IN THE SUPREME COURT
STATE OF FLORIDA

STATE OF FLORIDA;
LAWTON CHILES, Governor of the State of Florida; and FLORIDA DEPARTMENT OF ADMINISTRATION,

Appellants,

vs.

FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.; FLORIDA NURSES ASSOCIATION; and FLORIDA PUBLIC EMPLOYEES COUNCIL 79, AFSCME,

Appellees.
_____/

CASE NO: 77,842

Appeal from District Court of Appeal, First District.

ANSWER BRIEF OF APPELLEES
FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.
and
FLORIDA NURSES ASSOCIATION

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CONSTITUTION **AND STATUTES**

Preliminary Statement

The abbreviations and references set out below will be used throughout the text of this brief:

Appellee, FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.: "Florida P.B.A."

Appellee, FLORIDA NURSES ASSOCIATION: "F.N.A."

Chapter 88-555, Laws of Florida: "the 1988 General Appropriations Act,"

All references to the Florida Statutes will be to the 1987 version unless otherwise noted.

Statement of the Case and Facts

Appellees, Florida P.B.A. and F.N.A., have reviewed the statement of the case and facts contained in Appellants' brief. Appellants' statement is accurate with one exception. There is no record evidence which demonstrates the modifications to the annual and sick leave benefits required by Section 9.3.A(5) of the 1988 General Appropriation Act would, or did, save the State money in comparison with the annual and sick leave benefits previously enjoyed by the State career service employees.

In order to assist the court in fully understanding the legal issue raised by the Appellants on appeal, relevant portions of the circuit and district court of appeal decisions are set out below. These portions of the decisions contain each court's legal analysis of the case.

The circuit court granted the motion for summary judgment of the Florida P.B.A. and F.N.A. finding:

> The right of Florida's public employees, including the State career service system employees represented by Plaintiffs, to collectively bargain over wages, hours and other terms and conditions of employment is a fundamental right which may not be denied or abridged. Article I, Section 6, Florida Constitution; Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988); City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981). Annual and sick leave benefits are terms and conditions of employment and thus, mandatory subjects of bargaining when Florida public employees are represented by a certified bargaining agent. See St. Petersburg Association of Fire Fighters, Local 747, IAFF v. City of St. Petersburg, 5 FPER ¶ 10381 (1979), aff'd, 388 So.2d 1124 (Fla. 2d DCA 1980) and Local No. 301 (LIUNA) v. City of Jacksonville, 6 FPER ¶ 11047 (1980).
>
> As the Defendants admit, Section 9.3.A(5) of the 1988 General Appropriations Act substantially alters the annual and sick leave

> benefits of the State career service employees represented by Plaintiffs. The annual and sick leave benefit alterations mandated by Section 9.3.A(5) *are* accomplished unilaterally, without negotiations with, impasse resolution or the agreement of the Plaintiffs. There is no clear and unmistakable waiver on the part of Plaintiffs of the right to negotiate annual and sick leave benefits. The Defendants neither allege nor establish a compelling state interest for the unilateral modification of the annual and sick leave benefits. Hillsborouah County Governmental Employees Association v. Hillsborough County Aviation Authority, 522 So.2d at 362 and City of Tallahassee v. Public Employees Relations Commission, 410 So.2d at 491. See also United Teachers of Dade v. Dade County School Board, 500 So.2d 508 (Fla. 1986); Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, 475 So.2d 1222 (Fla. 1985).
>
> The Court therefore declares section 9.3.A(5) of the 1988 General Appropriations Act to be unconstitutional as a violation of Article I, Section 6 of the Florida Constitution.

The district court of appeal affirmed the decision of the circuit court holding:

> The provisions of section 9.3.A(5) uncontrovertedly undertake to alter or modify the annual and sick leave benefits to which career service employees are entitled. It is also uncontroverted that these benefits are conditions of employment subject to collective bargaining by the public employer and the certified bargaining agents for the represented public employee. No separation of powers concern precludes the judicial branch from addressing the constitutionality of the acts of the other branches. Holley v. Adams, 238 So.2d 401 (Fla. 1970). The constitutionality of the legislature's acts via its appropriations power are subject to review by the courts as is any other legislative act. See: Murray v. Lewis, 15 F.L.W. S655 (Fla. Dec. 20, 1990); Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982). The other arguments raised by appellants are without merit.

Appellants take issue with the legal standard and analysis utilized by the lower courts.

