

IN THE SUPREME COURT OF FLORIDA

COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION, INC.,

Petitioner,

v.

Case No. SC00-1860

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

Respondent.

_____ /

INITIAL BRIEF OF PETITIONER
COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.

G. "Hal" Johnson, Esquire
Florida Bar No. 200141
300 East Brevard Street
Tallahassee, Florida 32301
Telephone: (850) 222-3329
Facsimile: (850) 561-8898

Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	5
ISSUE PRESENTED:	9

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

ARGUMENT:9

APPLICATION OF THIS COURT'S HOLDINGS AND RATIONALE IN ITS RECENT
SERVICE EMPLOYEES AND ATTORNEYS GUILD DECISIONS DICTATES THAT THE
COURT FIND DEPUTY SHERIFFS ARE NOT CATEGORICALLY EXCLUDED FROM
COLLECTIVE BARGAINING RIGHTS UNDER CHAPTER 447, PART II, FLORIDA
STATUTES.

CONCLUSION	26
CERTIFICATE OF SERVICE	27
STATEMENT OF TYPE STYLE	28
APPENDIX	29

TABLE OF AUTHORITIES

CASES

<u>Broward County Police Benevolent Association, Inc. v. Sheriff of Broward County</u> , 19 FPER ¶ 24196 (PERC 1993)	24
<u>Brown v. Neumann</u> , 188 F.3d 1289 (11 th Cir. 1999)	20
<u>Chiles v. State Employees Attorneys Guild</u> , 734 So.2d 1030 (Fla. 1999)	passim
<u>City of Boca Raton v. Mattef</u> , 81 So.2d 644 (Fla. 1956)	15, 16
<u>Escambia County Sheriff's Department v. Florida Police Benevolent Association, Inc.</u> , 376 So.2d 435 (Fla. 1 st DCA 1979) cert. denied, 389 So.2d 1109 (Fla. 1980)	22, 24
<u>Florida Police Benevolent Association, Inc. v. Escambia County Sheriff's Department</u> , 16 FPER ¶ 21035 (PERC 1989),	24
<u>Florida Police Benevolent Association, Inc. v. Florida Department of Management Services</u> , 24 FPER ¶ 29294 (PERC 1998)	19
<u>Florida Police Benevolent Association, Inc. v. State of Florida</u> , 14 FPER ¶ 19234 (PERC 1988)	19
<u>Hillsborough County Governmental Employees Association, Inc. v. Hillsborough County Aviation Authority</u> , 522 So.2d 358 (Fla. 1988)	6, 12, 17
<u>In the Matter of State of Florida</u> , 2 FPER 166 (PERC 1976)	19
<u>Ison v. Zimmerman</u> , 372 So.2d 431 (Fla. 1979)	passim
<u>Murphy v. Mack</u> , 341 So.2d 1008 (Fla. 1 st DCA 1977) rev'd 358 So.2d 822 (Fla. 1978)	passim
<u>Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission</u> , 752 So.2d 569 (Fla. 2000)	passim
<u>United Faculty of Florida v. Board of Regents</u> , 417 So.2d 1055 (Fla. 1 st DCA 1982)	15, 16

STATUTES

Chapter 447, Part II, Florida Statutes	passim
Sections 30.071-30.079, Florida Statutes	21
Section 447.201, Florida Statutes	13
Section 447.203(3), Florida Statutes	passim
Section 447.203(14), Florida Statutes	24
Section 447.307(2), Florida Statutes	3
Section 447.403, Florida Statutes	24
Sections 943.10(1) and (14), Florida Statutes	19

CONSTITUTION

Article I, Section 6, Florida Constitution	6, 9
Article III, Section 14, Florida Constitution	23

PRELIMINARY STATEMENT

The following abbreviations and references will be used throughout the text of Petitioner's brief:

Coastal Florida Police Benevolent Association, Inc: CFPBA.

Phillip B. Williams, Sheriff of Brevard County: Sheriff Williams.

Public Employees Relations Commission: PERC.

Record on Appeal: ROA at _____.

All references to the Florida Statutes will be to the 1999 version, unless otherwise noted.

