

STATE OF FLORIDA
FLORIDA SUPREME COURT
CASE NO. SC01-765

THE FLORIDA SENATE; THE
FLORIDA HOUSE OF REPRESENTATIVES;
JOHN MCKAY, as President of the Florida
Senate; TOM FEENEY, as Speaker of the
Florida House of Representatives; STATE
SENATOR RODOLFO GARCIA; and
STATE REPRESENTATIVE FREDERICK
C. BRUMMER,

Petitioners,

v.

FLORIDA PUBLIC EMPLOYEES
COUNCIL, AFSCME,

Respondent.

**BRIEF OF AMICUS CURIAE,
FLORIDA AFL-CIO**

—

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Section 447.303, Florida Statutes, 1999	passim
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STATEMENT OF THE CASE

The Florida AFL-CIO, not a party to the proceeding below, adopts the statement of the Case and Statement of the Facts presented by Respondent.

SUMMARY OF ARGUMENT

1. The rights protected by Section 447.403, Florida Statutes, are part of a scheme to carry out the rights guaranteed by Article I, Section 6 of the Florida Constitution. Petitioners acted in disregard of those rights.

2. Petitioners were obliged to comply with the lower court's order absent a showing that the order was void. Accordingly, in the absence of such a showing the writ of prohibition should be dismissed.

3. The lower court's order did not interfere with the legislature's ability to carry out its legislative functions. Rather, the legislature was being asked to adhere to the rules and procedures it fashioned itself in enacting Section 447.403.

4. The lower court acted to protect the due process rights of AFSCME. Petitioners flagrantly disregarded those rights when they scheduled a legislative hearing to resolve bargaining issues at impasse before receiving the special master's report and recommendations.

5. Temporary delay in a committee hearing does not amount to a First Amendment violation. The temporary delay of such a hearing is merely a reasonable regulation of speech mandated by the concerns the legislature expressed when enacting Section 447.203.

ARGUMENT

The Rights at Stake in These Proceedings Are of Constitutional Import.

It goes without saying that the interests at stake in these proceedings are substantial, representing the constitutional rights of thousands of citizens of this state who are employed by the state of Florida. These rights were obtained by action of the citizens of the state of Florida when the 1968 constitutional amendments were voted on and adopted. It took another six years of both judicial and legislative work to bring about a mechanism to enforce these rights. See *e.g.*, *Dade County Classroom Teachers Association, Inc. v. Legislature*, 269 So.2d 684, 685 (Fla. 1972); *Dade County Classroom Teachers Association, Inc. v. Ryan*, 225 So.2d 903, 905 (Fla. 1969). Now almost 30 years later, this court is faced with a dispute that could unravel or make meaningless the rights of state employees.

Chapter 447, Part II implements the rights guaranteed to public employees by Article I, Section 6 of the Florida Constitution. These include the right to engage in meaningful collective bargaining. Without the statutory impasse scheme spelled out in

Section 447.303, Florida Statutes, state employees cannot obtain the rights of Article I, Section 6.

Petitioners actions in violating §447.403 constitute a thinly disguised assault on the constitutional right of state employees to bargain collectively. Section 447.403 was adopted pursuant to Article I § 6 of the Florida Constitution, which provides that the right to bargain collectively is enjoyed by all persons in Florida. As such, the committee hearing at issue in this case is no ordinary committee hearing but a critical part of the collective bargaining process to which petitioners are a party. A premature hearing, a meaningless or a truncated hearing constitutes a deprivation of the constitutional right of state employees to bargain collectively. In the instant case, petitioners sought to convene a hearing that would render the special master's process a nullity.

When the state violates § 447.403, it must expect that the courts will enforce those procedures that the legislature itself agreed to impose upon itself in furtherance of a constitutional right. Without judicial enforcement, the constitutional and statutory guarantees of the right to bargain collectively would be illusory. The inherent authority of this Court to enforce constitutional rights such as Article I § 6 was recognized by this court in *Dade County Classroom Teachers Association, Inc. v. Legislature*, 269 So.2d 684 (1972). In *Locke v. Hawkes*, 595 So.2d 32 (1992), this Court again

recognized its power to determine whether a legislative enactment was applicable to the legislature.

Absent a Showing that the Lower Court Order Was Void at the Time It Was Issued, the Petitioners Must Obey the Court's Order.

