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In the Supreme Court of Florida

CASE NO.: SC13-1882

WALTER E. HEADLEY, JR., MIAMI LODGE NO. 20, FRATERNAL ORDER OF POLICE, INC.,

Petitioner,

v.

CITY OF MIAMI, FLORIDA,

Respondent

ON DISCRETIONARY REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER

Respectfully Submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

JOURNALS

STATEMENT OF THE CASE AND FACTS

A. Introduction

This case is before the Court on discretionary review from a decision of the First District Court of Appeal in *Headley v. City of Miami,* 118 So.3d 885 (Fla. 1st DCA 2013), affirming a decision of the Public Employees Relations Commission ("PERC") which found the City had not committed an unfair labor practice ("ULP"). In 2010, the City unilaterally changed the terms of a collective bargaining agreement ("CBA") and lowered the wages and retirement benefits of the City of Miami's police officers, while the CBA was in effect. The First District found that the unilateral changes were lawfully enacted pursuant to the financial urgency statute, § 447.4095, Fla. Stat. (2010). (R. Vol. 15: 2464-2486)[1].

This case raises important questions arising from the City's use of Florida's financial urgency statute, which states:

> 447.4095 Financial urgency. In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be

[1] References to the original record on appeal prepared by the Clerk of the trial court appear herein by volume and page number as follows: (R Vol __:___). A copy of the First District Court's decision has been made an Appendix hereto and is referenced by Appendix page number as follows: (A__).

> deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission. The parties shall then proceed pursuant to the provisions of s. 447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

The Fraternal Order of Police, Walter E. Headley, Jr., Miami Lodge #20, Fraternal Order of Police ("FOP") asserts that in *Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993), this Court set out a a standard that must be met under the Florida Constitution, before government can modify the terms of a CBA. Both PERC and the First District rejected the use of that standard. The FOP asserts that this case raises the questions of: (1) was it error for PERC and the First District to reject the *Chiles* standard; and (2) if that standard is met, whether a public employer must proceed through the statutorily mandated impasse procedure, or whether it can skip a portion of the impasse procedure and unilaterally lower wages and pension benefits.

B. Statement of the Facts, Course of Proceedings and Disposition in the Lower Tribunal

The FOP is a certified collective bargaining agent which represents Police Officers, Sergeants, Lieutenants, and Captains in the Miami Police Department. (R. Vol. 1: 3). The FOP and the City had entered into a CBA covering the period October 1, 2007 through September 30, 2010. (R. Vol. 5: 561-711). That CBA was ratified by both the union members and the City Commission pursuant to §

447.309(1), Fla. Stats. (2010) which is contained in Chapter 447, Part II[2]. The CBA contained a total agreement clause by which the FOP promised not to ask for any changes in the terms of the agreement, and the City was prohibited from passing any legislation which would alter the terms of the CBA. (R. Vol. 5: 603).

The City was experiencing what the City described as serious financial problems in the last two years of that contract. (R. Vol. 15: 2327). The financial problems which lead to the City's actions in 2010 did not appear suddenly; rather, the parties were aware of their existence for some time prior. During City Commission meetings in 2009, discussions took place regarding the City's projected deficit and the FOP offered cost-savings proposals to the City. (R. Vol. 15: 2341). "[T]he parties were mutually interested in saving costs and reducing the City's growing deficit." *Id.* In 2009, the FOP and the City entered into a Memorandum of Understanding which provided for certain employee concessions due to a projected deficit in the City's budget for the fiscal year ending September 30, 2010. (R. Vol. 10: 1401-1403). PERC has long allowed parties to *mutually* agree to changes to a CBA during the term of the agreement.

Because of the financial difficulties faced by the City, the City's newly elected Mayor asked Mr. Carlos Migoya ("Migoya") to consult with the City

[2] Chapter 447, Part II is commonly referred to as the Public Employees Relations Act ("PERA").

regarding its finances. (R. Vol. 16: 223). Migoya had lengthy private sector experience in banking and finance. (R. Vol. 16: 221). Migoya was then hired by the Mayor to serve in the capacity of City Manager in February 2010. (R. Vol. 16: 222). Initially, Migoya had difficulty obtaining accurate financial information. (R. Vol. 16: 265-266). Migoya originally determined that for fiscal year 2008/2009 (the fiscal year before he became City Manager), the City had experienced an operating deficit of approximately twenty million dollars ($20,000,000.00). (R. Vol. 16: 225). Migoya also determined that in previous years, the City had undertaken money transfers from capital expenditures to the operating budget in order to balance past budgets. (R. Vol. 16: 25). Those transfers resulted in close to thirty million dollars ($30,000,000.00) in additional deficits, bringing the estimated budget deficit for fiscal year 2008/2009 to approximately fifty million dollars ($50,000,000.00). (R. Vol. 16: 225).