For the Court's convenience, copies of the following cases are contained in the appendix to the brief:

- TAB 1 Williams v. Coastal Florida Police Benevolent Association Inc., ____ So.2d ____, 25 Fla. L. Weekly D2051, 2000 WL 1205626 (Fla. 5th DCA, Opinion August 25, 2000).
- TAB 2 Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, 752 So.2d 569 (Fla. 2000).
- TAB 3 Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999).

STATEMENT OF THE CASE AND FACTS

In mid-January, 2000, the Florida Supreme Court issued its decision in the case of Service Employees International Union Local 16, AFL-CIO v. Public Employees Relations Commission, 752 So.2d 569 (Fla. 2000). The decision resulted in a flourish of organizational activities for the purpose of collective bargaining among the deputy sheriffs in Florida.

¹ ROA at 114-115.

On February 16, 2000, the Coastal Florida Police Benevolent Association, Inc., filed a representation certification petition with the Public Employees Relations Commission seeking to be certified as the exclusive collective bargaining agent for a bargaining unit comprised of certain sworn personnel working for the Brevard County Sheriff's Office in the positions of deputy sheriff, field training officer, corporal and sergeant. ROA at 13-15. The petition excluded from the proposed bargaining unit non-sworn personnel for the Sheriff as well as sworn personnel in the positions of lieutenant, major, inspector, commander, chief deputy and sheriff. ROA at 14. The petition was accompanied by showing of interest statements signed by 165 of the estimated 372 deputies included in CFPBA's proposed bargaining unit.

² ROA at 14.

PERC issued a notice of sufficiency with respect to CFPBA's representation petition

¹ As noted by PERC, there are seven other representation certification petitions pending before it at the present time involving literally thousands of deputy sheriffs. ROA at 114-115.

² Section 447.307(2), Florida Statutes, requires a representation certification petition be accompanied by showing of interest statements signed by 30 percent of the individuals in the proposed bargaining unit sought to be represented by the petitioning organization.

on February 18, 2000. ROA at 17-18. It found the petition was sufficient on its face and ordered an evidentiary hearing to resolve factual and legal disputes concerning the petition.

ROA at 17 and 40-41. PERC's notice of sufficiency specifically noted:

The Florida Supreme Court's recent opinion in *Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, et al.*, No. SC 94-427 (Fla. January 13, 2000), casts doubt as to the vitality of its prior decision in *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978), holding that deputy sheriffs are not public employees. Therefore, we find this petition to represent deputy sheriffs for the purpose of collective bargaining sufficient in order to develop a record as to the deputies' duties and responsibilities vis-à-vis the sheriff himself.

ROA at 17.

Subsequently, Sheriff Williams filed a petition for writ of prohibition with the Fifth District Court of Appeal. ROA at 1-12. The sheriff sought a writ prohibiting PERC from exercising jurisdiction over the CFPBA petition as it related to "individuals appointed as deputy sheriffs." ROA at 6. The sheriff argued that the case of Murphy v. Mack, 358 So.2d 822 (Fla. 1978), controlled the matter and PERC lacked jurisdiction to proceed to an evidentiary hearing. ROA at 6.

On August 25, 2000, the district court issued its opinion denying Sheriff Williams' petition and certifying the legal issue raised by the petition to this Court, stating:

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*. Since this is a case of great public importance and there are several similar cases pending before PERC, we certify to the Florida Supreme Court the following question:

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

We therefore deny the writ, but grant the stay of the proceedings below to enable the parties to seek review in the Florida Supreme Court.

ROA at 148.

Following invocation of the court's discretionary jurisdiction by CFPBA, this Court deferred accepting jurisdiction of the case and directed the parties to file briefs on the merits of the case. ROA at 156.

SUMMARY OF THE ARGUMENT

This Court's general holding in the case of Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, 752 So.2d 569, 573 (Fla. 2000), that all of Florida's public workers, regardless of job title, enjoy the right to collectively bargain is correct. The legal analysis and rationale utilized by the Court in the case is also correct, from both a common sense and constitutional perspective. Applying the Service Employees and other recent court decisions relating to the right to collective bargaining to the certified question posed by the district court leads to only a single conclusion: deputy sheriffs are not categorically excluded from collective bargaining rights under Chapter 447, Part II, Florida Statutes.

