IN THE SUPREME COURT OF FLORIDA

COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.,

Petitioner,

v. **Case No. SC00-1860**
(Lower Tribunal Case No. 5D00-618)

PHILLIP B. (PHIL) WILLIAMS, SHERIFF OF BREVARD COUNTY,

Respondent.
_____ /

ANSWER BRIEF OF AMICUS CURIAE

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STATEMENT OF THE CASE AND FACTS

The Palm Beach County Sheriff's Office, as amicus curiae (hereinafter "PBSO") joins in and adopts the statement of facts to be submitted by Appellee, Phillip B. (Phil) Williams as Sheriff of Brevard County, Florida.

Appellant will be referred to as "CFPBA."

The Florida Public Employees Relations Commission will be referred to as "PERC."

SUMMARY OF ARGUMENT

Palm Beach County Sheriff's Office moved for leave to appear as amicus curiae, and provides argument herein, to address the issue certified by the Fifth District Court of Appeals:

> ARE DEPUTY SHERIFFS CATEGORICALLY EXCLUDED FROM HAVING COLLECTIVE BARGAINING RIGHTS UNDER CHAPTER 447?

Based upon Florida common law, the Florida Constitution of 1885, the current Florida Constitution, Chapter 447, and established Florida case law, deputy sheriffs are categorically excluded from having collective bargaining rights under Chapter 447, Florida Statutes. At the time of the 1968 revision of the Florida Constitution giving public employees the right to collectively bargain, sheriff's deputies were not public employees under common law, statutory or case law. At the time the Florida Public Employees Relations Act ("PERA") was passed in 1974, sheriff's deputies were not public employees under common law, statutory or case, law. This Court in *Murphy v. Mack*, 358 So.2d 822 (Fla. 1979) correctly found that, based upon the common law status of deputy sheriffs and case law at the time PERA was enacted, deputy sheriffs did not have collective bargaining rights under Chapter 447, Fla. Stat. In these circumstances, only the Legislature can provide deputy sheriffs with collective bargaining rights.

ISSUE PRESENTED

ARE DEPUTY SHERIFFS CATEGORICALLY EXCLUDED FROM HAVING COLLECTIVE BARGAINING RIGHTS UNDER CHAPTER 447?

ARGUMENT

Deputy Sheriffs are categorically excluded from collective bargaining under Chapter 477 because only the state legislature can bring deputy sheriffs under the jurisdiction of the Public Employees Relations Act.

The initial brief presented by the CFPBA urges the Court to apply its holdings in *Service Employees International Union, Local 16, v. PERC*, 752 So.2d 569 (Fla. 2000) ("SEIU Local 16") and in *Chiles v. State Employees Attorneys Guild*, 734 So.2d 1030 (Fla. 1999) to find deputy sheriffs are "public employees" under § 447.203(3), Fla. Stat. (2000). The CFPA ignores common law, Florida constitutional law, the history of public employee collective bargaining in the state of Florida, statutory and case law as applied to Chapter 447, the Public Employees Relations Act ("PERA").

It would be an abrogation of legislative power for this Court to hold that deputy sheriffs are "employees" under PERA. To argue that the Legislature intended to or was required to include deputy sheriffs in the original PERA ignores the status of the law at that time of the 1968 constitutional revision, and at the time of the passage of PERA in 1974.

In dicta in the *SEIU Local 16,* decision, this Court indicated that *Murphy v. Mack,* 358 So.2d 822 (Fla. 1978) may have been wrongly decided. PBSO respectfully submits that because deputy clerks, and not deputy sheriffs, were the subject of the *SEIU Local 16,* case, the Court overlooked the history of public employee collective bargaining in the state of Florida and the importance of the common law status of deputy sheriffs.

A. The History of Public Employee Collective Bargaining In The State Of Florida

The right of employees to bargain collectively has been in the Florida Constitution since 1885. Section 12 of the Declaration of Rights of the 1885 Florida Constitution provided:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization, provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization to bargain collectively with their employer.

In 1946, the Florida Supreme Court interpreted § 12 of the Declaration of Rights in the 1885 Florida Constitution as not granting collective bargaining rights to public employees. *Miami Water Works Local No. 654 v. City of Miami,* 26 So.2d 194, 198 (Fla. 1946).

In 1968, the Florida Constitution was revised to its current wording:

> The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Art. I, § 6, Fla. Const.

The only substantive change made by the 1968 Constitutional revision was to add the sentence: "Public employees shall not have the right to strike." At the time of the revision, the extant case law held that deputy sheriffs were not public "employees." *Blackburn v. Brorein*, 70 So.2d 293, 295 (Fla. 1954).

