4)(b). Or, if other issues remain unresolved, PERC will defer to the arbitrator's award but conduct proceedings to resolve the remaining issues. Similar circumstances were presented to the court in Blanchette v. School Board of Leon County, 378 So.2d 68 (Fla. 1st

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[14]FOP, Miami Lodge 20 v. City of Miami, 8 FPER ¶ 13371 (1982) (A 39-40); AFSCME Local 1907 v. City of Miami, 8 FPER ¶ 13397 (1982) (A 41-42); FOP Miami Lodge 20 v. City of Miami and AFSCME, Local 1907 v. City of Miami, 11 FPER ¶ 16128 (1985) (A 22-38).

DCA 1979). In that case, a teacher sought a formal APA hearing in her claim for an unpaid leave of absence. The issue was subject to the parties' collective bargaining agreement which, of course, contained a provision for final and binding arbitration. The court said:

> [T]he School Board properly refused to resolve unilaterally, by APA procedures, a grievable dispute which the Board was obliged by contract to arbitrate with the collective bargaining representative of its teacher employees. When parties through their bargaining representatives have contracted to arbitrate grievable disputes arising out of the collective bargaining agreement, grievable disputes must be resolved in that manner, if possible, rather than through APA procedures whose object is a final order expressing the decision of the employer-agency and determining a party's substantial interests. If following arbitration any issues remain which are subject to Chapter 120 processes, they may be resolved, on appropriate petition, by formal or informal proceedings.

Id. at 69.

Just as the court in Blanchette guaranteed access to APA procedures for the resolution of issues unresolved through arbitration, PERC also ensures access to statutory unfair labor practice procedures should contractual arbitration not finally and effectively resolve a dispute. PERC retains jurisdiction to review the arbitration award, and will institute further proceedings if a party establishes reasonable cause to believe the dispute was not resolved by the arbitration award. Rule 38D-21.011(4)(b), Fla. Admin. Code; Rigs v. State of Florida, 11 FPER ¶ 16150 (1985) (A 63-66).

PERC submits that its deferral policy has been promulgated with standards which promote the objective of deferral while ensuring that deferral occurs only when appropriate.

III. DEFERRAL WAS APPROPRIATE IN THESE CASES.

Application of each of the standards for deferral to the facts of the instant cases reveals the standards were clearly met. In fact, the cases present outstanding examples of disputes most appropriately resolved by arbitration.

Both unfair labor practice charges centered upon the issue of whether the City had improperly increased the cost to employees of certain insurance premiums. Both contracts contained specific provisions setting forth the basis upon which to apportion premium increases. (R 404-405; SR 190) Interpretation of the contract language was certainly within the province of the arbitrator, who was at least as qualified as PERC for the task, and who analyzed the agreements and bargaining history to determine whether the City was authorized to increase insurance premiums. (SR 196-208)

PERC's final order giving conclusive effect to the arbitration award explains why PERC determined that the result reached by the arbitrator was not repugnant to the purposes and policies of Chapter 447, Part II. PERC went beyond that, however, noting that the arbitrator's discussion of the issues "was expressly based upon Commission precedent" and that the arbitrator "cited and discussed numerous Commission decisions with thoroughness and sensitivity to factual distinctions." (R 396) In light of PERC's obviously careful consideration of the arbitration procedure and award, it is difficult to understand what purpose would be served by requiring the unfair labor practice charges to be reconsidered by PERC in a de novo proceeding. To require such relitigation of

disputes once resolved would make meaningless the statutory directive that the arbitrator's decision be "final and binding."

CONCLUSION

PERC respectfully asks this Court to conclude that PERC has authority under Chapter 447, Part II, to defer unfair labor practice charges to arbitration, and to give final and binding effect to the decision and award of the arbitrator. PERC would further ask the Court to conclude that the Commission has promulgated appropriate standards for deferral, which were properly applied in these cases, and that PERC's final order should therefore be affirmed.

CHARLES F. McCLAMMA
STAFF COUNSEL
2586 SEAGATE DRIVE, SUITE 100
TURNER BUILDING
KOGER EXECUTIVE CENTER
TALLAHASSEE, FLORIDA 32399-2171
(904) 488-8641

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner, Florida Public Employees Relations Commission has been sent by U.S. Mail this 10th day of November, 1986, to the following:

Robert D. Klausner, Esquire
PELZNER, SCHWEDOCK, FINKELKSTEIN & KLAUSNER, P.A.
Attorney for Respondents
1922 Tyler Street
Hollywood, Florida 33020

Peter J. Hurtgen, Esquire
Claudia B. Dubocq, Esquire
MORGAN, LEWIS & BOCKIUS
Attorneys for Petitioner City of Miami
3200 Miami Center
100 Chopin Plaza
Miami, Florida 33131

Respectfully submitted,

Charles F. McClamma

CHARLES F. McCLAMMA
STAFF COUNSEL

CMC/sc