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.
_____/

RESPONSE OF RESPONDENT TO EMERGENCY PETITION FOR WRIT OF PROHIBITION

The Respondent here, Florida Public Employees Council 79, AFSCME, representing 70,000 state workers and their families, hereafter referred to as "FPEC," hereby responds to the petition filed against it and against the Honorable L. Ralph Smith for a writ of prohibition. Although a temporary restraining order was entered in the case below on April 3, 2001, none of the defendants, here the Petitioners, moved at any time thereafter to dissolve the restraining order against them.

A petition for a writ of prohibition is an extraordinary remedy contesting the jurisdiction of a court. Here the petitioners assert prohibition to avoid the imposition of a penalty for disobedience of the restraining order. The Petitioners seek such relief against the Respondent and the lower trial court arguing three points that are addressed by FPEC under one heading. FPEC's argument and the authorities that it cites herein show that the petitioners are not entitled to the extraordinary relief of a writ of prohibition.

FPEC's complaint before the circuit court invoked the jurisdiction of the circuit court to construe the constitutional and statutory entitlement of FPEC and its 70,000 bargaining unit members to a fair hearing before the Joint Select Committee on Labor Relations, an entity created by the State Legislature to implement the Legislature's constitutional and statutorily imposed duties under Section 447.403, Florida Statutes, and Article I, Section 6 of the Constitution of the State of Florida.

The circuit court considered the motion of FPEC and the 70,000 state workers for a temporary restraining order and granted it. The order simply maintained the status quo until a fair and timely hearing in accord with Section 447.403, Florida Statutes could be held and FPEC and its 70,000 members could be heard.

The Petitioners here, two of whom are attorneys, Feeney and Garcia, defied that order and mocked it: one by showing everyone in the Capitol as a prop his toothbrush and the other showing a jail uniform and a pair of handcuffs. Each dared the circuit court to enforce the restraining order. None moved to challenge the court's restraining order until this petition was filed on Thursday, April 12.

The Petitioners, here, the defendants below expect this court to give them a fair hearing. It is ironic that they should expect such fairness when they have so cavalierly refused to give a fair hearing to FPEC and its 70,000 bargaining unit members and their dependent families. To obtain the fair hearing demanded by our system of government, by our constitution, and by the statutory law enacted by the legislature and signed by the governor, albeit not the amicus, FPEC and its 70,000 workers were forced to request the intervention of the circuit court. They asked for nothing more than fairness.

This court has said that fairness and fair play is a fundamental principle of our society and must be honored by all branches of the government.

> One of the most fundamental principles of Anglo-American jurisprudence is the guarantee of due process. The concept was first articulated in a written legal document in article 39 of the Magna Charta [FN5] when promulgated by King John of England on June 15, 1215. Since that time, the concept of due process has been embodied in every great charter produced by modern Western democracies. Both the

fifth and fourteenth amendments of the federal Constitution, as well as article I, Section 9 of the Florida Constitution, embody the concept and make it binding upon the courts of Florida. It is one of the central tenets of the organic law of this state, and one that restricts the power of all three branches of government. As a concept rooted in the Anglo-American tradition of ordered liberty, due process is a transcendent principle of both natural and positive law, against which even the enactments of the legislature or the pronouncements of the courts will be measured.

> FN5. Article 39 required that no person could be subject to a loss of rights except according to the law of the land. C. Holt, *Magna Charta* 326-27 (1965).

Due process rests primarily on the concept of fundamental fairness. On several occasions we have cited with approval the statements made by Daniel Webster in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 580-582, 4 L.Ed. 629, 645 (1819) (cited with approval in *State ex rel. Munch v. Davis*, 143 Fla. 236, 196 So. 491 (1940), and *Fiehe v. R.E. Householder Co.*, 98 Fla. 627, 125 So.2d 2 (1929), where he said that due process

> hears before it condemns; … proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, property, and immunities, under the protection of the general rules which govern society.