In 1969, in the case of *Dade County Classroom Teachers' Ass'n., Inc. v. Ryan*, 225 So.2d 903, 905 (Fla. 1969), the Florida Supreme Court interpreted the 1968 constitutional revision regarding public employees as extending the right to bargain collectively to public employees. In 1972, the Supreme Court in *Dade County Classroom Teachers, Ass'n., Inc. v. The Legislature*, 269 So.2d 684-685 (Fla. 1972)

reaffirmed its holding in *Ryan* that, with the exception of the right to strike, public employees have the same right of collective bargaining as is granted private employees by Article I, § 6 of the Florida Constitution. The Court in *Dade County Classroom Teachers Ass'n., Inc.* denied a writ of mandamus which would have compelled the Legislature to enact collective bargaining standards/guidelines for public employees. However, the Court cautioned that if the Legislature did not enact such guidelines, it would have no choice but to fashion such guidelines by judicial decree. 269 So.2d at 688.

The result was that in 1974, the Legislature enacted Chapter 447, Fla. Stat. which is the Public Employees Relations Act (PERA). Chapter 447 was and is a comprehensive regulation of public employees' collective bargaining rights in Florida. Between 1968 and 1974, there was no change in statutory or case law with regard to the status of deputy sheriffs.

The above history makes it clear that public employees' collective bargaining rights are constitutional in origin and emanate from the 1968 revision to the Florida Constitution. It is equally clear that the operative term in the 1968 Constitutional revision is "employees," i.e., the Constitution grants public sector collective bargaining rights only to "employees" and not to a broader class of persons. Thus, employee status is the *sine qua non* to collective bargaining rights in the public section in Florida. A fundamental right for sheriff's deputies under the Florida Constitution to collectively bargain was not created in 1968 or in 1974. Simply put, sheriff's deputies do not have a fundamental right to collectively bargain.[1]

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[1] The argument of CFPBA in its initial brief that the rationale of *Murphy v. Mack* must somehow satisfy a "strict scrutiny" test because it denies deputy sheriffs the right to collectively bargain is inapposite. Strict scrutiny is not required where there is no fundamental right involved. *Cf., Chiles v. State Employees Attorney Guild*, 734 So.2d 1030, 1033 (Fla. 1999).

B. <u>The Common Law Status Of Deputy Sheriffs In Florida</u>

The relationship between a sheriff and deputy sheriffs in Florida has long been recognized as one derived from common law. In *Blackburn v. Brorein*, the Florida Supreme Court quoted approvingly from 47 Am. Jur. 929-931, Deputies, § 154:

> The office of under or deputy sheriff is a common law office; and this is the rule unless a change is effected by the Constitution or statute law of the state.

70 So.2d at 295.

At issue in *Blackburn* was whether or not deputy sheriffs were "employees" and therefore subject to a Hillsborough County Civil Service Law or officers and therefore outside the purview of the Civil Service Law. In resolving this issue in *Blackburn*, the Florida Supreme Court emphasized the common law origin of the sheriff-deputy sheriff relationship. The Court noted that from the very beginning of government in Florida, the law has provided for a sheriff and has authorized the appointment of deputy sheriffs. 70 So.2d at 295. The Court offered the following historical perspective of the sheriff-deputy sheriff relationship in Florida:

> Prior to the Constitution of 1885, the deputy sheriffs had been appointed by the sheriffs. The statutes specifically recognized the necessity for deputy sheriffs and in plain language provided for the sheriffs to appoint deputy sheriffs. The Constitution, by making special mention of a deputy sheriff in the Constitution, and by adopting all laws then in force not inconsistent with the new Constitution, provided for the appointment of such deputy sheriffs by the sheriff of each county in and by Section 30.07, F.S., F.S.A., formerly Section 4 of Chapter 1659, Laws of 1868, notwithstanding the provisions of Section 27 of Article III of the State Constitution.

Id.

Based upon its historical analysis, the *Blackburn* court held that deputy sheriffs were officers and, as such, were not subject to the Hillsborough Court Civil Service Law.

Thus, some *fourteen* years before the 1968 Constitutional revision and *twenty* years before PERA was enacted, the Florida Supreme Court held that deputy sheriffs were "officers" and not "employees." However, *Blackburn* decision has significance beyond its actual holding, because the Court stressed the common law origin of the sheriff-deputy sheriff relationship. As such, Section 2.01 of the Florida Statutes was implicated. Section 2.01, Fla. Stat. reads:

> 2.01 Common law and certain statutes declared in force.
>
> The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state.

Section 2.01, Fla. Stat., passed in 1829, expressly made the common law relationship between a sheriff and his deputies a part of the law of Florida. This is significant because:

> Whenever a principle of the common law has been once clearly established, the courts of this country must enforce it until repealed by the legislature, as long as there is a subject matter for the principle to operate on, and although the reason, in the opinion of the court, which induced its original establishment may have ceased to exist.

