IN THE SUPREME COURT OF FLORIDA

COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION, INC.

Petitioner,

vs. CASE NO. SC00-1860

PHILIP B. (PHIL) WILLIAMS, as Sheriff of
Brevard County, Florida,

Respondent.
______________________________________/

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

The Respondent, Philip B. (Phil) Williams, Sheriff of Brevard County, is in general agreement and adopts the Statement of the Case and Facts set forth by the Petitioner the Coastal Florida Police Benevolent Association, hereinafter referred to as the PBA, with the following additions and modifications:

1. On page 3 of its brief, the PBA fails to sufficiently explain the significance of PERC's finding that a representation-certification petition filed by the PBA was sufficient. In its Notice of Sufficiency, the Public Employees Relations Commission (PERC) ordered a hearing on the following issues: (a) the duties and responsibilities of deputy sheriffs vis-à-vis the Sheriff, (b) the appropriateness of the bargaining unit requested by the PBA, and (c) the validity of the PBA's registration pursuant to Section 447.305, Florida Statutes (1999). (R-31-33) The "Notice of Sufficiency" also ordered the Brevard County Sheriff's Office to do the following: (a) file an answer within twenty (20) days from the date of the petition indicating whether the Sheriff's Office agrees with the bargaining unit proposed by the PBA, (b) file with the Commission an alphabetized list of all employees in the classifications specified by the PBA for inclusion in the proposed bargaining unit to enable PERC to determine whether the showing of interest filed with the petition met the requirements of Section 447.307(2), Florida Statutes (1999), and (c) post notices

throughout the Brevard County Sheriff's Office informing individuals employed or appointed by the Sheriff of the pending petition before PERC. (R-31-33) If the Sheriff's Office disagreed with the proposed bargaining unit, it was required to describe with particularity the unit which the Sheriff's Office believed appropriate under the criteria set forth in Section 447.307(4), Florida Statutes (1999). (R-31-33)

2. The PBA also failed to explain the representation-certification process, which would ultimately lead to a final appealable order. After conducting a hearing on the PBA's representation petition, PERC was required to define an appropriate bargaining unit and order an election by secret ballet, the cost of which is born equally by the PBA and the Sheriff's Office, to determine whether a majority of the individuals in the bargaining unit defined by PERC desired representation by the PBA as their exclusive bargaining agent. §447.307(3), Fla. Stat. (1999). Should a majority of the individuals voting select the PBA as their representative, the Commission then certifies the PBA as the exclusive bargaining representative for the individuals in the defined unit. §447.307(3), Fla. Stat. (1999). PERC's certification order is the "final order" in the representation process for purposes of judicial review. City of Panama City v. PERC, 333 So.2d 470 (Fla. 1st DCA 1976); School Board of Sarasota County v. PERC, 333 So.2d 95 (Fla. 2d DCA 1997).

3. The PBA also neglected to state that the Sheriff of Brevard County not only filed a Petition for Writ of Prohibition, but also a Petition for Review of Non-Final Agency Action. (R-1)

4. The Fifth District Court of Appeal initially granted, in part, the Petition for Writ of Prohibition. The Court held that the representation hearing could go forward, but that the hearing officer's decision would be immediately reviewable by the District Court of Appeal (R-101-106, 107). After the parties submitted motions for reconsideration, the District Court of Appeal issued the order now under review, denying the Petition for Writ of Prohibition (R-145-148). Williams v. Coastal Florida PBA, 765 So.2d 908 (Fla. 5th DCA 2000).

5. The PBA filed a Petition to Invoke this Court's Discretionary Jurisdiction on September 8, 2000. On September 26, Sheriff Williams also filed a Notice to Invoke this Court's Discretionary Jurisdiction out of an abundance of caution, since the PBA was not adversely affected by the decision of the District Court of Appeal below.

6. The parties have since requested this Court to consolidate both Notices of Appeal into a single case.

SUMMARY OF THE ARGUMENT

The Petitioner, Coastal Florida PBA, is requesting this Court to overrule twenty-two years of precedent and now hold that deputy sheriffs may collectively bargain. To the contrary, this Court correctly decided the issue in Murphy v. Mack, 358 So.2d 822 (Fla. 1978), wherein it held that deputy sheriffs are common law officers and not employees within the meaning of Chapter 447, Part II, Florida Statutes. The unanimous Murphy decision invited the legislature to amend the definition of public employee in Section 447.203(2), Florida Statutes, to provide collective bargaining rights to deputy sheriffs.