Elsewhere, we have stated that

> "[t]he essential elements of due process of law are notice, and an opportunity to be heard and to defend in an an orderly proceeding adapted to the nature of the case….[I]t is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear,

> and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered."
>
> Fiehe, 98 Fla. At 636, 125 So. At 7 (quoting 6 R.C.L. 446 (1915)). Due process, then, embodies at least two general concepts: the right to adequate advance notice and a meaningful right to be heard *before* a tribunal takes action.

State v. Smith, 547 So.2d 131, 134 (Fla. 1989).

The trial court's exercise of jurisdiction and its orders which are at issue here directed the legislature to do no more than provide the fair and meaningful hearing on a bargaining dispute between the governor and 70,000 workers that the Joint Select Committee on Collective Bargaining was required to provide under both a constitutional and statutory imperative.

In this response FPEC will present its argument and authority under one heading referencing its studied and reasoned belief that the Doctrine of Separation of Powers suffers no infringement by any action of the trial court. FPEC will also address the firm conviction held by FPEC and its members that the petitioners may not ignore the orders of the trial court without being required to show cause in a proceeding conducted under Rule 3.840, Fl.R.Crim.P., as to why they should not be convicted of indirect criminal contempt.

STATEMENT OF THE CASE AND OF THE FACTS

On April 3, 2001, the court enjoined the petitioners here from holding a meeting that had been scheduled by them for the purpose of resolving a bargaining impasse. The meeting was first noticed by Rodolfo "Rudy" Garcia and Frederick C. Brummer in a notice issued on March 27, 2001. It was noticed on the letterhead of the Florida Legislature, Joint Select Committee on Collective Bargaining. It notified the Plaintiff as follows:

> This letter is to inform you that a public hearing is being scheduled for April 3, 2001 from 6:15pm-8:00pm in Reed Hall (102 House Office Building). The public hearing is regarding issues at impasse between the State of Florida and all parties pursuant to ss. 216.183(4) and 447.403, F.S.
>
> The purpose of this hearing is to allow the Joint Select Committee on Collective Bargaining to receive testimony relevant to resolution of impasse issues. Testimony will be limited to the issues contained in the last proposal offered by the bargaining Unit and by the State at the conclusion of negotiations, or if recommendations of a special master were rejected then testimony is to be given explaining the reasons for rejecting such recommendations.

See, Exhibit C to the Kreisberg Affidavit, Exhibit I to the Appendix hereto.

The reference to Section 447.403, Florida Statutes, is to a provision of the Public Employee's Relations Act entitled, "Resolution of Impasses." This is an act passed by the legislature, signed into law by the governor, and as such binding on the legislature.

The statute provides a method for obtaining the input of an outside neutral labor expert, called a special master, on the dispute and a time schedule after official receipt of the outside expert's report and recommendation for the parties to digest the report. During the twenty days following the receipt of the special master's report and recommendation the parties are expected to consider and reconsider their positions, to meet and discuss the report. If the parties remain unable to reach a mutually acceptable

bargaining agreement after such steps have been taken they can then invoke the jurisdiction of the Joint Select Committee to hear the dispute and decide it.

In this case the legislature proceeded before its jurisdiction had been properly invoked and before the 70,000 workers represented by Council 79 could properly digest, consider and reconsider the special master's report, before the parties to the dispute could meet, and before FPEC could reasonably prepare for a quasi-judicial adjudicatory hearing before the Joint Select Committee on Labor Relations.

The reference to a special master is to an individual qualified by training and experience to serve as a neutral in a matter involving a labor dispute. The Public Employee's Relations Commission specifies the qualifications one must have to serve as a special master and maintains a roster of qualified masters. See, Rule 38D-19.004, F.A.C.

The special master who is appointed by the Commission to hear issues between the parties involving bargaining disputes is empowered to conduct proceedings, issue subpoenas and to then issue his/her report and recommendations for the resolution of the disputed issues. *See*, Section 447.403(3), Florida Statutes. The special master's recommended resolution is deemed approved by the parties unless it is rejected within 20 days of receipt.

