Filing # 22084980 E-Filed 12/31/2014 12:48:16 PM

RECEIVED, 12/31/2014 12:48:46, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1882
L.T. CASE NO.: 1D12-2116

WALTER E. HEADLEY, JR.,
MIAMI LODGE #20, FRATERNAL
ORDER OF POLICE, INC.

Appellant,

vs.

CITY OF MIAMI, FLORIDA

Appellee.

BRIEF OF AMICUS CURIAE, EAST NAPLES FIRE CONTROL & RESCUE DISTRICT

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STATEMENT OF INTEREST

The EAST NAPLES FIRE CONTROL & RESCUE DISTRICT has a direct interest in the outcome of this appeal. The EAST NAPLES FIRE CONTROL & RESCUE DISTRICT is subject to Section 447.4095. The EAST NAPLES FIRE CONTROL & RESCUE DISTRICT declared a financial urgency under the statute. As a result of the EAST NAPLES FIRE CONTROL & RESCUE DISTRICT's declaration, the EAST NAPLES FIRE CONTROL & RESCUE DISTRICT has been involved in administrative proceedings, litigation, and appeals involving the interpretation, application and constitutionality of the statute before the Public Employees Relations Commission and the Second District Court of Appeal.

The EAST NAPLES FIRE CONTROL & RESCUE DISTRICT is currently involved a pending appeal from a PERC final order to the Second District Court of Appeal involving the same or similar issues styled *Collier Professional Firefighters and Paramedics International Association of Firefighters, Local 2396, AFL-CIO v. East Naples Fire Control & Rescue District.* The decision in the above-styled case will likely have a direct impact on the EAST NAPLES FIRE CONTROL & RESCUE DISTRICT.

SUMMARY OF THE ARGUMENT

Section 447.4095 is constitutional because it does not violate the right to collective bargaining or impair the right to contract. The statute does not violate the right to collective bargaining as it does not allow a public employer to unilaterally declare a bargaining agreement invalid. Further, unions entering into labor contracts after the effective date of the Financial Urgency Statute are precluded from claiming the statute constituted an unconstitutional impairment of the collective bargaining agreement.

ARGUMENT

THE FLORIDA FINANCIAL URGENCY STATUTE IS CONSTITUTIONAL AS IT DOES NOT VIOLATE THE RIGHT TO COLLECTIVE BARGAINING OR IMPAIR THE RIGHT TO CONTRACT.

A. Presumption of Constitutionality.

"It is a general principal that the courts are law interpreting and not law-making bodies and have no power to do so[.]" *Ervin v. Collins,* 85 So.2d 852, 855 (Fla. 1956). "Deciding which laws are proper and should be enacted is a legislative function." *Carter v. Stuart,* 468 So.2d 955, 957 (Fla. 1985). The judiciary has an obligation, pursuant to the separation of powers contained in Article II, Section 3 of the Florida Constitution, to construe

statutory pronouncements in strict accord with the legislative will, so long as the statute does not violate organic principles of constitutional law. *See Sebring Airport Auth. v. McIntyre*, 783 So.2d 238, 244-245 (Fla. 2001).

Statutes are presumed constitutional. As stated in *Scott v. Williams*, 107 So. 3d 379, 384-385 (Fla. 2013):

> We are ever mindful that "[w]hile we review decisions striking state statutes de novo, we are obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible." *Fla. Dep't of Revenue v. Howard*, 916 So. 2d 640, 642 (Fla. 2005). Statutes come to the Court "clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008). "Absent a constitutional limitation, the Legislature's 'discretion reasonably exercised is the sole brake on the enactment of legislation.'" *Id. at 141* (quoting *Bush v. Holmes*, 919 So. 2d 392, 406 (Fla. 2006) (quoting *State v. Bd. of Pub. Instruction for Dade County*, 126 Fla. 142, 170 So. 602, 606 (1936)). "[E]very reasonable doubt should be resolved in favor of a law's constitutionality." *Franklin v. State*, 887 So. 2d 1063, 1080 (Fla. 2004).

See also Trushin v. State, 475 So.2d 1290 (Fla. 3d DCA 1985) (citing *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983)); *Belk-James, Inc. v. Nuzman*, 358 So.2d 174 (Fla. 1978). When an interpretation upholding the constitutionality of a statute is available, the court must adopt that construction. *See Department of Ins. v. Southeast Volusia Hosp. Dist.*, 438 So.2d 815 (Fla. 1983). This Court has

long held that, when enrolled, signed, and filed, acts of the legislature are prima facie valid. *See State ex rel. Buford v. Carley*, 89 Fla. 361, 104 So. 577 (1925); *Amos v. Gunn*, 84 Fla. 285, 94 So. 615 (1922); *State ex rel. Turner v. Hocker*, 36 Fla. 358, 18 So. 767 (1895).