In the Service Employees case, the Court confronts for the second time in a year, a fundamental question regarding the right to collectively bargain: which of Florida's public workers are guaranteed the right to collectively bargain? See also, Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999). Its answer is clear and unequivocal: all individuals who work as employees in the "ordinary sense of the word" are entitled to collectively bargain. 752 So.2d at 753. The only exceptions to this general standard are managerial level employees, as well as other limited specialized workers,

whose exclusion from collective bargaining is warranted by a compelling state interest. 752 So.2d at 753 and Chiles v. State Employees Attorneys Guild, 734 So.2d at 1033-1034.

The Court's rationale in both Service Employees Attorneys Guild cases is simple, straightforward and constitutionally founded. Collective bargaining is a fundamental constitutional right applicable to all Florida workers, both public and private. Article I, Section 6, Florida Constitution. As such, it applies broadly to all persons who work as employees in the ordinary sense of the word and may only be denied or restricted based upon a compelling state interest implemented in the least intrusive means possible. 752 So.2d at 571 and 734 So.2d at 1033-1034. See also, Hillsborough County Governmental Employees Association, Inc. v. Hillsborough County Aviation Authority, 522 So.2d 358, 362 (Fla. 1988).

In Service Employees, this Court recognizes that, today, the deputies of Florida's constitutional officers resemble "public employees" in the ordinary sense of the word. 752 So.2d at 573. In fact, the Court has specifically recognized deputy sheriffs are employees in the commonly understood meaning of the term. Ison v. Zimmerman, 372 So.2d 431, 436 (Fla. 1979). Clearly, deputy sheriffs are public workers, regardless of job title, entitled to collectively bargain under application of the Service Employees rationale and are not categorically excluded from collective bargaining under Chapter 447, Part II,

Florida Statutes.

Furthermore, the decision and rationale of Murphy v. Mack, 358 So.2d 822 (Fla. 1978), offer no basis for categorically denying this valuable constitutional right to Florida's deputy sheriffs. The rationale of Murphy does not meet the exacting standard of review, i.e. strict judicial scrutiny, for any legislative or judicial decision, which seeks to abridge the right to collectively bargain.

As this Court correctly notes in Service Employees, the Murphy case reflects, essentially, an unwarranted precisionist's review and application of the constitutional right to collectively bargain which exalts form over substance. 752 So.2d at 573. Neither the technical distinctions in terminology cited, nor the cases relied upon in Murphy establish a compelling state interest for denying deputy sheriffs the right to collectively bargain which is presently enjoyed by the rest of Florida's public workers and law enforcement officers. 752 So.2d at 573.

The Coastal Florida Police Benevolent Association, Inc., requests the Florida Supreme Court accept jurisdiction of this case and find that deputy sheriffs in Florida are not categorically excluded from having collective bargaining rights under Chapter 447, Part II, Florida Statutes.

ISSUE PRESENTED

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

ARGUMENT

APPLICATION OF THIS COURT'S HOLDINGS AND RATIONALE IN ITS RECENT SERVICE EMPLOYEES AND ATTORNEYS GUILD DECISIONS DICTATES THAT THE COURT FIND DEPUTY SHERIFFS ARE NOT CATEGORICALLY EXCLUDED FROM COLLECTIVE BARGAINING RIGHTS UNDER CHAPTER 447, PART II, FLORIDA STATUTES.

In the past year, this Court has issued two significant decisions involving the right to collectively bargain, which is guaranteed to Florida's public workers by Article I, Section 6, Florida Constitution. The first case, Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999), holds that persons employed as attorneys by the State of Florida cannot be categorically denied the right to collectively bargain under Chapter 447, Part II, Florida Statutes. The Court finds that a statute imposing such a blanket ban on collective bargaining by the State's attorneys is unconstitutional because it does not serve a compelling state interest in the least intrusive means possible. *Id.* at 1036.