See, Section 447.403(3), Florida Statutes. Rejection of the special master's decision must be in writing, accompanied by an articulation of the reasons for rejection, and must be filed with the Commission. The parties to the bargaining impasse must share the costs of the process. This can be a substantial expense. Under the statute the proceeding is not to be a pointless exercise.

The State and FPEC had been parties to a three day special master proceeding as described above and were awaiting the report and recommendations on March 27 when the Joint Legislative Committee announced its meeting and intentions to resolve all bargaining impasses. *See*, paragraph 5 of the Kreisberg affidavit, Exhibit I hereto.

FPEC had, prior to receipt of the notice of March 27, respectfully informed the Committee that it had not received the special master's report relevant to the impasse and asked that any hearing be delayed pending receipt of the report and compliance with the time frames of Section 447.403, Fla. Stat. *See,* paragraph 10 of the Kreisberg affidavit, Exhibit I hereto.

On March 29 FPEC again presented its objections to the scheduling of the hearing announced by the Joint Select Committee on Collective Bargaining for the purpose of resolving a bargaining impasse. *Id*. On April 3, 2001, and immediately before this litigation was filed FPEC once again, and a

third time, expressed its objections to the hearing scheduled for the evening of April 3. *See*, the correspondence attached hereto as Exhibit II.

At the time the FPEC letter was prepared and submitted to the Committee on April 3, 2001, FPEC had not officially received the report and recommendations of the Special Master.[1] The Special Master's report was officially received by the Council at 4:00 p.m. on April 3, 2001. It was 80 pages in length and addressed what the special master described as "one of the most complex and voluminous impasses ever referred to the Special Master process." *See*, Special Master's Recommendations dated March 31, at 8, Exhibit III hereto. It addressed an area of great concern to the 70,000 Career Service System employees in the AFSCME bargaining units, job security, which the Governor proposed to remove referring to his proposal as "Service First," and which in the opinion of the special master "will eventually be 'Service Worse' instead of 'Service First.'" See, Appendix, Exhibit III, at 76.

Certainly a document of such great length on a subject of such great interest to the 70,000 AFSCME bargaining unit members would need more detailed attention than offered by a two hour period between official receipt

[1] An e-mail copy of the report was reviewed on Monday April 2, but such is not the official copy which is sent by certified mail return receipt requested.

and the expected resolution of all bargaining issues by the Joint Select Committee on Collective Bargaining..

Resolution of any impasse must be accomplished pursuant to Section 447.403, Florida Statutes. It is part of the Public Employees Relations Act, the purpose of which "is to provide statutory implementation of s. 6, Art. I of the state constitution, with respect to public employees; to promote harmonious and cooperative relationships between government and its employees, both collectively and individually; and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government." *See*, Section 447.201, Florida Statutes.

Subsection 447.403(3) gives the parties up to twenty days to consider the special master's report and discuss it.[2] The objective in the delay is to encourage the parties to approach their dispute dispassionately and rationally and reach an agreement that is mutually acceptable to each. Such an objective cannot be accomplished unless the report is read and considered. The special master's report that is implicated in this dispute is exceptionally lengthy, 80 pages, and could hardly be digested, disseminated internally, and discussed

[2] Section 447.403, F.S., provides that the parties may waive the appointment of a special master and proceed directly to the legislative subcommittee. Under the terms of 447.403 Such a waiver must be an agreement of the parties expressed in writing. At least one contention of the Petitioners here is that the Joint Select Committee could meet before the twenty days expired and as soon as one party to the negotiations, i.e., the State here states that it disputes the special master's recommendations. Such an interpretation is a strained and unfair reading.

with the State in the brief period between receipt and the time that the impasse resolution committee met.

