IN THE SUPREME COURT
OF THE STATE OF FLORIDA

SARASOTA CLASSIFIED/TEACHERS ASSOCIATION,

Petitioner,

vs. Case No. 81,423

SARASOTA COUNTY SCHOOL DISTRICT AND THE PUBLIC EMPLOYEES RELATIONS COMMISSION,

Respondents.
_____/

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Sarasota Classified/Teachers Association ("SC/TA"), was the plaintiff/appellee below. The Public Employees Relation Commission ("PERC") was an appellee below. Respondent Sarasota County School District ("the School Board") was the defendant/appellant below.

A copy of the Second District's decision, which is reported as Sarasota County School District v. Sarasota Classified/Teachers Association, 614 So.2d 1141 (Fla. 2d DCA 1993), is included in the Appendix ("App.") at Tab 1 and will be designated "Sarasota County at ____." The order of PERC ("PERC order ___") which was the subject of the School Board's appeal to the Second District is included in the Appendix at Tab 2, and the hearing officer's recommended order to PERC ("R.O. ____") is at Tab 3 of the Appendix.

All emphasis is supplied unless otherwise noted.

STATEMENT OF THE CASE AND FACTS[1/]

The School Board is both a public employer under section 447.203(2), Florida Statutes (1989), and a legislative body as defined by Section 447.203(10). Sarasota County at 1144. SC/TA is, and has been for many years, the certified bargaining agent for the School Board's classified and instructional employees' bargaining units. Id.

In 1988, the School Board and SC/TA negotiated two collective bargaining agreements for those School Board employees. Id. The agreements, which ran from July 1, 1988, through June 30, 1991, contained, as had past agreements for the last 12 years, provisions for annual step pay increases. Id. A "step pay" increase is based on a negotiated salary schedule. R.O. ¶ 1, p. 4; App. 3. Ascending pay rates are established for each bargaining unit and a step is accomplished by earning one or more years of experience or training. Id. Although the 1988-1991 agreements had expired and new ones had not been negotiated, those employees eligible for step increases on July 1, 1991 received the increases. Sarasota County at 1144.

In July 1991, the superintendent of the School Board, acting on behalf of the Board as the employer, submitted a proposed budget to the School Board acting as a legislative body; that budget included sufficient funds to allow the payment of the step increases for the 1991-1992 school year. Id. Faced with a

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[1/] The facts set forth in this statement are taken virtually verbatim from the district court's decision, the recommended order of the hearing officer, and the order of PERC.

fifteen million dollar deficit for the school year, the School Board rejected the superintendent's proposed budget and instead approved a budget which appropriated less than was required to fund the step increases which had become part of the status quo as a result of established past practices. Id. at 1145.

While the parties were in negotiations over wages and other terms and conditions of employment, the School Board unilaterally discontinued the step increases, based upon the tentative budget. Id. The tentative budget was subsequently adopted by the School Board. Id. The superintendent offered to bargain the impact of that budget upon his administration of the agreements, but he did not agree to bargain the amount of money the School Board had appropriated. Id.

The SC/TA filed an unfair labor practice charge with PERC, complaining that the School Board had violated Florida Statutes Section 447.501(1)(a) and (c) by unilaterally discontinuing the payment of step increases during the collective bargaining negotiations. Id. As an affirmative defense, the School Board asserted that Florida Statutes Section 447.309(2) authorized its failure to appropriate monies sufficient to fund the agreements and provided that this would not constitute an unfair labor practice. Id. That statute provides as follows:

> Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated,

> the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence or, any unfair labor practice.

FLA. STAT. § 447.309(2). The School Board also asserted that there had been a waiver of the step increases for this time period.

At the conclusion of the hearing on the SC/TA's charge, the hearing officer entered a detailed recommended order. Sarasota County at 1145. [See App. 3 for recommended order]. The hearing officer specifically found that each year, for at least the preceding twelve years, employees who attained a higher step during the year had their salaries increased effective July 1.[2/] R.O. ¶ 2, p. 4; App. 3.