Approximately seven months later, the Court issued a second decision involving the right of Florida's public workers to engage in collective bargaining. The second case, Service Employees International Union, Local 16, AFL-CIO v. Public

Employees Relations Commission, 752 So.2d 569 (Fla. 2000), finds specifically that Florida's deputy court clerks are public employees within the contemplation of Section 447.203(3), Florida Statutes. *Id.* at 569.

More importantly, the Court uses the decision to establish a "bright line" test for determining which of Florida's public workers enjoy collective bargaining rights. *Id.* At 573-574. The test is whether an individual works as an employee in the "ordinary sense of the word." If so, he or she is entitled to collectively bargain. *Id.* at 573-574. In so holding, the Court severely criticizes, if not implicitly reverses, an earlier decision rendered in the case of Murphy v. Mack, 358 So.2d 822 (Fla. 1988), finding that deputy sheriffs are not "public employees" under Chapter 447. *Id.* at 573-574.

The present case is the logical extension of the Court's rationale in the Attorneys Guild and Service Employees decisions. It places the "blanket ban" against collective bargaining by Florida's deputy sheriffs, squarely before the Court.

It is the position of CFPBA that the Court's holdings and rationale in Attorneys and Service Employees dictate a single, logical and constitutional result in the present case: a finding that deputy sheriffs are not categorically excluded from collective bargaining rights under Chapter 447, Part II, Florida Statutes.

A. The Attorneys Guild and Service Employees Cases

The Attorneys Guild and Service Employees cases reflect the current law with respect to the ability of the legislature or judiciary to deny Florida's public workers the right to collectively bargain. While the holdings in the cases are significant, of equal significance is the fact that each case reflects a more legally refined and common sense approach to this fundamental right, not found in earlier decisions of the Court.

As previously stated, the Attorneys Guild case deals with an attempt by the legislature to categorically exclude the attorneys working for the State of Florida from the right to collectively bargain. 734 So.2d at 1032. The legislature attempted to achieve this "blanket ban" against bargaining by excluding the attorneys from the definition of "public employee" as defined in Section 447.203(3). *Id.*

The significance of the decision rests not only in the Court's holding that such a prohibition is unconstitutional, but also, in the standard of review adopted by the Court to be used in analyzing statutory prohibitions to bargaining imposed by the legislature. *Id.* at 1033. The standard is one of the strict judicial scrutiny:

A statute abridging the right of state employees to bargain is consonant with the constitution only if it vindicates a

compelling state interest by minimally necessary means.

734 So.2d at 1033 (quoting lower court opinion with approval). See also, Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority, 572 So.2d 358, 362 (Fla. 1988). This standard is a refinement, and a more strict standard of review than previously utilized by the courts. *Id.* at 1033

The legal principle to be drawn from the Attorneys Guild decision is that a blanket ban (or categorical exclusion) prohibiting a class of Florida's public workers from collective bargaining is unconstitutional unless it "vindicates a compelling state interest by minimally necessary means."

The Service Employees case provides additional refinement to this area of the law by providing a broad, common-sense interpretation of the term "public employee" found in Section 447.203(3). Instead of confronting a specific legislative prohibition to bargain like the one in reviewed in the Attorneys Guild case, the Court in Service Employees confronts an implicit judicial prohibition to collectively bargain imposed on Florida's "deputy" court clerks and premised on the historical status of Florida's "deputies," espoused in the case of Murphy v. Mack, 358 So.2d 822 (Fla. 1978).

In Service Employees, the Court rejects job-title based distinctions and historical premises for denying Florida's

public workers the constitutional right to collectively bargain. 752 So.2d at 572-573. Instead, the Court uses a common-sense test to determining whether or not a worker constitutes a "public employee." The test is simply whether an individual works for an employer in the "ordinary sense of the word." *Id.* 752 So.2d at 573. The Court supports this broad, inclusive interpretation of Section 447.203(3), by reliance on Article I, Section 6, Florida Constitution, as well as the legislative statement of intent set forth in Section 447.201, Florida Statutes. *Id.* at 570-571.