The first issue the Court must decide is under what circumstances can a person, albeit a member of Florida's Legislature, ignore an order of a state court. In this instance, the order of the Circuit Judge, Judge Smith, was reportedly received by the Petitioners and, without reply or appearance, ignored by the Petitioners.¹ Under these circumstances, it is not surprising that the Circuit Court Judge issued the show cause order that is the subject of this pending dispute.

As a general rule, absent a showing that the lower court's order is "transparently invalid or has only a frivolous pretense to validity," the lower court's order must be obeyed so as to permit an "orderly review" by the court. *See Sandstrom v. State of Florida*, 309 So. 2d. 17, 20, *cert. dismiss'd*, 336 So.2d. 572 (Fla. 1976), citing *Walker v. Birmingham*, 388 U.S. 307, 315, 87 S.Ct. 1824, 1829 (1967). Without a finding that the order of the lower court was so defective to warrant complete disregard, this Court should dismiss the pending writ of prohibition and return this case to the lower court to proceed on the merits.

¹The undersigned obtained the pleadings and other lower court papers from the Leon County Clerk of Court web site.

The Lower Court's Order Did Not Violate the Separation of Powers Doctrine

Amicus Florida AFL-CIO fully supports the position taken by the Florida Public Employees Council, AFSCME. The lower court properly issued a temporary restraining order to assure that no legislative hearing occurred until petitioners complied with specific procedures enacted by the legislature to resolve bargaining impasses between the state and its employees. Its actions did not interfere with principle of separation of powers so much as assure adherence to procedural requirements that the legislature itself adopted in enacting § 447.403, Florida Statutes.

Accordingly, there is no issue of the legislature's being required to legislate when it declines to do so. Nor is there an issue of the legislature's being required to adhere to rules and procedures in enacting legislation fashioned by another branch of government. Rather, the legislature is being asked to adhere to the rules and procedures it fashioned itself in enacting the aforementioned statute.

The Lower Court Properly Enjoined a Committee Hearing That Violated Due Process

Amicus also agrees with AFSCME that the hearing in question is quasi-judicial. The 70,000 AFSCME members have an absolute right to proper notice and an opportunity to be heard. Petitioners flagrantly disregarded that right when they scheduled a statutory legislative impasse resolution hearing to resolve bargaining issues at impasse before even receiving the special master's report and recommendation.

Therefore, the overarching constitutional concern of the Court must be this flagrant denial of due process and not, as petitioners would have it, the violation of the doctrine of separation of powers.

There Was No Deprivation of Free Speech

Finally, petitioners' First Amendment argument has no merit. The temporary delay of a committee hearing is merely a reasonable regulation of speech mandated by the concerns the legislature itself expressed when enacting §447.403. The delay of a quasi-judicial hearing to further the requirements of the applicable statute and to afford the parties the statutorily required opportunity to "discuss" the recommendations, and an opportunity to fully prepare and participate does not deny free speech but furthers due process.

Conclusion

As a public employer, the legislature must comply with the statutory requirements that it enacted itself to further Article I § 6. It is not above the law with regard to the statutory requirements for the resolution of impasses in collective bargaining. Furthermore, as the lower court's injunction did not violate the separation of powers doctrine, petitioners have acted at their peril by refusing to honor an injunction until such time as it is dissolved or reversed on appeal. *See Estate of Coveney v. Coveney*, 324 So.2d 681 (Fla. 4th DCA 1976).

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was sent via overnight mail to Ben Patterson, 315 Beard Street, Tallahassee, Florida, 32315, Barry Richards, Esq., 101 E. College Avenue, Tallahassee, Florida 32301; William N. Meggs, Esq., State Attorney, Second Judicial Circuit, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, Florida 32301, The Honorable L. Ralph Smith, Circuit Judge, Leon County Courthouse, 301 S. Monroe Street, Tallahassee, Florida 32301; Charles Canady, Esq., General Counsel, Executive Office of the Governor, Room 209, the Capitol, Tallahassee, Florida 32399-1050; and Thomas E. Warner, Esq., Solicitor General, The Capitol – PL01, Tallahassee, Florida 32399-1050 on April 16, 2001.

CERTIFICATION OF COMPLIANCE WITH RULE 9.210

The undersigned hereby certifies that this response is computer generated in Times New Roman 14 point font, complying with Rule 9.210(a)(2), Fla.App.P.

Respectfully submitted,

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