The hearing officer further found that the step increases have been a part of every collective bargaining agreement ratified by these parties. R.O. ¶ 3, p. 4; App. 3. Each of these contracts expired and, in every instance, a new contract was not ratified until after the summer: the July 1, 1982-1985 contract was ratified on September 1, 1982; the July 1, 1985-1988 contract was ratified on October 15, 1985; the July 1, 1988-1991 contract was ratified on January 24, 1989. [R.O. ¶ 3, p.4; App. 3. Nevertheless, the School Board always paid the step increases

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[2/] This only affected eleven and twelve-month contract employees; employees who worked on contracts of less than eleven months received their increases when they returned to work at the start of school after the summer hiatus. R.O. ¶ 2, p.4; App. 3.

effective on July 1, notwithstanding the lack of a ratified successor contract. R.O. ¶ 3, p.4; App. 3.

In light of these facts (which were undisputed), the hearing officer found that:

> Accordingly, employees in these two units grew to expect that the District would honor the step increases outlined in the last contract even after the collective bargaining contracts expired. This was a reasonable expectation given the District's longstanding practice of continuing to pay the step increments.

R.O. ¶ 4, p.5; App. 3. The hearing officer went on to find that the School Board had not established the defense of waiver or shown that its failure to fund the budget fully was authorized under section 447.309(2). Sarasota County at 1145, 1146. However, hearing officer held that the anticipated revenue shortfall constituted "exigent circumstances" which required immediate action and that the School Board accordingly did not commit an unfair labor practice. R.O. ¶ 4, p.5; App. 3.

Upon considering the hearing officer's recommended order, the Commission ruled that the School Board did not plead or prove "exigent circumstances," as he had held, but it adopted the hearing officer's factual findings. PERC order, p.2, 4-6; App. 2. Based on those findings, PERC agreed that the School Board had unilaterally changed an established past practice during negotiations by withholding the step increases to bargaining unit members. Unlike the hearing officer, however, the Commission determined that this constituted an unfair labor practice under section 447.501(a) and (c). PERC order, p. 6-9;

App. 2. The Commission further found at pages 2-6 and 8-9 of its order that there had been (i) no waiver, (ii) no lawful legislative imposition by the School Board after a lawful impasse in the negotiation process, and (iii) as noted, it ruled that the School Board had neither pled nor proven exigent circumstances, which are the three conditions under which public employers are authorized to take such unilateral action. See FLA. STAT. §447.403 and Florida School for the Deaf and Blind v. Florida School for the Deaf and the Blind Teachers United, 483 So.2d 58 (Fla. 1st DCA 1986). Finally, PERC specifically rejected the School Board's contention that section 447.309(2) granted it absolute authority to take this unilateral action. Sarasota County at 1146; PERC order, p.6-8; App. 2.

The Second District reversed. Sarasota County; App. 1. Although acknowledging that Florida law prohibits "unilateral changes in working conditions" during negotiations it concluded that "the school board in its capacity as the legislative body has the absolute right and obligation under the constitution to fund or not fund any agreement entered into between the employees and the school board as their employer."[3/] Id. at 1148. Citing

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[3/] The Second District expressly recognized that annual step increases had become the established status quo and could not be unilaterally changed by the employer during negotiations. Sarasota County at 1147-1148. By its opinion, the court did not differentiate between underfunding an existing agreement and discontinuing the funding of wages which had become a part of the status quo as a result of long-standing practice. Instead, the court concluded that section 447.309(2) grants the School Board the "absolute" right to refuse to fund any "requirement that arises out of collective bargaining." Sarasota County at 1148.

this Court's decision in State of Florida v. Florida Police Benevolent Ass'n, 613 So.2d 415 (Fla. 1992) ("FPBA"), the Second District held that the separation of powers principles set forth there required reversal of PERC's decision here because "the executive branch of government [could not] bargain away a legislative body's constitutional right and obligation to appropriate funds." Sarasota County at 1149.

By order dated July 14, 1993, this Court accepted jurisdiction.

SUMMARY OF ARGUMENT

The Second District's decision allows school boards to do in their legislative capacity that which the court conceded school boards could not do in their capacity as a public employer: unilaterally refuse to pay salary benefits to which its employees are legally entitled, without demonstrating that a "compelling reason," as defined by this Court, (or other circumstances specified by Florida law) requires this action. That decision is contrary to this Court's controlling precedents upholding the constitutional right of public employees to "effective collective bargaining" with their public employee, and it should be reversed.

Significantly, Florida law provided a way for the School Board to address truly "exigent circumstances," but the School Board did not follow those procedures. Instead, it unilaterally altered the established status quo during the collective bargaining process, and that it cannot constitutionally do.