State v. Egan, 287 So.2d 1, 3 (Fla. 1973).

C. The Supreme Court's Decision In *Murphy v. Mack*, 358 So. 2d 822 (Fla. 1978) Correctly Recognized And Gave Deference To The Common Law Relationship Between A Sheriff And His Deputies.

In its 1978 *Murphy v. Mack* decision, the Florida Supreme Court held that deputy sheriffs were not employees and therefore not covered by PERA. Crucial to the Court's *Murphy v. Mack* decision was its recognition of the common law origin of the relationship between a sheriff and his deputies. The *Murphy* court specifically observed:

> The relationship between sheriff and deputy has not been recognized by this Court to be that of employer and employee. To the contrary, this Court has expressly held that a deputy is not an employee, which is consistent with the common-law concept of deputy sheriffs.

Id. at 825. (emphasis added).

The Supreme Court in *Murphy* not only recognized the common law origin of the relationship between a sheriff and his deputies, but, more importantly, the Court recognized that it was not free to overrule such common law concepts.[2] The Court correctly held that:

> Since deputy sheriffs have not been identified as employees by the courts of this state, we cannot assume that the Legislature intended to include them within the definition of public employee without express language to this effect. In the absence of language including deputy sheriffs within the definition set forth in Chapter 447, Florida Statutes (1975), we find that they are not encompassed by the act.

Id. at 826.

The Court refused to usurp the legislative prerogative based upon the common law status of sheriff's deputies at the time PERA became law.

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[2] Although not expressly doing so, the *Murphy* court essentially applied the principle of statutory construction that statutes in derogation of common law must be strictly construed. *See, In re Estate of Levy*, 141 So.2d 803, 805 (Fla. 2d DCA 1962) and cases cited therein.

D. Legal And Statutory Development Since *Murphy v. Mack.*

In the *twenty-two* years since *Murphy v. Mack* was decided, no legal decision or statutory enactment has questioned that decision until this Court did in dicta in *SEIU Local 16*. In fact, the opposite has occurred in that the Legislature and the courts have consistently treated deputy sheriffs as not having collective bargaining rights. On at least two occasions, the Legislature has passed legislation which affected the status of all deputy sheriffs.

In 1993, the Law Enforcement Officers Bill of Rights was amended to include deputy sheriffs within its provisions. Section 112.535, Fla. Stat., specifically provided:

> The provisions of Chapter 93-19, Laws of Florida, shall not be construed to restrict or otherwise limit the discretion of the sheriff to take any disciplinary action, without limitation, against a deputy sheriff including the demotion, reprimand, suspension, or dismissal thereof, nor to limit the right of the sheriff to appoint deputy sheriffs or to withdraw their appointment as provided in Chapter 30. Neither shall the provisions of Chapter 93-19, Laws of Florida, be construed to grant collective bargaining rights to deputy sheriffs or to provide them with a property interest or continued expectancy in their appointment as deputy sheriff. (Emphasis added).

In 1994, the Legislature amended Chapter 30 to provide for review boards to review terminations taken by sheriffs against regularly appointed deputy sheriffs for lawful off-duty political activity or for discriminatory reasons. Sections 30.071-30.079, Fla. Stat., Section 30.071 (2) and (3) of the amendment specifically provides:

> (2) This act does not grant to deputy sheriffs the right of collective bargaining.
>
> (3) This act does not change the alter ego relationship which exists between a deputy sheriff and the appointing sheriff.

It is a principle of statutory construction that:

> (T)he last expression of the legislature will is the law, and . . . . therefore, the last in point of time or order of our argument prevails. This rule is applicable where the irreconcilable provisions appear in different statutes, or in different provisions of the same statute.

Speights v. State of Florida, 414 So.2d 574, 578 (Fla. 1st DCA 1982) citing 30 Fla. Jur. § 120, n. 67 (1974). If, as the CFPBA argues (ignoring case law and common law as it existed prior to the 1968 constitutional revision and the passage of PERA in 1974), deputy sheriffs really were somehow, or should have been, included in the definition of public employee under § 447.203(3), the last expression of the Legislature is found in § 112.535, Fla. Stat. and in § 30.071(2) which explicitly state that collective bargaining rights are not being granted to deputy sheriffs. The Legislature's intent with regard to collective bargaining for deputy sheriffs is clear and unequivocal.

State and federal courts have consistently followed *Murphy v. Mack*. In 1979, in *Ison v. Zimmerman*, 372 So.2d 431, 433 (Fla. 1979), the Supreme Court reaffirmed *Murphy* stating that:

> . . . we have already answered this question in the negative in *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978). In recognition of the peculiar status of the deputy as officer of the sheriff, himself a constitutional officer, we held there that a deputy sheriff was not a "public employee" within the contemplation of Chapter 447 . . .