Early in 2010, both parties were well aware that the City was facing a projected budget deficit for the fiscal year starting October 1, 2010 and ending September 30, 2011, the fiscal year at issue in this case. (R. Vol. 16: 53). Both parties were also well aware that under established Florida public sector labor law, if a successor agreement was not effective on September 30, the last day of the existing CBA, the status quo would prevail. The "status quo period" refers to the gap between collective bargaining agreements, when one agreement has expired and

another has not yet been executed. During this period, the terms of the first agreement govern the labor/management relationship. The employer cannot unilaterally alter material terms in the expired contract pending negotiation of a new contract.

It is with this backdrop in mind that the parties began their negotiations for a new CBA. The existing CBA between the City and the FOP (R. Vol. 5: 561-711) set out a timetable for negotiations for a successor CBA. (R. Vol. 1: 81). The FOP submitted its proposals in April, 2010 (R. Vol. 15: 2330) and the City submitted its proposals thereafter. (R. Vol. 15: 2331). FOP proposed a wage increase for bargaining unit members and maintaining the status quo for the existing pension plan. (R. Vol. 15: 2330). The City's counter-proposal included a wage proposal with a tiered wage reduction. (R. Vol. 15: 2331). As for the pension plan, the City proposed that the current retirement plan, a defined benefit plan, be frozen, and the participants would be transferred into a defined contribution plan. The parties then entered into collective bargaining negotiations. (R. Vol. 7: 944-948).

Several formal collective bargaining sessions were held, but the parties never agreed on a successor CBA. (R. Vol. 15: 2325-2360). While the FOP made several suggestions that it believed could have alleviated some of the city's financial difficulties, it made clear from the beginning of formal negotiations that it was not going to agree to any lowering of wages or pension benefits. (R. Vol. 16: 283-284).

On April 30, 2010, the City had declared financial urgency on the Firefighters union (R. Vol. 12: 1933) whose CBA was not expiring until one year after the FOP's. Migoya knew that the FOP was not agreeing to any of the concessions that the City was demanding and he also knew in May, 2010, that the projected budget deficit had grown significantly. Nevertheless, the City did not declare financial urgency in connection with negotiations concerning the FOP's CBA until July 28, 2010, almost 3 months after it had declared it on the Firefighters. (R. Vol. 9: 1312-1313).

Following the declaration of financial urgency, the parties continued to negotiate at the collective bargaining table, but were unable to reach an agreement. (R. Vol. 15: 2325-2360). Discussions concerning cost savings proposals were still taking place away from the collective bargaining table as well. *Id.* The FOP utilized the services of a FOP attorney, who was also an expert in the area of public pension law. (R. Vol. 15: 2341).

The FOP expert met with the City Manager to offer suggestions and explore ways to mutually resolve the City's financial problems and preserve the integrity of the City of Miami's Firefighters' and Police Officers' Retirement Trust ("FIPO"), the retirement plan that provides pension benefits to the City's police officers and firefighters. *Id.* The FOP expert worked with the City's actuary and FIPO's actuary

regarding cost savings proposals. *Id.* The parties' negotiators knew of these discussions. *Id.*

While negotiations were still ongoing, "[o]n August 31, the City Commission passed a resolution adopting modifications to wages and pension benefits of employees represented by the FOP. (R. Vol. 15: 2339). The modifications included tiered wage reductions of up to 12% of pay; and the changing of other pay provisions of the contract. (R. Vol. 15: 2339-2340). There were also significant modifications which lowered the FIPO pension benefits. (R. Vol. 15: 2340). Later, the City passed an Ordinance officially amending FIPO in order to effectuate the changes which it had imposed by resolution. (R. Vol. 13: 2064). Pension benefits were slashed, including reductions to the (1) normal retirement date; (2) multiplier; (3) maximum benefit; (4) normal benefit form; (5) and calculation of average final compensation on which benefits would be based, and a maximum benefit limitation. (R. Vol. 13: 2064-2086). The changes as to the wages took effect on September 30, 2010 (R. Vol. 16: 85). Most of the changes to the pension plans took effect on October 1, 2010. The City also made changes to the pension benefit formula which would take effect in future fiscal years. (R. Vol. 16: 85).