By allowing the School Board to evade its obligation to pay the established step increases by merely putting on its legislative hat and refusing to fund those benefits, the Second District has effectively destroyed the employees' constitutional right to bargain. Employees cannot bargain with an employer which has an "absolute" right to refuse to perform the very obligation it has incurred in the first instance, merely by changing hats. By this decision, the Second District has made

illusory the constitutional right of public employees to collectively bargain with public employers who act in both an executive and a legislative capacity, as all school boards and local governments in this state do.

In holding that the School Board could unilaterally alter the status quo during negotiations, the Second District expressly stated that this Court's decision in FPBA was controlling and compelled that holding. However, as this Court subsequently made clear in Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla. 1993), FPBA applies only where Florida's separation of powers doctrine is violated. In United Faculty, the separation of powers doctrine was not implicated -- and the FPBA did not control -- because the Legislature had already appropriated state funds and hence there was no interference by the executive branch with the Legislature's constitutional duty. By the same token, the separation of powers doctrine is not implicated here because the local governmental body which negotiated the agreement was the same body which refused to fund it, and hence there was no interference by one branch of the government with the constitutional duties of another branch of government.

Simply put, the Second District misapplied the separation of powers principles set forth in FPBA. FPBA does not apply where, as here, there is no action by state executive and legislative bodies with separate and independent identities. Instead, this Court's decision in United Faculty controls, and it plainly

precludes the School Board's unilateral violation of the established status quo during collective bargaining negotiations.

ARGUMENT

"The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged."

Article I, Section 6, Florida Constitution

The School Board's Unilateral Change in the Status Quo was an Unconstitutional Abridgement of the Employees' Right to Collective Bargaining.

As we show in sub-section A below, there can be no doubt that the School Board's unilateral termination of step increases for its employees altered the established status quo. By doing so, the School Board wrongfully deprived these public employees of their constitutional right to bargain with the School Board. The Second District frankly conceded that it would have found an unfair labor practice but for its conclusion that this Court's decision in FPBA compelled a contrary conclusion. As shown in sub-section B, however, FPBA does not compel a contrary conclusion, but rather is expressly based on the separation of powers doctrine, which has no application to local government bodies such as the School Board.

Because no "compelling reason" was established for the School Board's unilateral change in the status quo during collective bargaining negotiations, this Court's controlling precedents make it clear that the School Board unconstitutionally abridged its employees' right to meaningful collective bargaining. The Second District's decision contravenes those decisions and should accordingly be reversed.

A.

The Commission Correctly Held that the School Board Unlawfully Abridged the Constitutional Right of its Employees to Effective Collective Bargaining and to Maintenance of the Status Quo During that Process

In its order below, the Commission determined that the School Board made a unilateral change in the terms and conditions of employment which constituted the status quo, without satisfying the conditions imposed under Florida law for doing so. That finding was supported by the record evidence and by Florida law.

Florida law is settled that a public employer such as the School Board is prohibited from unilaterally altering terms and conditions of employment during collective bargaining negotiations, absent waiver, exigent circumstances requiring immediate action, or legislative body action taken pursuant to section 447.403.[4/] FLA. STAT. § 477.501(1)(a) and (c); Florida School for the Deaf and Blind v. Florida School for the Deaf and Blind Teachers United, 483 So.2d 58 (Fla. 1st DCA 1986); City of Tallahassee v. Leon County PBA, 445 So.2d 604 (Fla. 1st DCA 1984); City of Ocala v. Marion County PBA, 392 So.2d 26, 28-30 (Fla. 1st DCA 1980). Such a unilateral change is tantamount to a

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[4/] This prohibition derives in the first instance from Florida Statute section 447.309 (1), which provides that a certified bargaining agent and chief executive officer of the public employees "shall bargain collectively in the determination of wages, hours, and terms and conditions of employment" for employees in the bargaining unit. In addition, Florida Statute section 447.501(1)(c) prohibits a public employer from "refusing to bargain collectively [or] failing to bargain collectively in good faith. . . ."

refusal to bargain and constitutes a per se violation of the Public Employees Relations Act. Pasco County School Board v. Pasco County CTA, 3 FPER 9, 13 (1976), aff'd, 353 So.2d 108, 110-123 (Fla. 1st DCA 1977); City of Ocala, 392 So.2d at 26.