The legislature or committee thereof, here the Joint Select Committee on Collective Bargaining, that conducts an impasse resolution hearing is acting not in a purely legislative capacity, but in a quasi-judicial role as an adjudicator under the collective bargaining act. Impasse resolution promises objectivity and fairness to the parties that appear before it the Joint Select Committee. Fairness to FPEC and 70,000 State workers was denied under the circumstances described here. The actions of all three branches of government are restricted by the constitutional imperative of due process. *See*, *State v. Smith*, 547 So.2d 131, 134 (Fla. 1989).[3]

Fair notice of hearings, and a meaningful hearing at a meaningful time are fundamental and universally honored hallmarks of due process. This court has said, "[D]ue process is a transcendent principle of both natural and positive law, against which even the enactments of the legislature or the pronouncements of the courts will be measured." Id., 547 So.2d, at 134.

In this case the Joint Select Committee on Collective Bargaining ignored the interest of FPEC and its 70,000 bargaining unit members to a

[3] "It [, due process,] is one of the central tenets of the organic law of this state, and one that restricts the power of all three branches of government." 547 So.2d 131, 134 .

meaningful hearing at a meaningful time and rushed to schedule an impasse resolution hearing while the parties awaited the report of the special master. The Petitioners would not delay their hearing although it was premature and was well before the special master's report could be reviewed, analyzed, digested and distributed. Or rationally discussed with the governor. This was an egregious effront to the constitutional and statutory rights of FPEC and the 70,000 state workers it represented.

The Joint Select Committee headed by State Senator Garcia and Representative Brummer is in the context of the Act an impasse resolution commission. It is constrained by the Act, one that was passed by the Legislature and signed by the Governor into law, to resolve the bargaining impasse in an objective manner. That manner is described in Section 447.403, Florida Statutes. The law promises that the committee will act fairly and objectively. Its consideration is limited to two factors: the public interest and the interest of the public employees involved. *See*, Section 447.403(4)(d), Florida Statutes. Partisanship and special interests are to be set aside under the doctrine of *expressio unius est exclusio alterius*. To do otherwise is to act unlawfully.

The final action of the impasse resolution body may be reflected in a resolution or as a phrase in the appropriations act. It rarely involves the

passage of any independent legislation. It is, however, a vehicle created by the legislature to implement the constitutional right of public employees to bargain collectively with their employer, in lieu of the right to strike.

THE DOCTRINE OF SEPARATION OF POWERS IS NOT IMPLICATED BY JUDICIAL ENFORCMENT OF PUBLIC EMPLOYEE'S CONSTITUTIONAL RIGHT TO BARGAIN AND OF THE GUIDELINES FOR SUCH AS PROVIDED IN SECTION 447.403, FLORIDA STATUTES.

The Petitioners argue that under the Doctrine of Separation of Powers, the judicial branch cannot enjoin the legislature from performing its purely legislative duties. That axiom is generally true. On the other hand any public body or public officer can be enjoined from violating a statutory right or a constitutional right. It is black letter law that the court does not violate the doctrine of separation of powers when it construes a statute or a constitutional right in a manner that impinges adversely on another branch of government. *See*, 10 **Fla.Jur.2d** *Constitutional Law* ss. 157, at 503-04 (1997).

In this case the court was considering the constitutional right of public employees to bargain with their employer and the statutory guidelines for the implementation of the right. *See*, Section 447.201, Florida Statutes. The right of a public employee to engage in collective bargaining with the public

employer flows from Article I, Section 6 of the Constitution of the State of Florida. *See, Dade County Classroom Teachers Association, Inc., v. Ryan*, 225 So.2d 903, 905 (1969). In Ryan the court stated, "We hold that with the exception of the right to strike, public employees have the same rights of collective bargaining as are granted private employees by Section 6."

In Ryan the court did not direct the legislature to enact legislation concerning collective bargaining, although it stated:

> In the sensitive area of labor relations between public employees and public employers, it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subject within the limits of said Section 6. A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers without, however, in any way entrenching upon the prohibition against public employees striking or using coercive or intimidating tactics in the collective bargaining process.

The Legislature was invited to consider the subject and provide guidelines for the implementation of the constitutional right. In *Dade County Classroom Teachers Association, Inc. v. Legislature*, 269 So.2d 684 (1972), the court again considered the constitutional right of public employees to bargain collectively with their employer in an original mandamus action directed against the Legislature to compel it to pass a collective bargaining law for public employees. This was an action to compel legislation, a purely

legislative function, and the court denied the petition for the writ on the basis of the Doctrine of Separation of Powers, but noted the inherent and practiced authority of the courts to enforce constitutional rights.