The legislature declined to do so when it re-enacted the statute on three separate occasions after the Murphy decision. Moreover, the legislature definitively expressed its intent not to grant deputy sheriffs collective bargaining rights when it amended Chapter 30, Florida Statutes, providing deputies with certain protections against political retaliation, and the Police Officers' Bill of Rights, including deputy sheriffs within that statute. In both enactments the legislature stated that it did not intend to grant deputies the right to collectively bargain. §30.071(2), Fla. Stat. (1999); §112.535, Fla. Stat. (1999). Thus, the legislature has clearly articulated its intention to not grant collective bargaining rights to deputy sheriffs in conformity with this Court's decision in Murphy.

The PBA's reliance upon this Court's recent decisions in Service Employees Int'l

Union, Local 16 v. PERC, 752 So.2d 569 (Fla. 2000) and Chiles v. State Employees Attorneys' Guild, 734 So.2d 1030 (Fla. 1999), is misplaced. While Service Employees may have questioned the decision in Murphy, it did not overrule Murphy but rather refused to extend Murphy to deputy clerks of the court. This Court noted that there was no indication that the legislature intended to deny collective bargaining rights to deputy clerks of the court. In contrast, the legislature has definitively expressed its intent on the subject with regard to deputy sheriffs.

The Chiles decision does not apply in this case because there the issue was whether employees, who otherwise possessed the right to collectively bargain under Article I, Section 6 of the Florida Constitution, may be denied that right by legislation based upon a rationale basis or a compelling state interest. Here, deputy sheriffs are common law officers and not employees as that term has been construed by this Court with regard to the Florida Constitution. In particular, this Court decided in Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979), that deputy sheriffs could be covered by a local civil service act pursuant to Article III, Section 14 of the Florida Constitution, not as employees but rather as officers. Thus, deputy sheriffs are not employees as that term is utilized in Article I, Section 6 of the Florida Constitution.

Since Murphy remains the law of the state, the Fifth District Court of Appeal erred by not granting the Petitioner's, Sheriff Philip B. Williams, petition for writ of prohibition. The District Court of Appeal should have ordered PERC to dismiss the PBA's petition, which the PBA could then have appealed based upon its assertion that Murphy should be overruled.

ARGUMENT

DEPUTY SHERIFFS ARE NOT PUBLIC EMPLOYEES WITHIN THE MEANING OF CHAPTER 447, PART II, OR ARTICLE 1, SECTION 6 OF THE FLORIDA CONSTITUTION.

The issue presented for this Court's attention is whether it should overrule twenty-two years of precedent and hold for the first time that deputy sheriffs have the right to collectively bargain. The intervening years since this Court first ruled in the matter have not produced any circumstances that would warrant such a change. Indeed, clear manifestations of legislative intent demonstrate that the definition of "public employee" set forth in Section 447.203(3) was never intended to include deputy sheriffs. Nor were deputy sheriffs intended to be included within the term "public employees" set forth in Article I, Section 6 of the Florida Constitution.

<u>The Murphy Decision</u>

Chapter 447, Part II, Florida Statutes, was enacted in 1974 to provide a comprehensive scheme for public employee collective bargaining.

[1] The term "public employee" is defined in Section 447.203(3), in pertinent part, as

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[1] Ch. 74-100, Laws of Florida.

follows:

> (3) "Public Employee" means any person employed by a public employer except:

The statute then lists certain exemptions, none of which are relevant to this case.

In the seminal case of Murphy v. Mack, 358 So.2d 822 (Fla. 1978), this Court first addressed whether deputy sheriffs come within the definition of "public employee" set forth in Section 447.203. The Court ruled that deputy sheriffs hold a common law office by appointment and, therefore, they were not employed by the sheriff.

[2] In defining "public employee" the legislature did not indicate its intent to encompass deputy sheriffs in derogation of the common law. 358 So.2d at 824. Upon examining its prior decisions regarding the relationship between sheriffs and deputies, the Court noted that in the past it had never described deputies as employees, but rather as officers who are invested with the same sovereign power as the sheriff. Id. at 825.

For example, in Blackburn v. Brorein, 70 So.2d 293 (Fla. 1954), this Court held that a local law providing civil service protection for county employees did not apply to deputy

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[2] The Court also held that sheriffs meet the definition of "public employer" set forth in Section 447.203(2), Florida Statutes (1975), and, therefore, "employees" of a sheriff, such as clerical assistants, have the right to collectively bargain. 358 So.2d at 824.

sheriffs for the simple reason that they are not employees, but rather appointees who hold a common law office clothed with the same sovereign power as the sheriff. Id. at 297. The Court explained the necessity for a sheriff to maintain absolute control over the selection and retention of deputies in order for the electorate to place responsibility upon the sheriff for law enforcement within the county. Id. at 298.