Significantly, the Court confronts squarely the Murphy decision rejecting it as exalting form over substance in "contravention of the plain language and broad purpose" of Chapter 447, Part II. *Id.* at 573. The Court discredits the technical distinctions relied on in Murphy to support denying deputy sheriffs the right to collectively bargain. *Id.* at 573. Furthermore, it notes that the cases relied on in Murphy do not involve the same facts or policy issues raised by the right to collectively bargain. *Id.* at 573.

Refusing to follow the technical, precisionist approach found in Murphy, the Court in Service Employees adopts a bright line, common-sense approach to the issue of bargaining rights:

Based on the foregoing, we hold that where the collective bargaining rights of public employees are in issue, the plain language of chapter 447 controls and applies across the board to all public workers, regardless of

job title. The abiding bright line for determining coverage under part II is the simple "public employee/managerial employee" dichotomy set forth in section 447.203. If an individual works as an employee in the ordinary sense of the word under the criteria set forth in section 447.203(3), he or she is entitled to the protections of part II. On the other hand, if an individual works as a managerial level employee under the criteria set forth in section 447.203(4) or falls within any of the other exceptions listed in section 447.203(3), the protections of part II are inapplicable.

Id. at 573-574.

The legal principle to be drawn from Service Employees is that the determination of coverage under Chapter 447, Part II, does not rest on an individual's job title or other technical terms, but instead, on whether an individual works as an employee in the "ordinary sense of the word." *Id.* at 573.

**B. Deputy Sheriffs are Public Employees
Within the Meaning of Article I, Section 6**

Application of the legal principles utilized by the Court in the Service Employees and Attorneys Guild decisions leads to only one answer to the question certified by the district court: deputy sheriffs are not categorically excluded from having collective bargaining rights under Chapter 447, Part II, Florida Statutes. This answer is dictated by the fact deputy sheriffs are employees in the ordinary sense of the word. See, Ison v. Zimmerman, 372 So.2d 431, 436 (Fla. 1979).

As recognized by the First District Court of Appeal in the

case of United Faculty of Florida v. Board of Regents, 417 So.2d 1055 (Fla. 1st DCA 1982), Article I, Section 6 applies to employees in the common ordinary meaning of the term which was defined in the case of City of Boca Raton v. Matfef, 81 So.2d 644, 647 (Fla. 1956):

An employee is one who for consideration agrees to work subject to the orders and direction of another, usually for regular wages but not necessarily so, and further, agrees to subject himself at all times during the period of service to the lawful order and directions of the other in respect to the work done.

417 So.2d at 1058.

³ Clearly, today's deputy sheriffs meet the commonly understood definition of "employee" defined by the Court in Matfef.

⁴

Additionally, in the case of Ison v. Zimmerman, *supra*, this Court held that "in the common meaning of the word 'employee', a deputy sheriff is an employee of the sheriff, or a

³ The *United Faculty of Florida* case involved a legislative prohibition against collective bargaining by graduate assistants working for the State universities. 417 So.2d at 1057. The district court employed an analysis strikingly similar to that found in the *Attorneys Guild* and *Service Employees* decisions in finding such a prohibition unconstitutional. *Id.* at 1058-1059. Ironically, this same type of analysis was utilized by the district court in the *Murphy* case before the decision was overturned by this Court. See, *Murphy v. Mack*, 341 So.2d 1008, 1009 (Fla. 1st DCA 1977) rev'd 358 So.2d 822 (Fla. 1978).

⁴ The Court in *Service Employees* tacitly acknowledges the employee status of deputy sheriffs finding that deputy sheriffs work for a sheriff in the same manner that a municipal police officer works for a police chief. 752 So.2d at 573, fn. 9.

person whose services are engaged and recompensed by the sheriff.” 372 So.2d at 436. Thus, even this Court has acknowledged that deputy sheriffs are employees, and the historical terminology related to the term “deputy sheriff” or “officer” is largely a precisionist refinement upon the common meaning of “employee”. 372 So.2d at 436.

Simply put, deputy sheriffs are public workers or employees in the ordinary sense of the word. Under the “bright line” test announced by the Court in Service Employees, deputy sheriffs enjoy the right to collectively bargain and the protections of Chapter 447, Part II, unless they are managerial level employees, fall within other exceptions listed in Section 447.203(3), or there is a compelling state interest, which warrants depriving them of their constitutional right to bargain.