It is clear, of course, that an employer may take unilateral action to change terms of employment pursuant to section 447.403, Florida Statutes, after (i) completion of negotiations which fail to result in an agreement and (ii) exhaustion of the statutory impasse procedures. However, this statutory mechanism only applies after completion of this process, and it does not authorize unilateral action pending negotiations. See Palowitch v. Orange County School Board, 3 FPER 280 (1977), aff'd, 367 So.2d 730 (Fla. 4th DCA 1979) (the bargaining table is the legislatively mandated forum to determine wages, hours, and terms and conditions of employment).

By statute, the subject of wages is a mandatory subject of negotiations. FLA. STAT. § 447.309(1); Nassau Teachers Association, FTP-NEA v. School Board of Nassau County, 8 FPER ¶ 13206 (1982). It is undisputed that the School Board and the SC/TA were actively engaged in reopener negotiations on wages pursuant to section 447.309(1); no impasse had been declared, and the parties were not in the context of legislative resolution pursuant to section 447.403. Nevertheless, the School Board unilaterally terminated its longstanding past practice of providing employees with annual step increases in wages.

Accepting the findings of the hearing officer, the Commission specifically found that a step increase had been paid by the School Board each year since 1982 and that this manifested the status quo which could not be unilaterally altered by the School Board during collective bargaining negotiations. R.O., p.4-5, ¶¶ 2, 3, & 4; R.O., p.12-14; App. 3; PERC order, p.2; App. 2. Although the amount of the step increases had changed from year to year, the School Board did not merely change the amount on this occasion; rather, it totally eliminated step increases, and it is that unilateral change that the Commission found impermissibly altered the status quo.[5/] See City of Ocala , 392 So.2d at 30, 31. Consistent with Nassau Teachers Association, FTP-NEA, the Commission held that the last contractually prescribed amount established the status quo to be expected by the employees.

The Second District agreed with the Commission's determination that the School Board had unilaterally altered the status quo by discontinuing the step increases during negotiations. Sarasota County at 1147. The court further declared that "[i]f we were not considering the school board as a legislative body underfunding these increases, we would find an unfair labor practice." Id. However, the Second District concluded that this Court's decision in FPBA was controlling in

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[5/] Enforcement of the status quo is not one-sided. For example, the Commission has also allowed an employer to implement drug testing authorized by an expired contract because it was part of the status quo. IAFF, Local 226 v. City of St. Petersburg Beach, 13 FPER ¶ 18116 at 277 (1987).

this case and required a contrary determination. As we show in sub-section B, FPBA is not controlling here and the district court erroneously deprived these public employees of their constitutional right to bargain with the School Board.

The Declaration of Rights of Florida's Constitution expressly provides that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." FLA. CONST. art. 1, § 6. Moreover, as this Court has long recognized, the employees of a public employer have the constitutional right to "effective collective bargaining." Hillsborough Cty. GEA v. Aviation Authority, 522 So.2d 358, 363 (Fla. 1988). As an integral part of that constitutional right, the public employer must maintain the established status quo during the collective bargaining process. School Board of Orange County v. Palowitch, 367 So.2d 730, 731 (Fla. 4th DCA 1979).

Manifestly, there can be no meaningful negotiations if the very entity which has reached an agreement through bargaining as the employer is granted an absolute right to then refuse to fund that agreement. If the employer is given such a tilt in the balance of power in collective bargaining, the employees are deprived of their constitutional right to "effective" bargaining. That is not allowed under the Constitution and the decisions of this Court "except upon the showing of a compelling state interest."[6/] Hillsborough Cty. GEA, 522 So.2d at 363.

[6/] The district court found no such interest here. Nor did it find any showing of waiver by the collective bargaining agent, (continued...)

The importance of the district court's decision to employees of a public employer which also acts in a legislative capacity to appropriate funds for the very agreements it has itself negotiated through the collective bargaining process cannot be overstated. The bargaining table is the legislatively mandated forum to determine wages and other terms of employment. Palowitch, 367 So.2d at 731. During these collective bargaining negotiations, the School Board was obligated to maintain the established status quo, which included these step increases, and that obligation could not be evaded by merely refusing to fund the step increases. While circumstances can exist which would allow the School Board to unilaterally make essential changes in the status quo during the bargaining process, those changes must be made in the manner allowed by Florida law, not by the mere announcement that the School Board will no longer honor the established status quo due to revenue shortfalls. Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla. 1993).