In Parker v. Hill, 72 So.2d 820 (Fla. 1954), this Court held that deputies were covered under the workers' compensation law, not as employees, but as "officers not elected at the polls." The First District Court of Appeal likewise held that deputy sheriffs were not employees under the Police Officers' Bill of Rights, §112.531-.535, Fla. Stat. (1975). See, Johnson v. Wilson, 336 So.2d 651 (Fla. 1st DCA 1976).

The Murphy decision further quoted with approval the following passage from 70 Am.Jur.2d Sheriffs, Police and Constables §2:

> 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. He holds an appointment, as distinguished from an employment. Where so clothed with power, a deputy sheriff is a public officer, although he may not be a state or municipal officer within the meaning of constitutional provisions. A deputy sheriff is a public officer under laws which require his appointment by the sheriff to be approved by a judge, and which provide that he must take an oath of office, and confer on his powers and duties equal to those of the sheriff himself. As such, he has been held not subject to civil service regulations. And in the absence of specific language, including

> deputy sheriffs, a deputy sheriff has been held to be an official, and not an employee, of a county, within the meaning of a workers' compensation act. A deputy sheriff has been held to be embraced within the words 'or other county officer' contained in a statute relating to jury service, and, a special deputy, or one employee in particular cases, has been held to be an officer of the state under a statutory provision relating thereto.

358 So.2d at 825.

In light of the well settled principle of law that a statute will not displace common law unless the legislature expressly indicates an intention to do so,

[3] this Court simply had no choice but to rule that the legislature had not sufficiently articulated an intent to deviate from common law by including deputy sheriffs within the definition of "public employee" set forth in Section 447.203, Florida Statutes (1975). The Court in Murphy invited the legislature to address this issue, by stating:

> 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.

358 So.2d at 826.

As demonstrated below, the legislature has declined to accept the Court's invitation to amend the statute. To the contrary, the legislature has expressly indicated its approval of this Court's decision in Murphy.

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[3] See, e.g., Kitchen v. K-Mart Corp., 697 So.2d 1200, 1207 (Fla. 1997); In re Forfeiture of 1978 Chevrolet Van, 493 So.2d 433, 437 (Fla. 1986).

Legislative Response

It is a well settled rule of statutory construction that when a statute which has been judicially construed is re-enacted by the legislature, it is presumed that the legislature was aware of the construction and intended to adopt it absent a clear expression to the contrary. Gulfstream Park Racing Ass'n, Inc. v. Dept. of Business Regulation, 441 So.2d 627, 628 (Fla. 1983); Collins Investment Co. v. Metro Dade County, 164 So.2d 806, 809 (Fla. 1964). Subsequent to the Murphy decision, the legislature amended Section 447.203 thirteen times. On three occasions it specifically re-enacted the definition of "public employee" without changing the statute to include deputy sheriffs. Ch. 94-89 §1, Laws of Florida; Ch. 81-305 §2, Laws of Florida; Ch. 79-100 §1, Laws of Florida.

The legislature has also explicitly expressed its intent to not provide deputy sheriffs collective bargaining rights. As previously noted in Murphy, the Police Officers' Bill of Rights was construed to exclude deputy sheriffs from coverage because they were not employed by the sheriff. Johnson v. Wilson, supra. In response, the legislature amended the definition of law enforcement officer to specifically include deputy sheriffs within the Police Officers' Bill of Rights. Ch. 93-19, Laws of Florida, amending §112.531, Fla. Stat. (1995). In doing so, the legislature enacted Section 112.535, Florida Statutes (1995), which expressed its intent that deputy sheriffs not have the right to collectively bargain:

The provisions of -19-19, Fla. Stat. (1995) (emphasis added).