Summary of Araument

For over two decades, this court has recognized the right of Florida's public employees to collectively bargain over wages, hours and other terms and conditions of employment. Dade Countv Classroom Teachers Association v. Ryan, 225 So.2d 903 (Fla. 1969). For almost an equal period of time, the court has zealously guarded the right of public employees to collectively bargain from unnecessary interference or abridgement by public bodies, including the Florida Legislature. City of Tallahassee v. Public Emplovees Relations Commission, 410 So.2d 487 (Fla. 1981) and Dade Countv Classroom Teachers Association, Inc. v. Legislature, 269 So.2d 684 (Fla. 1972).

In the instant case, Appellants have, by their own admission, altered the annual and sick leave benefits enjoyed by State career service employees represented by the Florida P.B.A. and the F.N.A. Appellants altered these benefits unilaterally without negotiations with the Florida P.B.A. and the F.N.A. Rather than concede their conduct is unconstitutional, Appellants' contend the conduct is a simple matter of legislative prerogative. Appellants assert, unabashedly, the "power of the purse" is supreme over the "twisted" interpretation of the fundamental right of State career service employees to engage in collective bargaining rendered by the lower courts.

Appellants are wrong. Their conduct, including acts of the legislature via its appropriations power, is subject to review by the courts, Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982), and where such conduct is determined to unnecessarily abridge the fundamental right to collectively bargain it will be invalidated. Citv of Tallahassee v. Public Emplovees Relations Commission, 410 So.2d 487 (Fla. 1981).

As both the circuit court and the district court have recognized, Appellants' conduct in the case is unconstitutional since it abrogates the collective bargaining process. This court should hold, as did the lower courts, that legislative prerogative, regardless of its origin, may not be exercised in violation of the fundamental right of the State career service employees to collectively bargain.

The decisions of the lower courts should be affirmed.

Response to Appellants' Argument

THE LOWER COURTS CORRECTLY HELD SECTION 9.3.A(5) OF THE 1988 GENERAL APPROPRIATIONS ACT TO BE UNCONSTITUTIONAL AS A VIOLATION OF ARTICLE 1, SECTION 6 OF THE FLORIDA CONSTITUTION.

The legal issue involved in this case is simple. The legal issue which the court must address is whether or not the State of Florida, through its legislature, may abrogate the collective bargaining process and unilaterally alter sick and annual leave benefits enjoyed by certain state employees without negotiating those changes with the employees' certified collective bargaining agents. It is the position of the Appellants that such a prerogative rests inherently with the Florida Legislature if it is exercised via the legislature's appropriation power. It is the position of the Florida P.B.A. and the F.N.A. that the legislature may not, in the absence of a compelling state interest, unilaterally alter terms and conditions of employment without violating the constitutional right of the employees to engage in collective bargaining. Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988); City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981). See also, United Teachers of Dade v. Dade County School Board, 500 So.2d 508 (Fla. 1986).

Introduction

Prior to an examination of the specific legal position asserted by Appellants on appeal, it is appropriate to review the status of collective bargaining in Florida's public sector. As the court has long recognized, the right of Florida's public

employees to collectively bargain is a fundamental right established in Article I, Section *6* of the Florida Constitution. Dade County Classroom Teachers Association v. Rvan, **225** So.2d **903** (Fla. **1969).** It is a right that by the terms of the Florida Constitution may not be denied or abridged. See Article **I,** Section *6* of the Florida Constitution. See **also** City of Tallahassee v. Public Employees Relations Commission, **410** So.2d at **491** (Fla. **1981)** (court must assure right to bargain is not abridged).

Because of the right's fundamental nature, the Florida courts have zealously guarded the right to collectively bargain from unnecessary interference or abridgement by public bodies, including the Florida Legislature. In **1972,** this court denied a constitutional writ to compel the legislature to enact standards for regulating collective bargaining by public employees. Dade County Classroom Teachers Association, Inc. v. Legislature, 269 So.2d **684** (Fla. **1972).** While denying the writ, the court made it clear to the legislature that it would strongly protect the right to collectively bargain:

> We think it is appropriate to observe here that one of the exceptions to the separation of powers doctrine is in the area of constitutionally guaranteed or protected rights. The judiciary is in a lofty sense the guardian of the law of the land and the constitution is the highest law.
>
> ...
>
> The question of the right of public employees to bargain collectively is no longer open to debate. It is a constitutionally protected right which may be enforced by the courts, if not protected by other agencies of government.

269 So.2d at **686** and **687.**

A decade later, this court had occasion to review the constitutionality of legislation which prohibited public employees from over bargaining pension and retirement plans. City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981). The court held that its responsibilities in reviewing the legislation was to ensure the constitutional right of all employees to bargain collectively is not "abridged" nor rendered "hollow and useless." 410 So.2d at 491. It found the legislative prohibition to be unconstitutional as an abridgment of the right to collectively bargain, 410 So.2d at 489.