Simply put, the bargaining process can be regulated -- as it currently is -- to allow the necessary flexibility for governmental bodies to meet exigent circumstances. In the first instance, the School Board and the certified employee organization have the obligation to bargain collectively in good

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[6/](...continued)
exigent circumstances requiring immediate action, or the exhaustion of the statutory impasse procedures and action by the legislative body following that impasse, which are the specific ways by which the School Board is allowed to make essential changes in the status quo.

faith and to seek to reach an agreement; if an agreement is not reached, an impasse must be declared and the impasse resolution procedures must be exhausted pursuant to Section 447.403, Florida Statutes. Once this section of the law is complied with, the School Board is permitted to unilaterally impose a change in terms and conditions of employment. Moreover, if the School Board at any time encounters exigent circumstances requiring immediate action, it may take whatever unilateral action is necessary to provide immediate relief. Florida School for the Deaf and Blind Teachers United v. Florida School for the Deaf and Blind, 11 FPER ¶ 16080 (1985), aff'd, 483 So.2d 58 (Fla. 1st DCA 1986).

In this case, the School Board neither pled nor proved exigent circumstances,[7/] nor did it establish any of the other circumstances that would have allowed it to unilaterally alter the established status quo during the collective bargaining process. Consequently, the right of public employees to bargain could not be abridged by such unilateral action of the School Board. City of Tallahassee v. Pub. Emp. Rel. Com., 410 So.2d 487 (Fla. 1981). But that is exactly what the decision below allows as an "absolute right" of the School Board. By saying that school boards can negotiate agreements on the one hand and refuse to fund them on the other hand, the district court's decision

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[7/] The burden of proof of exigent circumstances rests on the School Board. Florida School for the Deaf and Blind Teachers United v. Florida School for the Deaf and Blind, 11 FPER ¶ 16080 (1985), aff'd, 483 So.2d 58 (Fla. 1st DCA 1986).

makes the right to collective bargaining guaranteed by Article I, section 6 an illusory right for school board employees. That plainly contravenes the decisions of this Court.

In Hillsborough Cty. GEA, this Court unequivocally held that:

> The Florida Constitution guarantees public employees the right of effective collective bargaining. This is not an empty or hollow right subject to unilateral denial. Rather it is one which may not be abridged except upon the showing of a compelling state interest.

Id. at 363. No "compelling" interest was found here, nor is there any infringement upon the separation of powers doctrine, as was the case in FPBA. Consequently, the fundamental right of public employees to bargain collectively could not be abridged by the employer/legislative body's unilateral decision not to fund the step increases that the employees were lawfully entitled to receive during the collective bargaining process.

B.

This Court's Decision in FPBA is not Controlling Here and it does not Grant the School Board the "Absolute" Right to Unilaterally Alter the Status Quo.

The Second District held that it would have enforced Florida's requirement that a public employer maintain the established status quo during collective bargaining but for this Court's decision in FPBA. As this Court has subsequently made clear, however, FPBA is applicable only where the separation of powers doctrine would otherwise be violated. Hence, that decision has no applicability in this case because the separation

of powers doctrine applies only to state government and its separate, independent branches, not to a single local governmental body such as the School Board.

Unlike the present case, FPBA involved collective bargaining agreements that the Governor of the State of Florida had negotiated with unions for various state employees. Under those agreements, which were to be effective between July 1, 1987 and June 30, 1990, employees were entitled to a specified amount of annual leave and sick leave. In 1988, the Florida Legislature enacted its general appropriations act, which altered the leave policy for career service employees and thus altered the leave awards for which the unions had bargained. The unions contended that the Legislature's action abridged their constitutionally guaranteed right to collectively bargain, and the trial court and the First District agreed. By a sharply divided decision, this Court reversed.

The Court's decision was squarely based on the separation of powers doctrine. The Court emphasized that "[t]he constitutional right to bargain must be construed in accordance with all provisions of the constitution" and that it was not intended to alter fundamental constitutional principles, such as the separation of powers doctrine. FPBA at 418. Noting that "[u]nder the Florida constitution, exclusive control over public funds rest solely with the legislature," the Court held that "[t]his fact in and of itself necessitates a realization that public and private bargaining is inherently different":

> Unlike the case of a private employer, whose agreement with a union binds the employer to fund its terms, the public employer, deemed by statute to be the governor, cannot so bind the guardian of its funds, the legislature.

Id.

Accordingly, the collective bargaining agreements were "subject to the appropriations power of the legislature. . . ." FPBA at 419. As the Court put it:

> Any other rule would permit the executive branch of government by entering into collective bargaining agreements calling for additional appropriations, to invade the legislative branch's exclusive right to appropriate funds. Indeed, to accept such a rule would require this Court to abrogate years of strict adherence to the separation powers doctrine.