In 1994, the legislature amended Chapter 30, Florida Statutes, to prohibit political retaliation against deputy sheriffs and to provide a procedure for appealing termination of their appointments for lawful off-duty political activity. Ch. 94-143, Laws of Florida, codified as §§30.071-.079, Fla. Stat. (1995). Once again, the legislature expressed its intent to preclude deputy sheriffs from collective bargaining in Section 30.071(2), Florida Statutes (1995), which states "This act does not grant to deputy sheriffs the right to collectively bargain." Moreover, the relationship between sheriffs and deputies as discussed in Blackburn and Murphy was codified in Section 30.071(3), which provides "This act does not change the alter ego relationship which exists between deputy sheriffs and the appointing sheriff."[4]

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[4] The PBA's claim that deputy definitional exclusions from Section 30.072(2) track the managerial confidential definitions of Sections 447.203(4) and (5) cannot withstand close scrutiny. Rather, Section 30.07(2) operates to exclude several other deputies who would not be excludable under the managerial confidential definitions. The statute is actually an amalgam of exclusions drawn from several federal statutes and regulations. For example, reference to the "members of the Sheriff's personal staff who report to or work under the direct supervision of the Sheriff," parrots the "elected official exemption" set forth in the Fair Labor Standards Act 29 U.S.C. §203(e)(2)(C), 29 C.F.R. §553.10-.12, which excludes those appointed positions who are under the direct supervision of the selecting elected official. Also the Section 30.072(2) listing of positions – "undersheriff, chief deputy, director, legal advisor" reflect those individuals who qualify as a "member of personal staff" to the elected official as envisioned under 29 C.F.R. §553.11(b) or as an "immediate advisor" under 29 C.F.R. §553.11(d). The phrase "appointees whose duties primarily involve the management or operation of the Sheriff's Office or department or subdivision of that office" are lifted from the criteria for the executive exemption of the Fair Labor Standards Act under 29 C.F.R. §541.1(f), which requires that the executive "employee's primary duty must be the management of the enterprise, or of a customarily recognized department or subdivision."

Obviously, several of the appointees set forth in the Section 30.07(2) exclusion, especially those managing a department or subdivision of the Sheriff's Office, would

In light of the foregoing, it is self evident that the legislature approved the construction placed on Section 447.203(3), Florida Statutes (1975), defining "public employee" as not encompassing deputy sheriffs. Overruling Murphy by now holding that Section 447.203 covers deputy sheriffs would fly in the face of clear and unmistakable legislative intent.

Post Murphy Decisions

This Court's analysis of the sheriff/deputy relationship articulated in Murphy has been applied by this Court, the District Courts of Appeal, and federal courts in Florida, as well as the Public Employees Relations Commission.

A year after the Murphy decision, Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979), was decided. There, a terminated deputy sheriff alleged that he was entitled to a grievance hearing pursuant to Section 447.401, Florida Statutes (1975), and a civil service hearing pursuant to a local law, Ch. 67-1149, Laws of Florida. The grievance hearing issue was quickly disposed of by this Court, reaffirming its holding in Murphy:

> We find no merit to appellant's contention that as a "public employee" he is entitled to relief under chapter 447. Confronted with the identical question of whether a deputy sheriff is a "public employee" under the definition of this term in chapter 447, 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 sheriff 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. A deputy sheriff was

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not satisfy the narrowly construed Chapter 447 managerial confidential exclusions.

therein distinguished from other employees of the sheriff, such as secretaries.

372 So.2d at 433.

The Court went on to uphold the deputy's right to a civil service hearing based upon Article III, Section 14 of the Florida Constitution and Section 30.53, Florida Statutes (1975). 372 So.2d at 434. The constitutional provision authorized creation of civil service systems by general or local law for employees and for "such offices thereof as are not elected or appointed by the governor." The statute, on the other hand, authorized creation of civil service systems for sheriff's office personnel. The Court based its conclusion on the deputy's status as an "officer" and not an "employee."

> Finally, subsequent legislative action supports a construction of article III, section 14 of the 1968 constitution that allows creation of civil service systems by special or local laws for deputies as officers "not elected or appointed by the governor."

372 So.2d at 434 (emphasis added).

The PBA refers solely to the portion of the Ison opinion holding that inclusion of the term "employees" in the title to the local civil service law did not render the law unconstitutional as applied to deputy sheriffs. The Court noted that the legal distinction between officers and employees would not be sufficient to meet the heavy burden required to render the local law unconstitutional. However, conspicuous by its absence from the

PBA's brief is the fact that the Ison decision upheld and reaffirmed the legal distinction between deputy sheriffs as officers and not employees as discussed in Murphy.

