

IN THE SUPREME COURT
STATE OF FLORIDA

FREDDY D'AGASTINO and
FRATERNAL ORDER OF POLICE,
WALTER E. HEADLEY, JR., MIAMI
LODGE NO. 20,

Petitioners,

v.

THE CITY OF MIAMI and THE CITY
OF MIAMI CIVILIAN
INVESTIGATIVE PANEL,

Respondents.

CASE No. SC16-645
LOWER CASE No. 3D10-2704

**THE CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL'S
RESPONSE IN OPPOSITION TO MOTION OF FLORIDA
PROFESSIONAL FIREFIGHTERS, INC., INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO, TO FILE AMICUS
CURIAE BRIEF**

Respondent, the City of Miami Civilian Investigative Panel ("CIP"), hereby files its response in opposition to the motion of the Florida Professional Firefighters, Inc., International Association of Firefighters, AFL-CIO (the "FF Union"), seeking leave to file an amicus curiae brief in support of petitioners.

1. In their motion for leave to file an amicus brief – which was followed immediately thereafter by the filing of the brief¹ – the FF Union asserts as grounds

¹ The brief was filed despite the known opposition of the City of Miami. The position of CIP's counsel was not reflected in the original motion for leave
(continued . . .)

for leave two points: (i) firefighters also have a “similar” bill of rights (hereafter, the “FFBOR”); and (ii) the Court may want to hear from a union representing first responders.² No further elaboration is provided.

2. The appeal before this Court is purely a matter of statutory construction, and it concerns sections 112.532 and 112.533, Florida Statutes, not the FFBOR, which is codified at section 112.82, Florida Statutes. While the FF Union contends that its bill of rights is “similar” to the bill of rights afforded to law enforcement officers, the statutes are *not* identical. Significantly, the FFBOR does not have a provision comparable to section 112.533, which lies at the heart of this appeal. Section 112.533 contains the critical provision – at least from the petitioners’ perspective – stating that the procedures set forth in that statute are “the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges....” § 112.533(1)(a), Fla. Stat.

3. Consequently, how the FFBOR may be interpreted or how firefighter first responders may be affected is irrelevant to the Court’s analysis of whether sections 112.532 and 112.533 preempt or conflict with the CIP’s authorizing

(. . . continued)

(since corrected). This is likely the result of waiting until the day before such briefs were due before attempting to obtain consent from the parties.

² This second point seems odd, since the Court *is* already hearing from *two* unions representing first responders: the Fraternal Order of Police and the Police Benevolent Association (the latter of which filed an amicus brief without opposition from the CIP).

legislation. This is especially the case where neither the motion for leave nor the brief that was filed reflects that firefighters anywhere in the state are subject to civilian oversight at the local level. That firefighters also enjoy the right to have a union representative present when being *questioned by their agency*, § 112.82(8), Fla. Stat., adds nothing to the equation and does not assist the Court in reaching a correct conclusion in this appeal. That point has been fully advocated by the police union briefs already before the Court.

4. Accordingly, the CIP respectfully requests that the Court deny the FF Union's motion for leave and strike its amicus brief.

CERTIFICATE OF SERVICE

I certify that a copy of this motion was served via e-mail and e-portal on August 19, 2016, on: **Robert C. Buschel, Esq.**, Buschel Gibbons, P.A., (Counsel for Petitioner) 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 (buschel@bglaw-pa.com); **Ronald J. Cohen, Esq.**, Rice Pugatch Robinson Storfer & Cohen, PLLC, (Counsel for Petitioner) 101 Northeast Third Avenue, Suite 1800, Fort Lauderdale, FL 33301 (rcohen@rprslaw.com); **Charles C. Mays, Esq.**, (Counsel for CIP), 10240 S.W. 144th Street, Miami, Florida 33176 (ccmays@bellsouth.net); **Victoria Mendez, Esq.**, and **John Greco, Esq.**, (Counsel for City) Miami Riverside Center, Suite 945, 444 S.W. 2nd Avenue, Miami, FL 33130 (jagreco@miamigov.com; victoriamendez@aol.com); G. "Hal" Johnson, Esq., General Counsel, Florida Police Benevolent Association, Inc., 300 East Brevard Street, Tallahassee, Florida 32301; Robert D. Klausner, Esq.