C. Murphy Rationale Cannot Pass Compelling State Interest Test

As recognized in the Hillsborough County Governmental Employees case, the compelling state interest test is difficult to meet under any circumstances. 522 So.2d at 362. This is especially true when the “regulation” of the right to collective bargaining is the complete abridgement thereof for an entire class of public workers. Attorneys Guild, 734 So.2d at 1034. The rationale of Murphy does not satisfy the compelling state interest test nor offer the Court a basis for denying deputy sheriffs the right to collective bargaining.

Without completely reanalyzing the Service Employees decision, it is fair to characterize it as a plain rejection of the Murphy rationale. The Court is extremely candid in its assessment of the Murphy decision:

The Court in Murphy appears to have exalted form over substance in contravention of the plain language and broad purpose of the Act. The fact that deputy sheriffs are said to be “appointed” rather than “employed” is of little import under chapter 447—the definition of “public employee” in section 447.203(3) draws no such distinction. As for the cases that the Court relied on in Murphy, none involved the same facts or policy concerns that were in issue in Murphy. Further, the fact (asserted by the Clerk) that the legislature has not revisited chapter 447 in the wake of Murphy is not sufficient reason to extend that holding to deputy court clerks

in contravention of the plain language and broad purpose of part II.
[footnote omitted]

752 So.2d at 573.

Having rejected the Murphy rationale as a basis for denying Florida's public workers the right to collectively bargain, does Murphy continue to offer a compelling state interest for denying deputy sheriffs in Florida the right to bargain? The answer is no.

An examination of the Murphy decision reveals that it is premised on three historical concepts: (1) deputy sheriffs are "officers" and not employees; (2) deputy sheriffs can, in theory, act as the "alter ego" of the sheriff; and (3) the sheriff must maintain "absolute control over the selection and retention of deputies." 358 So.2d at 825 and cases cited therein. None of these historical concepts offer a compelling state interest for denying deputy sheriffs the right to collectively bargain.

Certainly, deputy sheriffs are "officers," but as the Court explained in Service Employees that title and responsibilities which accompany it are not determinative of the right to collectively bargain. 752 So.2d at 572-573. All of the State's other law enforcement "officers", correctional "officers", and municipal police "officers" enjoy the right to collectively bargain. Ironically, deputy sheriffs are the only certified "law enforcement officers" as the term is defined in Sections 943.10(1) and (14), Florida Statutes, that do not enjoy the right to collectively bargain.

⁵ Clearly, a deputy sheriff's status as an "officer" offers no compelling state interest for being

⁵ Under current PERC caselaw, State law enforcements, correctional officers, correctional probation as well as county and municipal police officers engage in collective bargaining. See e.g., *In the Matter of State of Florida*, 2 FPER 166 (PERC 1976) (establishing bargaining unit of all state law enforcement officers); *Florida P.B.A. v. State of Florida*, 14

denied the right to collectively bargain especially when the remainder of the State's other law enforcement officers enjoy this valuable right.

The next concept, the deputy sheriff as the Sheriff's "alter ego," offers no basis for denying deputy sheriffs the right to collectively bargain. The Court explored this concept fully in Service Employees and rejected it as a basis for denying "deputies" of Florida's constitutional officers the right to collectively bargain. 752 So.2d at 572-573. Certainly, the logic of such analysis extends equally to deputy sheriffs.

Furthermore, the Sheriff's "alter ego" concept has been reviewed in other legal contexts and been rejected. Recently, in the case of Brown v. Neumann, 188 F.3d 1289, 1291 (11th Cir. 1999) the Eleventh Circuit Court of Appeal had occasion to review the concept that "the Deputy Sheriff is the Sheriff's alter ego" in Florida for purposes of liability in a civil rights action brought under Title 42 U.S.C. § 1983. The plaintiff contended that the sheriff was liable for an alleged unjustified arrest by one of his deputy sheriffs since the deputy is the "alter ego" of the sheriff. *Id.* at 1291. The court rejected the plaintiff's "alter ego" theory as being "contrary to common sense," noting that a deputy sheriff is simply under the sheriff's chain of command. *Id.*

It is equally clear that Florida's Legislature has tacitly recognized the demise of this "alter ego" concept as it relates to deputy sheriffs in modern society. In recent legislation it, too, has distinguished between "regular" deputy sheriffs and those deputy sheriffs who perform

FPER ¶ 19234 (PERC 1988) (establishing bargaining unit of state correctional officers and correctional probation officers). Even the special agents working for the Florida Department of Law Enforcement enjoy collective bargaining rights. See, *Florida P.B.A. v. Florida Department of Management Services*, 24 FPER ¶ 29294 (PERC 1998).