The First District Court of Appeals also had occasion to consider attacks on *Murphy v. Mack's* validity. In *Brevard County Police Benevolent Ass'n., Inc. v. Brevard County Sheriff's Department*, 416 So.2d 20 (Fla. 1st DCA 1982), the court addressed a constitutional challenge to the exclusion of deputy sheriffs from PERA. The constitutional challenge alleged an equal protection clause violation under the U.S. Constitution and a violation of the basic rights and provisions of the Florida Constitution. The

court's reasoning in *Brevard* is highly instructive of the analysis which must be followed in resolving the deputy sheriffs' status under PERA. The court reasoned:

> Article I, Section 6, speaks only of employees, not persons, and does not, therefore, have applicability to persons who are not defined as employees. The Florida Supreme Court has already held that appointed deputy sheriffs are not "employees" within the meaning of Chapter 447, rather they are "officers." *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978). The determination was not based simply on the statute, but was an interpretation of common law. In so ruling, the court stated that the deputies' status, having arisen out of common law, could be changed by explicit provision in state statutes or appropriate government law. *See, e.g., Ison v. Zimmerman*, 372 So.2d 431 (Fla. 1979), and *Escambia County Sheriff's Department v. Florida Police Benevolent Ass'n., Inc.*, 376 So.2d 435 (Fla. 1st DCA 1979).

416 So.2d 20.

A similar constitutional challenge relative to *Murphy's* exclusion of deputy sheriffs from PERA was rejected in *Sikes v. Boone*, 562 F.Supp.74 (N.D. Fla. 1983), *aff'd. without opinion*, 723 F.2d 918 (11th Cir. 1983), *cert. denied*, 466 U.S. 959 (1984). The *Sikes* court's analysis illustrates the inherent fallacy of the *SEIU Local 16* dicta, i.e., the Florida Supreme Court is somehow free to overrule *Murphy*. The *Sikes* court noted that federal courts are bound by the interpretation placed on state statutes by the highest court of the state. *Id.* at 76, citing to *NAACP v. Button*, 317 U.S. 415 (1963). The *Sikes* court relying on *NAACP v. Button*, held that when a statute has been authoritatively construed by the state's highest court, the words of the court became the words of the statute. *Id.* at 76. The *Sikes* court then concluded that Chapter 447 must be read to include among its stated exceptions deputy sheriffs who are appointed by a sheriff.

E. <u>Conclusion.</u>

Murphy v. Mack remains good law and should continue to be dispositive of PERC's jurisdiction over representation petitions which seek to represent deputy sheriffs. As demonstrated above, the Supreme Court cannot now interpret Chapter 447 to include deputy sheriffs. The common law origin of the sheriff-deputy sheriff relationship is the statutory law of Florida and predates the 1968 Constitutional revision which granted collective bargaining rights to public employees. In these circumstances, only the Legislature can bring deputy sheriffs under PERA. When the common law is clear, the Court has no power to change it. *State v. Egan*, 287 So.2d 1, 3 (1973) citing *Ripley v. Ewell*, 61 So.2d 420 (Fla. 1952). It would be an abrogation of legislative power for the Supreme Court to now hold that deputy sheriffs are employees under PERA. *Cf. Donato v. American Telephone and Telegraph Co.*, 2000 WL 44043 (Fla. 2000), a case which was decided four days after *SEIU Local 16* where this Court refused to give a broad interpretation to the term "marital status" in the Florida Civil Rights Act because to do so would be an abrogation of legislative power. 200 WL 44043 at 8.

Dated this 6th day of November, 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer Brief of Amicus Curiae Palm Beach County Sheriff has been furnished by U.S. Mail, postage prepaid, to PHILLIP P. QUASCHNICK, ESQUIRE, LEONARD J. DIETZEN, III, ESQUIRE, and WILLIAM E. POWERS, JR., ESQUIRE, Attorneys for Phillip B. Williams, Post Office Box 12186, Tallahassee, Florida 32317-2186; G. "HAL" JOHNSON, ESQUIRE, 300 East Brevard Street, Tallahassee, Florida 32301; JACK E. RUBY, ESQUIRE, Assistant General Counsel, Public Employees Relations Commission, 2586 Seagate Drive, Turner Building, Suite 100, Tallahassee, Florida 32301-5032; and ELLEN LEONARD, ESQUIRE, Attorney for Cal Henderson, Sheriff of Hillsborough County, P.O. Box 3371, Tampa, Florida 33601, this 6th day of November, 2000.

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