FPBA at 418-419.

In a strong dissent, Justices Kogan, Barkett, and Shaw wrote that the majority's decision "cannot be squared with the plain meaning of Article I, section 6 or the holding in Hillsborough [County Governmental Employees Association, Inc. v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988)] or Dade County Classroom Teachers Ass'n [v. Legislature, 269 So.2d 684 (Fla. 1972)]." FPBA at 422. Stating that the Legislature's action "rendered the very act of negotiating on these issues meaningless," the dissenting justices declared that "[we] simply cannot conceive that this right [to collectively bargain through a union] was meant to be illusory for public employees, as the majority effectively holds today." Id. at 424.

The Second District expressly accepted the Court's decision in FPBA as controlling in this case. Specifically relying on FPBA, the Court stated that "[u]nder the separation of powers doctrine, the right to bargain must be considered along with Article VII, section 1(c) of the Florida Constitution, which provides that 'no money shall be drawn from the treasury except in pursuance of appropriation made by law.'" Sarasota County at 1148. The court went on to hold that:

> Accordingly, even though school board employees have the right to bargain with their employer, the school board in its capacity as the legislative body has the absolute right and obligation under the constitution to fund or not fund any agreement entered into between the employees and the school board as their employer. The legislature clearly reserved this right when it enacted section 447.309(2) and made it clear that underfunding an agreement was not an unfair labor practice. Any other rule would permit the executive branch of government, by entering into collective bargaining agreements calling for additional appropriations, to invade the legislative branch's exclusive right to appropriate funds. Florida Police Benevolent Ass'n.

Id. The court concluded by holding that:

> The appropriation of funds is the absolute right of the legislative body. The school board had this right before it entered into any agreements. Section 447.309(2) reserved this right after the agreements were executed, and it must be construed to reserve the right to underfund any obligation that arises from collective bargaining. Any other construction would result in allowing the executive branch of government to bargain away a legislative body's constitutional right and obligation to appropriate funds.

Id. at 1149.

The Second District's opinion makes it absolutely clear that it was the separation of powers doctrine underlying this Court's decision in FPBA that led to the district court's decision below that the School Board had the "absolute" right to unilaterally alter wages during negotiations. The Second District explicitly stated that "[i]f we were not considering the school board as a legislative body underfunding these increases, we would find an unfair labor practice." Sarasota County at 1147. However, the separation of powers doctrine has no application whatsoever to this local governmental body, and hence it does not override the constitutional right of the School Board employees to "effective collective bargaining."

As this Court's decision in FPBA establishes, Article II, section 3 of the Florida Constitution -- the separation of powers doctrine -- must be read in para materia with Article I, section 6 -- the right to collective bargaining -- when the state is the public employer because of the separation of state government into three coordinate branches. But Article II, section 3 has no application whatsoever to school boards which exist pursuant to Article IX, section 4 because the executive, legislative and quasi-judicial functions exercised by those boards are fused into one body by the Constitution itself. Hence, the Second District clearly erred in applying the separation of powers doctrine to reach its result in a situation where, unlike FPBA, there are no separate, independent governmental branches of the state involved.

The point is, when a local school board is involved, the executive and legislative powers repose in a single body, which cannot split its personality. FPBA, on the other hand, dealt specifically with state legislative and executive branches which are entirely separate and independent and are governed by the specific prohibition in Article II, section 3 against any member of one "branch" of "state government" exercising powers of the other "branches." Nevertheless, the Second District expressly accepted this Court's decision in FPBA as controlling in this case, where all executive, legislative, and quasi-judicial powers are lodged in one local government body, not in separate branches of the government.

This Court's recent decision in United Faculty, rendered after the district court's decision below, unequivocally establishes that FPBA is not controlling in circumstances such as these. United Faculty, 615 So.2d at 672. As this Court squarely held in United Faculty, its decision in FPBA applies only in those cases where the separation of powers doctrine would be violated by the executive branch's interference with the legislative branch's constitutional duty to make appropriations. Id. at 673.

In United Faculty, as here, there was no issue of separation of powers. The Legislature had authorized a three-percent pay raise for certain public employees to be effective January 1, 1992. When shortfalls subsequently arose in public revenues, the Legislature postponed the raises and then eliminated them

altogether. Thus, just as the School Board here refused because of a projected revenue shortfall to fund step increases required to maintain the status quo, in United Faculty, the Legislature refused to fund raises required under collective bargaining agreements because of a shortfall in revenues.