Labor unions have attacked the rationale in Murphy on both the state and federal level without success. In Brevard County PBA, Inc. v. Brevard County Sheriff's Dept., 416 So.2d 20 (Fla. 1st DCA 1982), the court upheld an order of the Public Employees Relations Commission dismissing an unfair labor practice charge against the Brevard Sheriff for refusing to collectively bargain over deputy sheriffs.
[5] The court rejected the PBA's argument that deputy sheriffs possessed the right to collectively bargain under Article I, Section 6 of the Florida Constitution because that article speaks in terms of "employees" and deputies are officers and not employees pursuant to the rationale in Murphy. Moreover, the court recognized that since the Murphy decision was based upon common law, the status of deputies in relation to sheriffs could not be changed except by "explicit provision in state statute or appropriate local government law." Id. at 21.

A year later in Sikes v. Boone, 562 F.Supp. 74 (M.D. Fla. 1983), aff'd, 723 F.2d

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[5] Brevard County PBA, Inc. v. Brevard County Sheriff's Dept., 7 F.Per. ¶12343 (PERC 1981) (finding that deputy sheriffs are not public employees under the rationale articulated in Murphy and in Ison).

918 (11th Cir. 1983), cert. denied, 466 U.S. 959, 104 S.Ct. 2171, 80 L.Ed.2d 555 (1984), a law enforcement union challenged Murphy in federal court. The plaintiff sought a declaratory judgment that Section 447.203, Florida Statutes, as construed in Murphy, violated the rights of deputy sheriffs under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the Florida Constitution.

With respect to the equal protection issue, the court rejected the plaintiff's argument that deputy sheriffs were being discriminated against compared to other law enforcement officers that are allowed to collectively bargain in Florida. The court held that deputy sheriffs were not similarly situated to police officers because deputy sheriffs were appointed to a common law office. Id. at 77-78, 81. Thus, because of the unique historical status of deputy sheriffs, their exclusion from collective bargaining under Chapter 447 was reasonable and not discriminatory. Id. at 81.

The court also disposed of the plaintiff's argument based upon Article I, Section 6 of the Florida Constitution. Because this provision speaks in terms of "employees," and as a result of this Court's decision in Murphy holding that deputies are not employees, the court held that deputies do not possess collective bargaining rights under Article I, Section

6. Id. at 80.

Finally, over the years in both state and federal courts concerning a variety of issues, Murphy v. Mack, supra, has been cited as the law in the State of Florida regarding the relationship between sheriffs and their deputies. Tanner v. McCall, 625 F.2d 1183, 1186 (5th Cir. 1980), cert. denied, 451 U.S. 907, 101 S.Ct. 1975, 68 L.Ed.2d 295 (1981) (alleged political patronage dismissal of deputies); Stough v. Gallagher, 967 F.2d 1523, 1530 (11th Cir. 1992) (appointed deputy sheriffs serve at pleasure of sheriff and have no property interest); Moghadam v. Morris, 87 F.Supp.2d 1255, 1261 (N.D. Fla. 2000) (deputy sheriffs hold common law office unless changed by state constitution or statute); FOP, Lodge 32 v. Brescher, 579 F.Supp. 1517, 1519 (S.D. Fla. 1984) (prior federal court decision res judicata as to deputy sheriffs claimed right to collectively bargain); McRea v. Douglas, 644 So.2d 1368, 1373 (Fla. 5th DCA 1994) (deputy sheriffs not employees of sheriff and have no property interest); Brevard County v. Miller, 452 So.2d 1104 (Fla. 5th DCA 1984), rev. denied, 459 So.2d 1042 (Fla. 1984) (discharged deputy sheriffs limited to remedy in civil service statute); Szell v. Lamar, 414 So.2d 276 (Fla. 5th DCA 1982) (internal disciplinary procedure does not provide deputy sheriffs with property interest).

Contentions of Coastal Florida P.B.A.

Despite the clear legislative intent supporting this Court's holding in Murphy and its

progeny, the PBA is now seeking to have Murphy overruled based upon an overly broad reading of this Court's recent decisions in Service Employees Int'l Union, Local 16 v. PERC, 752 So.2d 569 (Fla. 2000), and Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (1999). Both cases are readily distinguishable.