In a more recent case, this court reviewed the Florida Legislature's enactment of a performance award for public educational instructional personnel in light of the right of such personnel to collectively bargain. United Teachers of Dade v. Dade County School Board, 510 So.2d 508 (Fla. 1986). The legislation was attacked as being an abridgment of the right to bargain,' While no constitutional violation was found, the court utilized the decision to, once again, admonish the legislature against intruding on the right to collectively bargain under the guise of a simple exercise of legislative power. Noting that it is the judiciary's responsibility to ensure constitutional rights are construed so as to "make them meaningful," the court pointedly advised:

> ...Article I, Section 6 grants public employees rights they did not have previously, and the days of totally unilateral legislative power over all educational personnel matters are gone.

'The court rejected the constitutional attack on the performance award program adopted by the legislature on the basis that the award was not "a wage or other term or condition of employment" and thus, not subject to the collective bargaining process. 500 So.2d at 514.

500 So.2d at **511.** (Emphasis added).[2]

Finally, it must **be** conceded the right **to** collectively bargain is subject to curtailment and regulation; however, such regulation or curtailment must be both limited and supported by a showing of a compelling state interest." Hillsborough Countv Governmental Employees Association **v.** Hillsborough County Aviation Authority, 522 So.2d at 362. While this strict-scrutiny standard is one which is difficult to meet under any circumstance; it is more difficult in the case **of** collective bargaining because the protection afforded the right embraces not only the right itself, but also, the effective exercise of the right. As the court recognized in the Hillsborough Countv case:

> It is presumed that the intent of the Constitution is to grant the right of effective collective bargaining. Any restriction on the right to bargain collectively must necessarily violate Article I, Section 6 of the Florida Constitution.

522 So.2d at 362.

In summary, the **status** of the right of Florida's public employees to collectively bargain is clear. It is a fundamental right. It may not be denied or abridged **by** legislative enactment. It is to be construed to be meaningful and effective. Moreover, it may be curtailed or regulated only upon a showing **of** a compelling state interest.

[2]The Court's comments were in response to an assertion that the performance award program fell within the purview **of** Article **IX,** Section 1 of the Florida Constitution, which mandates the legislature shall provide for a uniform system of public education.

Lower Courts' Analysis

As an examination oft he lower courts' decisions establish, the legal analysis employed by the **courts** is straightfotward and based upon criteria established by this court. The standard of review employed by the lower courts rests primarily on **two** cases. Those cases are United Teachers of Dade v. Dade Countv School Board, 500 So.2d 508 (Fla. **1986)** and Hillsborough Countv Governmental Employees Association v. Hillsborouah Countv Aviation Authority, **522** So.2d **358** (Fla. 1988). Both of these cases are public **sector** labor law decisions.

The United Teachers **of** Dade case involves a **fact** pattern which **is** similar to the present case. In **1984,** the Florida Legislature adopted and implemented a performance award for Florida's instructional personnel, The program established a performance award for instructional personnel meeting certain standards. The United Teachers of Dade County, which was the certified bargaining agent for certain instructional personnel employed by the Dade County School Board, filed an action for a declaratory and injunctive relief alleging the legislative award program was unconstitutional in that the program infringed upon the right of the instructional personnel to engage in collective bargaining. 500 So.2d at **509.**

The analysis employed by the court in the decision dictates courts utilize a **two-**step process when confronted with such **a** situation. First, the court must analyze the benefit involved in order to determine whether or not it constitutes a wage or term and condition of employment. The next step of the analysis requires a determination of whether the benefit has been negotiated with the employees'

bargaining agent **or** whether the employer has unilaterally determined the benefit. 500 So.2d at 511-512.[3]

The Hillsborough County Aviation Authority case adds an additional step to the United Teachers of Dade analysis. **The** step requires **a** determination of whether there is a "compelling state interest" which would support bypassing the constitutionally protected right to bargain. Hillsborough County Aviation Authority, ***522*** So.2d at 362.