The Court held that this refusal to fund violated Article I, sections 6 and 10 of the Florida Constitution. Recognizing that the Legislature "must be given some leeway to deal with bona fide emergencies," this Court concluded that the Legislature may "reduce previously approved appropriations to pay public workers' salaries made pursuant to a collective bargaining agreement, but only where it can demonstrate a compelling state interest." United Faculty, 615 So.2d at 673. In order to do that, this Court held that:

> The legislature must demonstrate no other reasonable alternative means of preserving its contract with the public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not itself a compelling reason. Rather, the legislature must demonstrate that the funds are available from no other possible reasonable source.

Id.

In so holding, this Court stressed that it was not retreating from its decision in Chiles v. Children A, B, C, D, E & F, 589 So.2d 260 (Fla. 1991) ("Chiles"), "where we reaffirmed Florida's strong separation of powers doctrine." United Faculty, 615 So.2d at 673. The Court carefully explained that United Faculty did not "present a violation of separation of powers,"

and hence the collective bargaining agreements could not be unilaterally abridged by the public employer. Id.

In contrast to FPBA and Chiles, but just like United Faculty, this case does not "present a violation of separation of powers." When a school board engages in collective bargaining, the "employer" and the "legislative body" are one and the same entity and all legislative, executive, and quasi-judicial functions are performed by that single entity.[8/] In sum, no separate and independent governmental branches are involved here, as is the case for state government, and the separation of powers doctrine simply has no application here.

This is made especially manifest by this Court's analysis of that doctrine in Chiles. In Chiles, this Court held that the separation of powers doctrine was violated by the Legislature's enactment of a statute which assigned broad discretionary authority to the executive branch to reapportion the state budget. Pointing to the historic principles underlying the governmental separation of powers, the Court observed that "[t]he fundamental concern of keeping the individual branches separate is that the fusion of the powers of any two branches into the same department would ultimately result in the destruction of

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[8/] The district court's decision reflects that on its face. The court stated that "CTA and the school board, as a public employer, negotiated the agreements which contained the step increases that are the subject matter of this actions," and the School Board acted "as a legislative body" to appropriate the funds to implement those agreements. Sarasota County at 1147.

liberty." Chiles, 589 So.2d at 263. The Court concluded that the statute challenged there violated that important doctrine:

> To permit the commission to reduce specific appropriations in general appropriations bills would allow the legislature to abdicate its lawmaking function and would enable another branch to amend the law without resort to the constitutionally prescribed lawmaking process. This delegation strikes at the very core of the separation of powers doctrine and for this reason section 216.221 must fail as unconstitutional.

Chiles, 589 So.2d at 265-66.

With respect to state government, of course, the Constitution requires that this level of government shall have separate and independent branches for checks and balances purposes. The evil addressed by the separation of powers doctrine arises where there is a "fusion of the powers of any two branches into the same department. . . ." Chiles, 589 So.2d at 263. That would violate the constitutional requirement for separation of the powers of the executive, legislative, and judicial branches of state government, and this would "ultimately result in the destruction of liberty." Id.

Unlike state government, however, Florida's Constitution does not require "separate branches" of a local governmental body such as the School Board, and there are no such checks and balances implicated. Rather, under Article IX, section 4 of the Constitution, there is simply a school board, in which all of the executive, legislative, and quasi-judicial powers are, by that organic document itself, fused in one single body. Not only is this not inconsistent with the Constitution, then, it is actually

required by the Constitution, and the separation of powers doctrine is wholly inapplicable to this type of local governmental action.

Indeed, by its plain terms, the separation of powers provision only applies to the "branches" of the "state government," which are wholly separate. Thus, Article II, section 3, provides as follows:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

This Court has itself squarely held that Florida's "separation of powers provision was not intended to apply to local governmental entities and officials, such as those identified in articles VIII and IX (ie, school boards) and controlled in part by legislative acts."[9/] Locke v. Hawkes, 595 So.2d 32, 36 (Fla. 1992).