The City notified PERC on August 16, 2010 that it had reached impasse in its financial urgency negotiations with the police union. (R. Vol. 16: 283-284). Although the Union never waived the right to proceed before a Special Magistrate,

the City imposed the wages and pension plan benefit changes before participating in a hearing before the special magistrate pursuant to § 447.403, Fla. Stat. (2010) (R. Vol. 16: 86, 287-288).

On September 21, 2010, the FOP filed an unfair labor practice charge alleging that the City of Miami violated § 447.501(1)(a) and (c), Fla. Stat. (2010),[3] by unilaterally altering the terms and conditions of employment of bargaining unit members and failing to follow the procedures set forth in § 447.4095, Fla. Stat. (2010) (R. Vol. 1-3: 1-490). The FOP alleged that the City had improperly declared financial urgency. *Id.* The FOP also alleged that even if financial urgency was properly invoked, the City failed to follow that provision's procedures, and unilaterally altered the terms and conditions of bargaining unit members before completion of the impasse procedures set forth in § 447.403 Fla. Stat. (2010)[4]. *Id.*

At the evidentiary hearing before a PERC Hearing Officer, the FOP did not contest the fact that the City had significant financial difficulties, but argued that its

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[3] Public employers or their agents or representatives are prohibited from:

> a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.
>
> * * *
>
> c) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit.

[4] The FOP made other allegations which are not relevant here.

financial problems did not rise to a financial urgency which would require modification of the CBA. The Hearing Officer issued his Recommended Order concluding that the City properly invoked and utilized the financial urgency statute. (R. Vol. 14: 2325-2360).

The Hearing Officer made Findings of Fact concerning the City's financial condition, which PERC adopted. These are best summed up by PERC's Final Order, as follows:

> The hearing officer found that the City's total budget for FY 2010-2011 was approximately $500 million. The City demonstrated that, in July 2010, prior to invoking Section 447.4095, Florida Statutes, it was facing an operating deficit of over $115 million. The FOP acknowledged that the City was projecting a large budget deficit for FY 2010-2011. In an effort to address the budget deficit, the City implemented a hiring freeze, compelled all scheduled layoffs, stopped procurement of essential items such as replacement vehicles for police and fire, and initiated plans for various departments to identify positions for elimination. Notwithstanding these cost savings initiatives, the City's budget still presented a $60 million deficit.
>
> The City's personnel costs consumed more than eighty percent of its operating budget. To effectuate a city-wide reduction in expenses, pursuant to Section 447.4095, the City implemented modifications to employee wages, health care, and pension benefits for FY 2010-2011. Had the City failed to act, its personnel costs would have exceeded all revenues by consuming a staggering 101% of the City's budget. In that instance, the City

> would have been in the untenable situation of being unable to pay for essential governmental purchases, such as improvements, electricity, and fuel for City vehicles. The City would not have been able to operate or maintain its buildings, and its pension costs would have depleted approximately twenty-five percent of the City's budget.
>
> The City considered additional layoffs in lieu of reductions in pension and personnel costs; however, this would have necessitated the layoff of 1,300 employees or one-third of the City's workforce. These layoffs would have depleted hundreds of police and fire positions, impacted essential services to the citizens, and potentially endangered the health and safety of City residents.

(R. Vol. 15: 2473-2474).

The evidence presented to the Hearing Officer established that in 2010, while negotiations were ongoing and the FOP was sticking to its position that it would not agree to benefit and wage decreases, the City Commission consciously decided to take in less money in ad valorem taxes than it had the year before. (R. Vol. 16: 86-87). While the assessed valuation of taxable real property in the City had decreased, the City lowered the millage rate even further than the rolled back rate. (R. Vol. 16: 87). The "rolled back rate" is the millage rate established by the property appraiser, which, excluding certain amounts, would have provided the same ad valorem tax revenue as was levied during the prior year. § 200.065(1), Fla. Stat. (2010).