Applying the United Teachers of Dade and Hillsborouah Aviation Authority standard to the facts in the present case, the trial court determined annual and sick leave benefits are terms and conditions of employment which are mandatory subjects of bargaining.[4] The court determined further, the annual and sick leave benefit alterations mandated by Section 9.3.A(5) were accomplished unilaterally without negotiation with Appellees, without utilization of the impasse resolution process and without the agreement of the Appellees. The court found Appellees had not waived the right to negotiate annual and sick **leave** benefits. Finally, the court determined Appellants had neither alleged nor established a compelling state interest for the unilateral modification of the annual and sick leave benefits by the

[3]As noted by the court in its decision: "The correct analysis of each of these situations, however, must encompass not only the legislature's ... constitutional authority ... but also must focus **on** public employees constitutionally guaranteed collective bargaining rights." 500 So.2d at 511.

[4]It is clear that annual and sick leave policies of a public employer are terms and conditions of employment which are mandatory subjects of bargaining for public employees represented by a certified bargaining agent such as Appellees. See St. Petersburg Association of Fire Fighters, Local 747, IAFF **v.** City of St. Petersburg, 5 FPER ¶ 10381 (1979), aff'd **388** So.2d 1124 (Fla. 2d DCA 1980); Local No. 301 (LIUNA) v. City of Jacksonville, 6 FPER ¶ 11047 (1980).

legislature.' Thus, the court concluded Section 9.3.A(5) was unconstitutional as a violation of Article I, Section 6 of the Florida Constitution.

The district court of appeal focused its analysis of the case on Appellant's "appropriations power" argument and found it to be unavailing. In affirming the trial court's decision, the court held: "The constitutionality of the legislature's acts via its appropriations power are subject to review by the courts as is any other legislative act." To support this position the court relied on the decisions of Murray v. Lewis, 576 So.2d 264 (Fla. 1990) (proviso language held unconstitutional as violation of single-subject restriction) and Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982) (proviso language held unconstitutional as violation of free speech). Both of these decisions parallel the facts in this case in that: (1) the cases involve a constitutional attack on proviso language of a general appropriations bills, and (2) the proviso language in each case sought to change general law or policy through the legislature's "appropriations power." Significantly, the court in both the Murray and Department of Education cases found the legislature's conduct unconstitutional.

Based on the Murray and Department of Education cases, as well as the trial court labor rationale, the district court correctly determined that the focal point of an analysis of such situations is not the origin of the legislature's authority to act on the subject matter, but whether or not such action abridges the constitutionally

[5]At various times during the proceedings, Appellants have alluded to this matter as a "failure to fund" the Appellees' collective bargaining agreements. Not only is there no record evidence to support this contention, but Appellants did not raise the issue as an affirmative defense in their answer.

protected right to collectively bargain. Thus, the court determined that Appellants' conduct did violate the State career service employees right to collectively bargain.

Appellants' Point On Appeal

Appellants challenge the analysis employed by the lower courts in this case as being totally erroneous and a twisted interpretation of the fundamental right to collectively bargain. According to Appellants the appropriations power of the Florida Legislature is absolute regardless of whether or not it infringes, abrogates or abridges the State career service employees' right to collectively bargain. According to Appellants' the "power of the purse" vests the legislature with the power and the responsibility to establish wages, hours and terms and conditions of employment for State career service employees.

It is apparent Appellants' assertions and argument ignore over two decades of decisional law on the subject of the right of Florida's public to collectively bargain which establish the bargaining table is the constitutionally mandated forum for accomplishing changes in terms and conditions of employment. See United Teachers of Dade, 500 So.2d at 511-512; Palowitch v. School Board of Orange County, 3 FPER 280, 282 (PERC 1977), aff'd, 367 So.2d 730 (Fla. 4th DCA 1977). Simply put, the Appellants and the legislature unilateral control over personnel matters are gone. United Teachers of Dade, 500 So.2d at 512.

It is also apparent Appellants' assertions and argument ignore the statutory dictates of the State career service system. Contrary to Appellant's assertion, the responsibility for the establishment of State career service employment benefits does not rest with the legislature. The responsibility rests with the Governor, the

Administration Commission and the Department of Administration. See, Section 110.201, Florida Statutes. The responsibility must be exercised in conjunction, and consistent with, the collective bargaining negotiations between the Governor and the career service employees' designated bargaining agents. See, Section 110.105(5) and Section 110.201(4), Florida Statutes.[6]

In the instant case, Appellants admit the legislature enacted the 1988 General Appropriations Act "in which there was an appropriation of $59,394,653 for the State Health Insurance Trust Fund" and proviso language in Section 9.3.A(5) which "turned back the clock" on annual and sick leave benefits.