First, in Service Employees this Court held that deputy clerks of the court were public employees within the meaning of Section 447.203(3), Florida Statutes (1999). The Court did not overrule Murphy, but instead declined to extend the Murphy holding to deputy court clerks. 752 So.2d at 574. Significantly, in its analysis, this Court recognized that legislative intent was the "polestar" that guided its inquiry, and that the fact that the legislature had not revisited Chapter 447 after Murphy was insufficient to extend the holding in Murphy to deputy court clerks. 752 So.2d at 571, 573. Here, the overwhelming legislative history regarding deputy sheriffs is abundantly sufficient to demonstrate the legislature's approval of the Murphy decision with respect to deputy sheriffs. Indeed, as late as 1994 the legislature codified the alter ego status between sheriffs and their deputies and specifically stated it did not intend to give deputy sheriffs the right to collectively bargain. Ch. 94-143-143, wherein the Court quoted from the decision of the Fifth District Court of Appeal below:

> We are also hesitant to compare deputy court clerks with deputy sheriffs because deputy sheriffs act constantly "on behalf of the sheriff" in their enforcement of the law. Such deputies are called upon to exercise independent discretion and judgment in carrying out their duties, duties that often involve life or death situations. On the other hand, deputy court clerks do not tote a gun or carry a badge; they take notes and file evidence. Their work is generally route and involves very little discretion. Just observing them at work it would be difficult to distinguish between a deputy court clerk and a secretary. This is not to diminish the importance of the work performed by the deputy clerks of court, it is merely to point out that they look surprisingly like other public employees.

752 So.2d at 569, quoting Service Employees Int'l Union v. PERC, 720 So.2d 290, 291 (Fla. 5th DCA 1998).

The clear distinction between deputy sheriffs and employees, including municipal police officers, is graphically reflected by a litany of Florida Statutes. For example, deputy sheriffs must be bonded. §30.09, Fla. Stat. (1999). The sheriff is liable for the acts of his deputies. §30.07, §30.09(3), Fla. Stat. (1999). An authorized deputy may "raise the power of the county by calling by-standers or others to assist in quelling a riot or any breach of the peace …." §30.09(4)(f), Fla. Stat. (1999). Budget disputes between a county and its sheriff, including salaries for deputies, may be appealed to the cabinet sitting as the Administration Commission. §30.49, Fla. Stat. (1999). Section 30.15, Florida Statutes (1999), lists the "powers, duties and obligations" that shall be carried out by a sheriff or the sheriff's deputies, including: execution of all processes, writs, warrants, and other

papers directed to them within their counties, attendance at all terms of the circuit and county courts, execution of orders of the county commission, conservation of the peace, suppression of riots and unlawful assemblies, and apprehension without warrant of any person disturbing the peace.

Although subject to most provisions within the Police Officers' Bill of Rights, deputy sheriffs were specifically exempted from the provision establishing a complaint review board. §112.532(2), Fla. Stat. (1999). Moreover, as previously noted, when the Police Officers' Bill of Rights was amended to include deputy sheriffs, the law amending the statute provided that it should not be construed to limit the sheriff's discretion in disciplining or appointing deputies. §112.535, Fla. Stat. (1999). No such provision can be found relating to other law enforcement officers. Consequently, the PBA in this case has failed to provide sufficient justification for overruling twenty-two years of legal precedent beginning with the Murphy decision.

In this regard, Justice Overton's concurring opinion in Perez v. State, 620 So.2d 1256 (Fla. 1993), on the subject of stare decisis and adherence to legal precedent is instructional. In a search and seizure case, Justice Overton explained his concurrence with the majority opinion upholding the search based upon stare decisis even though he had

previously dissented when the same issue was initially decided by the court. Justice Overton observed:

> The doctrine of precedent is basic to our system of justice. In simple terms, it insures that similarly situated individuals are treated alike rather than in accordance with the personal view of any particular judge. In other words, precedent requires that, when the facts are the same, the law should be applied the same.

620 So.2d at 1259. With regard to issue of when a precedent should be overturned, Justice Overton relied upon the following passage from an article by United States Supreme Court Justice Stephens:

> The question whether a case should be overruled is not simply answered by demonstrating that the case was erroneously decided and that the Court has the power to correct its past mistakes. The doctrine of stare decisis requires a separate examination. Among the questions to be considered are the possible significance of intervening events, the possible impact of settled expectations and the risks of undermining public confidence in the stability of our basic rules of law. Such a separate inquiry is appropriate not only when an old rule is of doubtful legitimacy … but also when an old rule which was admittedly valid when conceived is questioned because of a change in the circumstances that originally justified it.

620 So.2d at 1259, quoting John P. Stevens, *The Lifespan of a Judge – Made Rule*, 58 N.Y.U.L. Rev. 1, 9 (1983).

Here, it cannot be said that the unanimous Murphy decision was without factual or legal basis. Nor have intervening events occurred to justify overruling Murphy. To the

contrary, the courts and legislature have without exception adhered to Murphy. Even though current members of the Court may have decided Murphy differently had they been sitting on the Court, it would be simply wrong to now ignore unambiguous legislative intent and replete state and federal precedent which relied upon and adopted Murphy. In order to promote the rule of law and stare decisis, Murphy must continue to be followed.