“managerial, confidential and policymaking duties.” See, Section 30.072(2), Florida Statutes.

6

Simply put, the concept that deputy sheriffs serve as the sheriff’s “alter ego”, while historically interesting, cannot offer a basis for denying today’s Florida deputy sheriffs the constitutional right to collectively bargain.

The final concept found in the Murphy case which can arguably be asserted as a basis for denying deputy sheriffs the right to collectively bargain is the need for the sheriff to maintain “absolute control over the selection and retention of deputies.” The simple response to this argument is that it has been considered and rejected by Florida courts in both a civil service context, Ison v. Zimmerman, supra, and a collective bargaining context, Escambia County Sheriff’s Department v. Florida Police Benevolent Association, Inc., 376 So.2d 435

⁶ In 1995, the Florida Legislature adopted a law which gives regular deputy sheriffs security from termination or separation from their position for political reasons. *See*, Sections 30.071-30.079, Florida Statutes. Section 30.072(2), defines a deputy sheriff to include:

(2) “Deputy sheriff” means a law enforcement officer appointed by the sheriff and certified under chapter 943. The term does not include a person who performs managerial, confidential, or policymaking duties. Managerial, confidential, and policymaking appointees who are not covered by this act include the undersheriff, chief deputy, director, legal advisor, sheriff’s personal secretary or administrative assistant, or members of the sheriff’s personal staff who report to or work under the direct supervision of the sheriff or who assist the sheriff in the formulation of general or special orders or in the preparation of the fiscal year budget, or appointees whose duties primarily involve the management or operation of the sheriff’s office or a department or subdivision of that office.

Interestingly, this is the same distinction drawn by the Court in *Service Employees*.

(Fla. 1st DCA 1978) cert. denied 389 So.2d 1109 (Fla. 1980).

The Ison case involved a challenge by the Sheriff of Brevard County to a special act creating a civil service system for employees of the sheriff, including deputy sheriffs. The sheriff argued that civil service protection for his deputy sheriffs would improperly interfere with the absolute control of the sheriff over his choice of deputies. This Court rejects this argument, stating:

We may dispose summarily of appellee's related contention that deputy sheriffs should not be protected by civil service. Appellee contends that deputies historically have been considered not employees but officers, imbued with some degree of sovereign power of the sheriff's office. Therefore, Appellee concludes, a sheriff should have absolute control over his choice of deputies. However, we decline to approve judicially such a sweeping view of the sheriff's duties to retain his deputies. For this view would obviously contradict both: (1) the spirit of article III, section 14, the constitutional mandate for the establishment of civil service for "employees and officers" and (2) the clear legislative intent in section 30.53, with its specific exception to the independence of the sheriff's duties in furtherance of civil service systems.

372 So.2d at 435. Effectively, this Court finds the enactment of Article III, Section 14 of the 1968 Florida Constitution overrules the absolute control argument to the extent it concludes that a civil service system for deputies would not unconstitutionally restrict the duties of the office of sheriff. Once again, the logic of such analysis extends equally to the deputy sheriffs.

The Ison decision is fatal to the absolute control argument as it relates to the right to collectively bargain. Clearly, if the employment protections imposed by a civil service system on a sheriff's control of his deputies are not unlawful, then neither can similar employment protections achieved through the process of collective bargaining negotiations be unlawful.

⁷ In fact, the First District Court of Appeal in the case of Escambia County Sheriff's Department v. Florida Police Benevolent Association, Inc., 376 So.2d at 436, utilizes the Ison decision to reject a claim by the sheriff of Escambia County that a special act, granting deputy sheriffs in Escambia County the right to both civil service and collective bargaining, does not contravene the common law status of deputies.