B. Section 447.4095 does not Violate the Right to Collective Bargaining.

Section 447.4095 does not violate the right to collective bargaining as the statute does not allow a public employer to unilaterally declare a collective bargaining agreement invalid or vitiated. The employer's declaration of a financial urgency does not conclusively or unilaterally determine the implications to the contract. *See Manatee Ed. Ass'n v. School Dist. of Manatee County*, 62 So.3d 1176, 1178 (Fla. 1st DCA 2011) (explaining that a "public employer may declare a "financial urgency" pursuant to section 447.4095, and proceed accordingly. But the employer's mere declaration cannot conclusively resolve the question. Absent some compelling state interest—determined to be such in a neutral forum, ultimately subject to judicial review—a public employer cannot unilaterally abrogate a collective bargaining agreement, consistently with public employees' constitutional right to bargain collectively. Once the fourteen-day period specified in section 447.4095 has run, the union is free to file an

unfair labor practice charge disputing the employer's claim of "financial urgency.""); *City of Miami v. Fraternal Order of Police*, 98 So.3d 1236, 1238 (Fla. 3d DCA 2012) ("After the fourteen-day statutory period has run, F.O.P. "is free to file an unfair labor practice charge disputing the employer's claim of 'financial urgency,'" a charge which is to be heard and decided by PERC. ... After exhausting its administrative remedies, F.O.P. may then obtain judicial review of PERC's final order.") (citations omitted).

The Financial Urgency Statute affords the union and public employer an opportunity to engage in abbreviated impact bargaining in the event of a financial urgency requiring modification of a labor contract. If at the conclusion of the impact bargaining the union challenges the existence of a financial urgency, the union may file an unfair labor practice charge. Then, it is incumbent upon PERC to decide whether a financial urgency within the meaning of the statute—construed in keeping with the Florida Constitution—actually existed. *See Manatee Ed. Ass'n,* 62 So.3d 1176 (declining to decide what constitutes a financial urgency, or to make the initial factual determination regarding whether the public employer was faced with a financial urgency; deferring to PERC). The Statute provides a neutral forum for the determination of whether there is a financial urgency

sufficient to modify the collective bargaining agreement, which is subject to judicial review.

The right to collectively bargain is not absolute. *See State v. Florida Police Benevolent Ass'n*, 613 So.2d 415, 418 (Fla. 1992) (stating that a public employee's constitutional right to bargain collectively is not and cannot be coextensive with an employee's right to so bargain in the private sector because certain limitations on a public employee's constitutional right to bargain collectively are necessarily involved; "a wage agreement with a public employer is obviously subject to the necessary public funding which, in turn, necessarily involves the powers, duties and discretion vested in those public officials responsible for the budgetary and fiscal processes inherent in government."). Even *Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993), which predated the enactment of the Financial Urgency Statute, recognized limits to the right to collectively bargain in the public sector. Before the enactment of the statute, that case held that a collective bargaining agreement could be changed in the face of a compelling state interest. Thus, this Court should find that section 447.4095 is constitutional as it does not violate the right to collective bargaining.

C. Section 447.4095 does not Unconstitutionally Impair the Obligation of Contract.

A statute that predates a contract cannot trigger an unconstitutional impairment of the contract. *See, e.g., United States Trust Co. v. New Jersey,* 431 U.S. 1, 18 (1977) ("[S]tatutes governing the interpretation and enforcement of contracts may be regarded as forming part of the obligation of contracts made under their aegis."); *Gulfside Dist., Inc. v. Beco, Ltd.,* 985 F.2d 513 (11th Cir. 1993); *Kinney v. Connecticut Judicial Dep't,* 974 F.2d 313 (2d Cir. 1992); *Abele v. Hernando County,* 161 Fed.Appx. 809 (11th Cir. 2005); *see also City of Miami v. Fraternal Order of Police,* 98 So.3d 1236, 1239 ("In this instance, the public interest is served by permitting the City and the F.O.P. to bargain expeditiously and to follow the statutory process recognized by Chapter 447 *and thus by the CBA itself.*") (emphasis added). The Financial Urgency Statute has been in effect since 1995. Hence, unions entering into labor contracts after 1995 would be precluded from claiming that the Statute constituted an unconstitutional impairment of the collective bargaining agreement.

The constitutional protection against impairment of contracts is not absolute. *See Scott v. Williams,* 38 Fla. L. Weekly S25 (Fla. Jan. 17, 2013) ("As with laws impairing the obligations of private contracts, an impairment

may be constitutional if it is reasonable and necessary to serve an important public purpose."), quoting *U.S. Trust Co. of New York v. New Jersey,* 431 U.S. 1, 25-26 (1977); *State v. Florida Police Benevolent Ass'n,* 613 So.2d 415 (Fla. 1992). The Statute here is undoubtedly reasonable and necessary to serve an important public purpose to protect the financial integrity of governmental entities and safeguard against bankruptcy. As noted above, the government's claim of financial urgency is judged in a neutral forum consistent with constitutional standards. *See Manatee Ed. Ass'n,* 62 So.3d 1176. Thus, this Court should find that section 447.4095 does not unconstitutionally impair the right to contract.

CONCLUSION

Accordingly, based on the foregoing arguments and authorities, is Constitutional. Therefore, it is the position of the EAST NAPLES FIRE CONTROL & RESCUE DISTRICT that the Final Judgment of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following individuals by e-mail and mail this 24th day of December, 2014:

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this Initial Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

By: */s/ John M. Hament*
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