The court in an opinion of Justice Roberts said:

> The doctrine of judicial authority and responsibility was early established in the historic case of Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803); and in the many years since then – particularly in the last quarter of a century – the courts have not hesitated to accomplish by judicial fiat what other divisions of government have failed to do in protecting, implementing, or enforcing constitutional rights. The federal constitution first amendment guarantees of freedom of speech, of the press, of assembly, and religion; the fourth amendment guaranty against unreasonable searches and seizures; the fifth amendment right against self-incrimination; and the sixth amendment right to counsel – all these constitutional rights have been judicially protected by the courts. See, for example, Chapman v. State of California, 87 S.Ct. 824, 386 U.S. 18, 17 L.Ed.2d 705 (1967), in which the court said that the right of the defendants not to be punished for exercising their fifth and fourteenth amendment right to be silent is a federal right which, in the absence of appropriate congressional action, is the responsibility of the Supreme Court to protect by fashioning the necessary rule. Legislative apportionment is a federal right that has also been coerced by the judiciary in recent years. See, Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663; cf. In re Advisory Opinion to the Governor, 150 So.2d 721 (Fla. 1963), in which it was noted that, in Sobel v. Adams, 208 F.Supp. 316 (1962), the Federal District Court for the Southern District of Florida stated that it would "fashion a remedy of reapportionment by judicial decree in such manner as may seem to the Court best adapted to meet the requirements of equal protection" if the Florida Legislature failed to do so.

Id., 269 So.2d 684, 687.

The court then proceeded to state, "The question of the right of public employees to bargain collectively is no longer open to debate. It is a constitutionally protected right which may be enforced by the courts …." The court noted, "It is a right which should be exercised in accordance with appropriate guidelines in order to make sure that there may be no denial of the right and, at the same time, that the *prohibition against strikes by public employees will not be violated*, either directly or indirectly." Id. 269 So.2d, at 687 (Italics in the original text).

Section 447.403, Florida Statutes, a copy of which is attached hereto, provides the guidelines for the implementation of that constitutional right as limited by the constitutional prohibition against strikes. As a necessary component for the implementation of the constitutional right, it is mandatory that the Petitioners here govern their actions in the resolution of bargaining impasses as directed by the statute. When the legislative body fails to honor its own guidelines for implementation of a constitutional right as reflected in Section 447.403, Florida Statutes, for the resolution of a bargaining impasse the court may, in its role of protector of the rights given to the people by the Constitution, direct the legislature and its members to abide by the statutory

guidelines for the implementation of the employees' right to engage in collective bargaining. Such rights include the timing of the consideration by the impasse resolution committee as set forth in Section 447.403, Florida Statutes.

The prematurely scheduled and conducted meeting of April 3, 2001 by the Petitioners violated the constitutional rights of the 70,000 public employees who are part of bargaining units represented by Council 79 to bargain collectively with their employer. The Petitioners by the action of the Joint Select Committee ignored the rights of citizens and public employees under Article I, Section 6, of the Constitution of the State of Florida, and under the statutory guidelines for the implementation of those rights.[4]

No fair person or body would compel a party to participate in an quasi-judicial adjudicatory proceeding under Section 447.403, Florida Statutes, involving the resolution of many bargaining issues where there was an 80 page report at issue that had not been digested. For the hearing to be meaningful the parties must have time to comprehend documents involved. This was to be a hearing on the wages, hours, terms and conditions of employment of 70,000 workers, including the infamous "Service First"

[4] Such an unfairly scheduled hearing also violates any concept of due process under Article I, Section 9, of the Constitution of the State of Florida, and the Fourteenth Amendment to the Constitution of the United States of America.

proposals of Governor Bush. Justice demanded a significant delay between the receipt of the special masters 80 page report and the hearing by the Joint Select Committee on Collective Bargaining.