Although the City Manager recommended using the rolled-back rate (R. Vol. 16: 323) the City Commission did not follow this recommendation, choosing instead to establish a millage rate that yielded even less revenue than had been received in the previous year. (R. Vol. 16: 87). The City Manager testified: "there are also, from a *political* perspective, for the Mayor and the Commissioners, they feel that *politically* the city is not in a position to increase taxes, ..." (R. Vol. 16: 235). In fact, the City Manager testified that he suggested that the City utilize a higher millage rate and collect more ad valorem taxes. (R. Vol. 16: 323).

The FOP's Legal Argument at PERC

FOP argued at PERC that before the City could abrogate its CBA and lower the contractually agreed to wage and pension benefits, it had to meet the standard announced by this Court in *Chiles*. The FOP argued that *Chiles* said that under Article I, Sections 6 and 10 of the Florida Constitution, the Florida Legislature lacked the power to change the terms of a collective bargaining agreement covering state employees in order to generate funds to address a financial crisis. The only exception is where there is a compelling state interest and there is "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part." The Court also stated that "the Legislature must demonstrate that the funds are available from no other possible reasonable source." *Id.* PERC, and

later the First District, explicitly rejected this standard and used a standard that was more deferential.

The FOP also argued that § 447.4095 clearly and unambiguously requires that after impasse the parties "shall then proceed pursuant to the provisions of s. 447.403." The FOP argued that provision, entitled "Resolution of Impasses" requires the dispute to be submitted to a special magistrate who makes recommendations to the legislative body (here, the City Commission) which, after hearing those recommendations, decides the terms and conditions of employment. PERC, and later the First District decided that the Special Magistrate procedure could be bypassed, and that the financial urgency statute was properly invoked and utilized.

The FOP Seeks Discretionary Review in This Court

The FOP sought discretionary review of the First District's decision in this Court, arguing that there was an express and direct conflict with this Court's decision in *Chiles,* concerning the appropriate standard that must be met before the City could alter the terms of the CBA and that the decision expressly and directly construes Article I, Section 6 of the Florida Constitution (the right of collective bargaining). While its request was pending, the Fourth District decided *Hollywood Fire Fighters, Local 1375, IAFF, Inc. v. City of Hollywood*, 133 So. 3d 1042, 1046 (Fla. 4th DCA 2014), which certified conflict with this case and said:

> By asserting that the language "the legislature must demonstrate that the funds are available from no other possible reasonable source" is not constitutionally mandated and should not be extended to section 447.4095, it appears to us that the First District adopted a modified *Chiles* test. District courts cannot alter the holding of *Chiles* with respect to the authority of the government to impair a contract and violate the union's right to collectively bargain. *See Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973) (holding that a district court does not have authority to overrule Supreme Court precedent.

SUMMARY OF ARGUMENT

The right of collective bargaining is a fundamental right, guaranteed to public employees by Article 1, Section 6 of the Florida Constitution. The Florida Constitution also prohibits the government from passing a law impairing the obligations of contract. In *Chiles*, the Supreme Court held that under those two Constitutional provisions, changes could only be made to obligations under a CBA if there was a compelling state interest and if there is "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part." *Id.* at 673. *Chiles* also held that in order to meet that standard, "the Legislature must demonstrate that the funds are available from no other possible reasonable source." Both PERC and the First District explicitly rejected that standard. The First District said:

> We recognize that in discussing the second prong of the test set forth above, the [Supreme]Court stated that "the

> legislature must demonstrate that the funds are available from no other possible reasonable source." *Id.* at 673.
>
> However, we are not persuaded that this restrictive standard is constitutionally mandated or that it should be extended to section 447.4095. Accordingly, we conclude that in a proceeding under section 447.4095, the local government is not required to demonstrate that funds are not available from any other possible source to preserve the agreement.

The First District then chose to invent and apply a laxer, more deferential standard which is in conflict with this Court's holding in *Chiles*. Under both PERC's and the First District's approach, a governmental body, such as the City in this case, is not required to show that the money to fund negotiated wages and benefits due under a CBA is not available from any other possible reasonable source before unilaterally changing the wages and benefit. Both PERC and the First District were required to follow this Court's *Chiles* holding.

The *Chiles* standard is based squarely on the Florida Constitution. In allowing the City to modify its contractual obligations without meeting the *Chiles* test, the financial urgency statute has been applied unconstitutionally.