The PBA also relies heavily on this Court's decision in Chiles v. State Employees Attorneys' Guild, 734 So.2d 1030 (Fla. 1999), for the proposition that deputies cannot be denied the right to collectively bargain under Article 1, Section 6 of the Florida Constitution unless there is a compelling state interest. The PBA's reliance on Chiles is misplaced because, unlike the attorneys in that case, deputy sheriffs are not "employees" encompassed within the terms of Article I, Section 6.

The subject of collective bargaining is addressed in Article I, Section 6 as follows:

> 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. 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.

This section of the constitution was construed to grant public employees the right to collectively bargain in Dade County Classroom Teachers Ass'n, Inc. v. Ryan, 225 So.2d 903 (Fla. 1969).

The issue presented to the court in Chiles was whether the legislature could remove the right to collectively bargain from attorneys employed by the state. Whether such attorneys were covered by Article I, Section 6 was not an issue because it was undisputed that they were so covered. The issue confronting the Court was whether the proper test for excluding employees encompassed within Article I, Section 6 from coverage under Chapter 447, Part II, was by a rational basis or a compelling state interest. 734 So.2d at 1033. The Court adopted the later test stating:

> In short, the state did not demonstrate that a blanket ban on collective bargaining by public employees working as attorneys is the least onerous means of protecting the attorney-client relationships between the lawyers and the public entities that employ them.

734 So.2d at 1036 (emphasis added). The court went on to describe rights bestowed by Article I, Section 6 as follows:

> The people of this state foreclosed this debate in 1968 by adopting the current version of article I, section 6 of the Florida Constitution. That provision expressly applies to "employees" without limitations, except that public employees do not have right to strike.

734 So.2d at 1036.

In contrast, this case involves the issue of whether deputy sheriffs are "employees" under Article I, Section 6. Based upon this Court's decisions in Murphy and Ison, they are not encompassed within this constitutional provision.

Without belaboring the point, in Murphy this Court held that deputies are not public employees but rather they are officers. That same distinction was drawn by this Court in Ison with respect to the Florida Constitution. In Ison it was argued that Article III, Section 14 of the Florida Constitution does not apply to deputy sheriffs. This article provided:

> By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor: and there may be authorized for such boards as are necessary to prescribe the qualifications, methods for selection and tenure of such employees and officers. (emphasis added)

In holding that this provision authorized creation of a civil service system for deputy sheriffs, the Court did not identify deputies as "employees" but rather as officers "not elected or appointed by the governor." 372 So.2d at 434. Thus, this Court recognized that a constitutional provision, which speaks in terms of "employees," does not include deputy sheriffs. The distinction between officers and employees is also referenced in Article III, Section 8 of the Florida Constitution entitled "Ethics in Government." This section prohibits certain acts by "any public officer or employee." Art. II, §8(c), (d), Fla. Const.

Article I, Section 6 must be construed in light of the common law and decisional law that existed at the time of its adoption in 1968. Jenkins v. State, 385 So.2d 1356, 1357

(Fla. 1980); Meeks v. Johnson, 95 So. 670, 85 Fla. 248 (Fla. 1923). Thus, Article I, Section 6 must be construed in light of this Court's prior decision in Blackburn v. Brorein, 70 So.2d 293 (Fla. 1954), wherein this Court held that deputy sheriffs were not employees but rather were common law officers. Had the drafters of the 1968 constitution intended for deputy sheriffs to possess the right to collectively bargain, they could have easily added language to Article I, Section 6 to articulate such an intention. The absence of such language clearly indicates the drafters' intention to not provide such rights.

Finally, there has been no attempt to amend Article I, Section 6 after the First District Court of Appeal's decision in Brevard County PBA, Inc. v. Brevard County Sheriff's Dept., 416 So.2d 20 (Fla. 1st DCA 1982), which held that deputy sheriffs do not possess a constitutional right to collectively bargain. Neither the legislature nor the revision commission proposed an amendment to reverse this ruling by adding the word "officers" to Article I, Section 6.