The proviso language did not provide for the Governor and the Appellees to return to the bargaining table to negotiate possible changes in annual and leave

[6]Appellants argue that the instant case should be analyzed strictly as an appropriation matter. The lower court rejected this approach; however, the case of Brown v. Firestone, 382 So.2d 654 (Fla. 1984), offers a second basis for declaring the proviso language of Section 9.3.A(5) unconstitutional. The basis is Section 9.3.A(5) violates Article III, Section 12 of the Florida Constitution which prohibits an appropriation provision from dealing with subjects other than appropriations. The provision is predicated on the policy that an appropriations act is not the proper place for enactment of general public policies on matters other than appropriations.

In the instant case, the legislature made an appropriation for the State group health insurance program established in Part I of Chapter 110, Section 110.123, Florida Statutes; however, it then entered proviso language relating to annual and sick leave benefits for career service system employees which is found in Part II of Chapter 110, Section 110.219, Florida Statutes. As noted, the establishment of annual and sick leave policies for career service employees is vested with the Governor and Administration Commission and subject to collective bargaining negotiations. See Sections 110.105(5) and 110.201(4), Florida Statutes.

Contrary to Appellants' contention, the Florida P.B.A. and the F.N.A. would submit to the court that an examination of the proviso language of Section 9.3.A(5) dealing with annual and sick leave for career service employees covered by Chapter 110, Part II, Florida Statutes is not "directly and rationally related" to the appropriation of funds for the State group health insurance program found in Chapter 110, Part I, Florida Statutes. See Department of Education v. Lewis, 416 So.2d at 460.

benefits. The legislature unilaterally decided the substance of those benefits and imposed them on the State career service employees - no negotiations, no impasse and no emergency. This is unconstitutional.

The fundamental flaw in Appellants' argument is their insistence that the alteration in annual and sick leave benefits is insulated from constitutional attack as a violation of Article I, Section 6 because it was a result of an exercise of the legislature's appropriation power. Clearly, Appellants could not reasonably contend that had the legislature enacted Section 9.3.A(5) as a general law rather than proviso language to the appropriation act it would be constitutional. Florida case law dictates such a general law would be unconstitutional. See, City of Tallahassee v. Public Employees Relations Commission, supra (statutory provision prohibiting negotiation over retirement and pension benefits is unconstitutional as violation of right to bargain). See also, Hillsborouah County Governmental Employees v. Hillsborough County Aviation Authority, supra (statutory provision limiting effectiveness of collective bargaining agreement which conflicts with civil service rules unconstitutionally abridges the right to bargain); United Teachers of Dade v. Dade County School Board, supra (legislature's authority pursuant to Article IX, Section 1 does not give legislature unilateral authority over personnel matters in light of instructional employees right to bargain).[7]

[7]The Florida P.B.A. and the F.N.A. have not overlooked Appellants' reliance on the United Faculty of Florida v. Board of Regents, 365 So.2d 1073 (Fla. 1st DCA 1979). The case is simply not applicable to the instant case. The Regents case, which predated many of the decisions establishing the fundamental nature of the right to bargain, is an impairment of contract case. The legislature appropriated a set amount of funds for salaries for state university system faculty and the petitioner was seeking to have the Board of Regents utilize other university funds for salaries. Significantly, the Regents case dealt with only an appropriations amount. The parties to the agreement were free to negotiate as to how best to implement the collective bargaining agreement in light of the funds appropriated. Unlike the instant case, the legislature did not alter substantive employment benefits through proviso language.

The fact that the legislature inserted the substantive change in annual and sick leave benefits as proviso language to the appropriations bill affords it no greater protection from constitutional attack. Proviso language in an appropriations bill is subject to constitutional attack if it violates fundamental, constitutional rights and must be scrutinized on that basis. Department of Education v. Lewis, 416 So.2d at 460-463.

Throughout the entirety of their brief, Appellants attempt to persuade the court that the only appropriate analysis of Section 9.3.A(5) is to assess it strictly as an appropriations provision, independent of its impact on the State career service employees' constitutionally protected right to collectively bargain. Appellees have demonstrated such an approach is incorrect and inconsistent with Florida case law. United Teachers of Dade v. Dade County School Board, 500 So.2d at 511. The lower courts in this matter correctly analyzed the conduct of Appellants as a constitutional issue arising under Article I, Section 6 and found such conduct to be unconstitutional. This court should affirm the decision of the lower courts.

Conclusion

Based upon the foregoing discussion and legal analysis, the Florida Police Benevolent Association and the Florida Nurses Association would urge the Court to affirm the decision of the lower courts in this case and find Section 9.3.A(5) of the 1988 General Appropriation Act to be unconstitutional.

Dated this 8th day of August, 1991.

Respectfully Submitted,

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and
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 8th day of August, 1991 to:

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