PERC's Final Order, and the First District's decision affirming it, absolved the City from having to establish that modifying the CBA was "required." Instead, both PERC and the First District adopted a standard which permitted the City to choose a more desirous, albeit not "required" action as opposed to one of the

numerous distasteful alternatives. The City could have saved the contract with its police officers, "in whole or in part" by using the rolled back tax rate, increasing its millage rate, laying off police officers, imposing unpaid furloughs on police officers decreasing services, changing staffing levels, seeking voluntary cuts from other vendors, and imposing new fees. The City took no measures at all to increase its revenues, and in fact reduced its tax revenue by not using the rolled back rate, which would have increased its revenue. The City had these and other reasonable, alternative means to save money while preserving its contract with the Union, in "whole or in part."

PERC and the First District erroneously held that the City did not have to complete the statutory impasse procedure prior to implementing changes in the wages and pension benefits of the police officers. The financial urgency statute plainly and unambiguously provides that after an impasse is reached, the parties "shall then proceed pursuant to the provisions of Section 447.403." § 447.4095, Fla. Sta. (2010). Section 447.403, Fla. Stat. provides an orderly procedure for the resolution of impasses, which places the final authority to determine the terms and conditions of employment in the hands of the legislative body. The procedure includes the right to a hearing before a Special Magistrate, who then makes recommendations as to what the terms and conditions of employment should be. If either party rejects those recommendations, the governing body makes the final

determination. This is an important part of the impasse resolution process, and modifications should not have been allowed just because the City skipped the entire Special Magistrate process.

ARGUMENT

I. THIS COURT'S DECISION IN *CHILES V. UNITED FACULTY OF FLORIDA*, 615 SO.2D 671 (FLA. 1993) SETS FORTH THE STANDARD THAT MUST BE MET BEFORE GOVERNMENT CAN UNILATERALLY MODIFY THE TERMS OF A CBA AND IT WAS ERROR NOT TO FOLLOW IT

Standard of Review

Questions of law are subject to *de novo* review. *Southern Baptist Hosp. of Florida, Inc. v. Welker*, 908 So.2d 317, 319-320 (Fla. 2005). Constitutional challenges to statutes or ordinances involve pure questions of law reviewable on appeal *de novo*. *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 500 (Fla. 2003). This appeal includes a constitutional challenge to a statute as applied and therefore must be reviewed *de novo*. *Kuvin v. City of Coral Gables*, 62 So.2d 625 (Fla. 3d DCA 2010).

The Constitutional Right To Bargain Collectively And The Constitutional Prohibition of Impairment of Contracts Are Both At Issue In This Case

Article I, Section 6 of the Florida Constitution provides a constitutional right of collective bargaining for public sector employees: "the right of employees by and through a labor organization, to bargain collectively shall not be denied or

abridged." Article I, Section 10 of the Florida Constitution prohibits a government from passing a law which impairs the obligations of contracts. Article I is titled "Declaration of Rights" and it is significant that a right is included in this Article, as explained by this Court:

> The text of our Florida Constitution begins with a Declaration of Rights-a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. ... Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government....
>
> These Declarations of Rights ... say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights ... "Thus far shalt thou come, but no farther." *State ex rel. Davis v. City of Stuart,* 97 Fla. 69, 102-03, 120 So. 335, 347 (1929).

North Florida Women's Health and Counseling Services, Inc. v. State of Florida, 866 So.2d 612, 618-619 (Fla. 2003).

In *Hillsborough County Govtl. Employees Ass'n v. Hillsborough County Aviation Auth.*, 522 So. 2d 358, 362 (Fla.1988), this Court held "[t]he right to bargain collectively is, as a part of the state constitution's declaration of rights, a fundamental right. As such it is subject to official abridgement only upon a showing of a compelling state interest. This strict-scrutiny standard is one that is difficult to

meet under any circumstance . . . .." Further, the Court there held that the Constitutional right includes the right to effective collective bargaining. *Id.* at 363.

The Florida Constitution also prohibits impairment of the obligations of contract. "Virtually no degree of contract impairment has been tolerated in this state." *Yamaha Parts Distributors, Inc. v. Ehrman,* 316 So. 2d 557, 559 (Fla. 1975). Florida law requires public employee unions and public employers to negotiate in good faith, and if an agreement is reached, to sign that agreement and then to submit it to ratification. § 447.309(1) Fla. Stat. The right to collective bargaining includes the right—indeed the duty—to make a good faith attempt to enter into a binding collective bargaining agreement.[5] *Id.*

This Court recognized the importance of both of these rights in *Chiles.*

> The right to contract is one of the most sacrosanct rights guaranteed by our fundamental law. It is expressly guaranteed by article I, section 10 of the Florida Constitution, and is equally enforceable in labor contracts by operation of article I, section 6 of the Florida Constitution. The legislature has only a very severely limited authority to change the law to eliminate a contractual obligation it has itself created. Art. I, § 10, Fla. Const.