In summary, nothing has changed in the twenty-two years since Murphy to warrant now overturning that decision. Indeed, the legislative history establishes that the construction based on Section 447.203, Florida Statutes, in Murphy comports with legislative intent. Moreover, deputy sheriffs do not possess the right to collectively bargain

under Article I, Section 6 of the Florida Constitution because that section speaks in terms of employees and not officers. Accordingly, Respondent, Sheriff of Brevard County, requests that this Court answer the certified question by holding that deputy sheriffs are categorically excluded from collective bargaining rights under Chapter 447.

THE DISTRICT COURT OF APPEAL ERRED IN DECLINING TO GRANT THE WRIT OF PROHIBITION

Assuming, arguendo, that this Court does not overturn its previous decision in Murphy v. Mack, 358 So.2d 822 (Fla. 1978), the only appropriate resolution of this case is a remand to the Fifth District Court of Appeal with instructions that it grant the writ of prohibition.

PERC's jurisdiction with regard to representation-certification petitions is limited to petitions in which an employee organization seeks to represent "public employees." §447.307, Fla. Stat. At the time the PBA filed its representation-certification petition in this case, deputy sheriffs were not public employees as defined in the statute. Murphy v. Mack, supra; Ison v. Zimmerman, supra; Brevard County PBA, Inc. v. Brevard County Sheriff's Dept., supra.

The District Court of Appeal denied the writ of prohibition based upon the assumption that this Court's opinion in Service Employees Int'l Union, Local 16 v. PERC, 752 So.2d 569 (Fla. 2000), effectively overruled Murphy with regard to deputy sheriffs. However, as set forth in Argument I herein, this Court in Service Employees stated that it would not extend the rationale in Murphy to deputy court clerks. It did not overrule Murphy.

It is well settled that lower tribunals in Florida must follow the pronouncements of the Florida Supreme Court unless or until those pronouncements are specifically overruled. State v. Dwyer, 332 So.2d 333 (Fla. 1976); Hoffman v. Jones, 280 So.2d 431, 433-34 (Fla. 1973). This is particularly true when the Florida Supreme Court has had an opportunity to overrule a prior decision but chooses not to do so. Government Employees Insurance Co. v. Stafstrom, 668 So.2d 631, 633 (Fla. 5th DCA 1996) (en banc), rev. denied, 677 So.2d 841 (Fla. 1996).

In this case, PERC acknowledged that Service Employees did not overrule Murphy by stating in its Notice of Sufficiency that the decision in Service Employees "cast doubt" with regard to the validity of Murphy. The decision by the Fifth District Court of Appeal stated, "We think the Service Employees case has substantially eroded the rationale of the Murphy case, but we are concerned that we may be in error in our reading of Service Employees." Williams v. Coastal Florida PBA, 765 So.2d 908, 909 (Fla. 5th DCA 2000). Consequently, both PERC and the Fifth District Court of Appeal had justifiable misgivings as to whether Service Employees overruled Murphy, and under those circumstances, the only appropriate action to take would have been to grant the writ of prohibition directing PERC to dismiss the PBA's representation-certification petition under the authority of

Murphy. The PBA then could have appealed the dismissal of its petition to the District Court of Appeal and ultimately to this Court based upon its claim that Murphy should be overruled.

In summary, if this Court decides not to overrule Murphy, this case should be remanded to the Fifth District Court of Appeal with instructions that it grant the writ of prohibition.

CONCLUSION

For the reasons stated herein the Respondent, Sheriff Philip B. Williams, respectfully requests this Court to answer the certified question by holding that deputy sheriffs do not have the right to collectively bargain. If the Court does so, it should remand this case back to the District Court of Appeal with directions that it grant Respondent's petition for writ of prohibition.

Respectfully submitted this 13th day of November, 2000.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Mail to JACK E. RUBY, Assistant General Counsel, Public Employees Relations Commission, Koger Executive Center, Turner Building, Suite 100, 2586 Seagate Drive, Tallahassee, Florida 32301-5032; GENE "HAL" JOHNSON, ESQUIRE, Florida Police Benevolent Association, Inc. 300 East Brevard Street, Tallahassee, Florida 32301, WILLIAM E. POWERS, JR., ESQUIRE, Powers, Quaschnick, Tischler, Evans & Dietzen, Post Office Box 12186, Tallahassee, Florida 32317; JAMES G. BROWN, ESQUIRE, Post Office Box 3108, Orlando, Florida 32802-3108, and ELLEN LEONARD, ESQUIRE, Post Office Box 3371, Tampa, Florida 33601, on this 13th day of November, 2000.

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PHILLIP P. QUASCHNICK, ESQUIRE