The scheduled and conducted meeting of the Joint Select Committee on Collective Bargaining violated the very law concerning scheduling that the Petitioners as the State Legislature passed. Are they empowered to act in derogation of the statutes of this State? Are the petitioners above the law? This court has held otherwise.

It is the judicial branch of government that has the authority to interpret, and the corresponding duty of enforcing state statutes. This court's decision in *Locke v. Hawkes*, 595 So.2d 32 (1992) is instructive.[5] In that case the legislature argued as here that the doctrine of separation of powers barred the judicial branch from construing chapter 119 of the Florida Statutes to apply to the legislature.

In Locke, the court said:

> As the supreme court of the judicial branch, one of our primary judicial functions is to interpret statutes and constitutional provisions. In carrying out this function, we find that we do not violate the separation of powers doctrine when we construe a statute in a manner that adversely affects either the executive or the legislative branch. Clearly,

[5] Hawkes is Paul M Hawkes who was the respondent in Locke v. Hawkes, 595 So.2d 32 (1992), and is now the Chief of Staff over policy to the Petitioner here, Tom Feeney.

> we have the power to determine whether chapter 119 is applicable to the legislature.

Id., 595 So.2d, at

Just as the court had the power to determine whether Chapter 119 is applicable to the legislature, it has the power to interpret the provisions at issue here, Section 447.403, and if it finds it applicable, to require the legislature to obey and honor the law. The orders of the trial court did not violate the Doctrine of Separation of Powers or of any such right under Article IV, Section 4 of the Constitution of the United States of America. The temporary restraining order was no more than a reasonable interpretation of the procedural provisions of Section 447.403, Florida Statutes, and Article I, Section 6, of the Constitution of the State of Florida. The order to defer the April 3 meeting of the Joint Select Committee until the time frames had elapsed or the parties had properly invoked the jurisdiction of the Joint Select Committee under Section 447.403, Florida Statutes, was reasonable. The order addressed procedural interests of FPEC and the 70,000 workers it represents to a fair hearing as the legislature promised when it passed 447.403. There is no arguable First Amendment violation that would support the issuance of a writ of prohibition.

In *Walker v. City of Birmingham*, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967), the Supreme Court considered a case where the petitioners

were civil rights advocates who had been enjoined from participating in or encouraging others to participate in civil rights demonstrations. They defied the injunction. They violated the restraining order and were held in contempt. The Alabama Supreme Court affirmed the finding of contempt and the case was submitted to the Supreme Court.

The Supreme Court expressed concern about the overbreadth of the injunction, but affirmed the finding of contempt. A party may not ignore the order of a court of general jurisdiction. The Petitioners here, as well as those in Walker, are not free to disobey an injunction. The injunctive order is to be respected until dissolved. Neither the First Amendment claims of the Petitioners nor their assertion of the Doctrine of Separation of Powers form a basis for the issuance of a writ of prohibition in this case.

II.

EVEN IF THE TEMPORARY RESTRAINING ORDER WAS PREMISED ON AN ERRONEOUS INTERPRETATION BY THE CIRCUIT COURT OF THE PROVISIONS OF SECTION 447.403, FLORIDA STATUTES, THE PETITIONERS WERE REQUIRED TO OBEY IT UNTIL IT WAS DISSOLVED.

The jurisdiction of the circuit court was invoked to interpret and enforce a statutory and constitutional right. The court entered its temporary restraining order and the order was served upon the Petitioners. The Petitioners were well

aware that FPEC had on behalf of its 70,000 bargaining unit members filed a complaint that asked the circuit court to declare and interpret constitutional and statutory rights and obligations. They were served official process that included both the complaint and motion for a temporary restraining order. Before official service was made they were provided with copies of the complaint and motion for a temporary restraining order.

FPEC sought a temporary restraining order against what it believed to be a premature and improper hearing held in contravention to the provisions of Section 447.403, Florida Statutes, and to the constitutional rights of the 70,000 state workers in its bargaining units. FPEC feared that the premature hearing may lead to an untimely and harsh decision reached in before FPEC could fairly discuss the special master's report with the governor and prepare its arguments or advance the findings of the special masters report.