The fact is that some deputy sheriffs already collectively bargain with their sheriffs without apparent problem. See, Florida Police Benevolent Association, Inc. v. Escambia County Sheriff's Department, 16 FPER ¶ 21035 (PERC 1989), and Broward County Police Benevolent Association, Inc. v. Sheriff of Broward County, 19 FPER ¶ 24196 (PERC 1993). While most public employers would rather not bargain with their employees, the Florida Constitution grants such right to Florida public workers. A sheriff's "perceived" problem with the collective bargaining process is no different than those of every other Florida public employer. Certainly, such "perceived" concerns do not rise to the level of a compelling state interest, justifying the denial of a constitutional right. If they did, then there would be no collective bargaining for any of Florida's public workers.

⁷ This is especially true since collective bargaining negotiations do not require the parties to the negotiations reach agreement on any specific proposal. Section 447.203(14), Florida Statutes. Where agreement cannot be reached, disputed issues are ultimately resolved by the public employer. See, Section 447.403, Florida Statutes.

CONCLUSION

Based upon the foregoing discussion and analysis, and in light of the Court's recent pronouncement in the Attorneys Guild and Service Employees cases, the Coast Florida Police Benevolent Association, Inc., urges the Court to answer the question certified to it by the district court in the negative and find that deputy sheriffs in Florida are not categorically denied the right to collectively bargain under Chapter 447, Part II, Florida Statutes.

DATED this 16th day of October, 2000.

Respectfully submitted,

G. "HAL" JOHNSON, Esquire
Florida Bar No. 200141
Attorney for Coastal Florida Police
Benevolent Association, Inc.
300 East Brevard Street
Tallahassee, Florida 32301

• • • • •
• • • • • (800) 733-3722, ext. 406

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of Petitioner, has been furnished by mail, to PHILLIP P. QUASCHNICK, Esquire, LEONARD J. DIETZEN, III, Esquire, and WILLIAM E. POWERS, JR., Attorneys for Phillip B. Williams, Post Office Box 12186, Tallahassee, Florida 32317-2186; JACK E. RUBY, Assistant General Counsel, Public Employees Relations Commission, 2586 Seagate Drive, Turner Building, Suite 100, Tallahassee, Florida 32301-5032; ELLEN LEONARD, Esquire, Attorney for Cal Henderson, Sheriff of Hillsborough County, P.O. Box 3371, Tampa, Florida 33601; and to JAMES G. BROWN, Esquire and DOROTHY F. GREEN, Esquire, Attorneys for Robert E. Newmann, Sheriff of Palm Beach County, P.O. Box 3108, Orlando, Florida 32802-3108, this 16th day of October, 2000.

Of Counsel

STATEMENT ON TYPE STYLE

I hereby certify the Initial Brief of the Petitioner, COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., has been typed in Courier New 12 point, a font that is not proportionately spaced.

DATED this 16th day of October, 2000.

Respectfully submitted,

G. "HAL" JOHNSON, Esquire
Florida Bar No. 200141
Attorney for Coastal Florida Police
Benevolent Association, Inc.
300 East Brevard Street
Tallahassee, Florida 32301
(800) 733-3722, ext. 406

IN THE SUPREME COURT OF FLORIDA

COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION, INC.,

Petitioner,

v.

Case No. SC00-1860

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

Respondent.

/

**APPENDIX TO
INITIAL BRIEF OF PETITIONER
COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.**

- TAB 1 Williams v. Coastal Florida Police Benevolent Association Inc., ____ So.2d ____, 25 Fla. L. Weekly D2051, 2000 WL 1205626 (Fla. 5th DCA, Opinion August 25, 2000).
- TAB 2 Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, 752 So.2d 569 (Fla. 2000).
- TAB 3 Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999).

G. "Hal" Johnson, Esquire
Florida Bar No. 200141
300 East Brevard Street
Tallahassee, Florida 32301
Telephone: (850) 222-3329
Facsimile: (850) 561-8898

Attorney for Petitioner