Consequently, no separation of powers question is presented here because the executive branch of state government did not "bargain away" another, separate branch's "constitutional right and obligation to appropriate funds" for an agreement negotiated by the executive branch. Unlike FPBA, where the Governor, as the

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[9/] The School Board relied below on Holmes County Teachers' Association v. Holmes County School Board, 9 FPER ¶ 14207 (1983) and Florida Public Employees Council 79, AFSCME v. Martin County, 18 FPER ¶ 23167 (1992), which suggested that the separation of powers provision may apply to local governmental entities. Those decisions are clearly contrary to this Court's controlling decision in Locke, supra, as well as the express terms of Article II, section 3 of the Florida Constitution and its historical underpinnings.

public employer of state employees, sought to bind the Legislature, which is the independent "guardian" of state monies, here the local School Board employer is the guardian of the public monies to be used to fund the agreements it previously negotiated. Since the entity that appropriates the funds is exactly the same entity that negotiated the wages in the first instance, no independent branch of the government is required to take any action to implement it. Instead, when the School Board, in its capacity as a "public employer," submitted its proposed budget (through its superintendent) for funding of the agreements it had negotiated, it merely shifted the hats it wears.

Given the absence of separate state executive and legislative branches in this case, the district court patently misapplied the Court's decision in FPBA by holding that the principles set forth there establish that the School Board had an "absolute" right to refuse to fund the step increases.[10/] Sarasota County at 1148. This Court's decision in FPBA does not authorize a local government entity to negotiate agreements under the collective bargaining process while wearing its "public employer" hat but then turn around and refuse to perform those agreements under the guise of its "legislative" hat. Rather, as United Faculty specifically holds, the School Board (in its legislative capacity) must demonstrate, not merely that there is

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[10/] The Fourth District reached the same erroneous conclusion in School Board of Martin County v. Martin County Education Association, 613 So.2d 521 (Fla. 4th DCA 1993), petition for review pending.

a shortfall in revenues, but that "funds are available from no other possible reasonable source." United Faculty Florida, 615 So.2d at 673. That was not shown in United Faculty and it was not shown here. Thus, just as in United Faculty, the employees' constitutional right to effective collective bargaining has been impermissibly abridged, and that result cannot be countenanced by this Court.

One final point must be emphasized. Contrary to the School Board's contention below, Florida Statutes section 447.309(2) does not in any way authorize or validate the School Board's unilateral alteration of the status quo during collective bargaining negotiations.[11/] That statute is simply a codification of the separation of powers doctrine by the Legislature in recognition that a separate executive branch cannot bind a separate legislative branch to fund a collective bargaining agreement negotiated by the executive branch alone. It merely makes explicit in the collective bargaining context what is a constitutional imperative. Consequently, that statute

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[11/] That statue provides as follows:

> (2) Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds shall not constitute, or be evidence of, any unfair labor practice.

obviously has no application where there is no issue of separation of powers, as is the case with a local school board.

The Second District clearly recognized this when it declared that it would have found an unfair labor practice here but for this Court's decision in FPBA. Sarasota County at 1148. Implicit in that statement is the court's conclusion that the School Board's action was not authorized under section 447.309(2), standing alone, to refuse to fund its collective bargaining obligations under circumstances such as these. Indeed, had the court believed the statute to be dispositive, it would never have reached the constitutional issue of separation of powers since it is fundamental that an appellate court will always decide a case on a statutory basis rather than a constitutional basis if one is available. McKibben v. Mallory, 293 So.2d 48, 51 (Fla. 1974).

Finally, if the statute did purport to grant such an absolute right to local governmental bodies such as this, it would represent a constitutionally impermissible abridgement of the employees' right to "effective collective bargaining." Obviously, the statute should be construed in a manner that renders it constitutional, not unconstitutional, as would be the case under the interpretation urged below by the School Board. McKibben, 293 So.2d at 51.

CONCLUSION

This Court's controlling precedents establish that a public employer cannot unilaterally alter the established status quo during collective bargaining negotiations, absent a "compelling" interest, which was not demonstrated here. The district court's decision plainly deprives employees of a local governmental body such as the School Board of their constitutional right to "effective collective bargaining" with their public employer. Accordingly, this Court should reverse the Second District's decision and remand with directions to reinstate the Commission's order.

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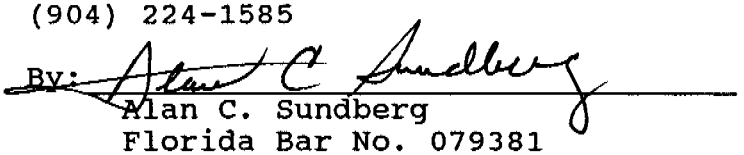
By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by U.S. Mail this 5th day of August, 1993, to:

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