The temporary restraining order was issued and it was properly served on the Petitioners here before the scheduled meeting of the Joint Legislative Committee was to commence. The Petitioners here did nothing on April 3 before the scheduled meeting and after the temporary restraining order was issued to challenge the order. They proceeded in defiance of the temporary restraining order and held the meeting. Mr. Feeney walked around the Capitol with a toothbrush daring the court to enforce its injunction. Senator Garcia appeared

with handcuffs and carried an inmate's uniform. All expressed their defiance of the order. None moved to stay the order or dissolve it. They did, however, ridicule the order and the judge that entered it. This is outrageous conduct.

FPEC and its 70,000 bargaining unit members moved for an order to show cause on April 9. On April 10 the court entered a show cause order directing the Petitioners to show cause why they should not be held in indirect criminal contempt at a hearing on April 19. The reports thereafter indicated that upon receipt of the show cause order Mr. Feeney, a lawyer, said that he would not deign to walk across the street and appear. This outrageous conduct is intolerable in any citizen much less a member of the Bar.

In this case the circuit court had jurisdiction of the subject matter before it and under Rule 1.610, Florida Rules of Civil Procedure, the power to enter a temporary restraining order. The fact that the order may have been erroneous or irregular or improvidently granted is no defense to nor does it justify a failure to abide by the terms of the order. It must be obeyed until it is dissolved or reversed on appeal. *See*, *Estate of Coveney v. Coveney*, 324 So.2d 681 (Fla. 4th DCA 1976).

The courts have said, "It is well established in this state, and elsewhere, that when a court acting with proper jurisdiction and authority renders an order, an aggrieved party's failure to abide by the order may be punished by contempt

even if the order is ultimately found to be erroneous." *Rubin v. State*, 490 So.2d 1001, 1003 (Fla. 3d DCA 1986). A contention that a decision is wrong does not serve to permit parties to ignore a court order.

In Rubin the court stated:

> Surely Rubin – one trained in the law – should know that if persons may with impunity disobey the law, it will not be long before there is no law left to obey.

Id., 490 So.2d, at 1005.

Surely the same can be said about such bar members as the petitioners, Tom Feeney and Rodolfo Garcia.

In *McQueen v. State*, 531 So.2d 1030 (Fla. 1st DCA 1988), the court said, "It is axiomatic that it is no defense to a charge of contempt that the disobeyed order was erroneous." In the absence of a stay or an order dissolving the restraining order the Petitioners are required to honor the restraining order. The Respondent here is of the opinion that the order suffers from no infirmity, but even if it was based on an improper interpretation of existing law, it must be honored until it is dissolved. *See, Walker v. City of Birmingham, supra*.

The trial court's order to show cause dated April 10 should not be reversed.

CONCLUSION

The Petitioners have requested that this court enter a Writ of Prohibition. Their petition should be denied. The circuit court has jurisdiction to interpret constitutional and statutory provisions. It has authority to enter injunctive relief in support of its jurisdiction. The court has inherent authority to enforce its orders through the exercise of its contempt power.

Respectfully submitted,

_____
Ben R. Patterson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was hand delivered to 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 this 16th Day of April, 2001.

_____
Ben R. Patterson

CERTIFICATION OF COMPLIANCE WITH RULE 9.210

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

_____
Ben R. Patterson

APPENDIX TO RESPONSE
CASE NO. SC01-865

I. Affidavit of Steven Kreisberg with attachments dated April 2, 2001 and attached to the complaint in the lower tribunal Case No. 01-842 filed in the Circuit Court for the Second Judicial Circuit, in and for Leon County, Florida.

II. April 3, 2001 letter of Steven Kreisberg to Senator Rudolfo Garcia and Representative Frederick C. Brummer as Co-Chairs of the Joint Select Committee on Collective Bargaining.

III. Special Master's Report dated March 31, 2001 and received by postal delivery return receipt requested on April 3, 2001.