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[5] "Collective bargaining" means the performance of the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment, except that neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this part. Florida Statutes Section 447.203(14).

Chiles, 615 So. 2d at 673.

A binding collective bargaining agreement, as with any contract, requires mutuality of obligation; if one party is not bound to an essential term, the contract is illusory and therefore invalid. *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So.2d 4 (Fla. 1984). Here, the parties negotiated and agreed to a contract with a three year term. (R. Vol. 1: 92). They did not have to do so; Florida law allows a lesser term. *See* § 447.309(5) Fla. Stat. (2010). The CBA also contains a "Total Agreement" clause which prohibited both parties from directly or indirectly initiating any municipal legislation which would alter the benefits agreed to in the CBA. (R. Vol. 1: 52). It is impossible to tell what either party may have given up for the three year term, or for the Total Agreement clause. As required by Florida law, § 447.309(1), Fla. Stat. (2010), the CBA was ratified by both the City and the police bargaining unit members. If at the end of that agreement a new agreement was not yet in place, the status quo would prevail. *See Util. Workers Union of Am. v. City of Lakeland*, 8 So. 3d 436, 437-38 (Fla. 2d DCA 2009) ("[g]enerally, the "status quo period" refers to the gap between collective bargaining agreements, when one agreement has expired and another has not yet been executed. During this time, the terms of the first agreement govern the labor/management relationship. The employer cannot unilaterally alter material terms in the expired contract

pending negotiation of a new contract."). The effect of allowing one party to unilaterally get out of its contractual obligations is drastic, greatly affecting the right of collective bargaining, and to be free from impairment of contract, and as will be shown below, places a heavy burden on the government to justify its actions.

The Chiles Standard And Its Rejection By The First Distict

In *Chiles*, this Court considered whether government can abrogate its promises contained in a collective bargaining agreement, and if so, under what circumstances. In *Chiles* the State entered into a contract with its unions, and appropriated sufficient monies to fund the Agreement. *Id.* at 672-73. There was a revenue shortfall, and the Legislature postponed contractually bargained for raises. *Id.* at 672. The fiscal situation got worse, and the Legislature then rescinded the raises. *Id.* The unions filed suit and prevailed in the trial court. *Id.* The Supreme Court affirmed and ordered the raises reinstated to the day they were supposed to be made under the contract, essentially nullifying the actions of the Legislature both in postponing and then rescinding the raises. *Id.* at 673-674. The Court's decision was based squarely on Article I, Section 6 (the right to bargain collectively) and Article I, Section 10 of the Florida Constitution, (the freedom from impairment of contract). ("Accordingly, we affirm the order of the trial court below based on Article I, Sections 6 and 10 of the Florida Constitution..."). *Id.*

The Court first considered whether the State Legislature had any authority to deal with bona fide emergencies that arise during a CBA, and stated,

> "We recognize that in the sensitive area of a continuing appropriation obligation for salaries and perhaps in other contexts as well, the legislature must be given some leeway to deal with bona fide emergencies. Accordingly, we agree with the trial court that the legislature has authority to reduce previously approved appropriations to pay public workers' salaries made pursuant to a collective bargaining agreement but only where it can demonstrate a compelling state interest. Art. I, §§ 6, 10, Fla. Const.; *Hillsborough County Governmental Employees Ass'n, Inc. v. Hillsborough County Aviation Authority,* 522 So. 2d 358 (Fla. 1988).

Chiles, 651 So. 2d at 673.

Chiles explained the standard that must be applied in ruling on the propriety of governmental action which reneges on wages and benefits provided for in a collective bargaining agreement:

> Before that authority can be exercised, however, the legislature must demonstrate *no other reasonable alternative* means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, *the legislature must demonstrate that the funds are available from no other possible reasonable source. Accord United States Trust Co. v. New Jersey,* 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); *Association of Surrogates and Supreme Court Reporters v. New York,* 940 F.2d 766 (2d Cir. 1991); *Sonoma County Organization of Public Employees v. County of Sonoma,* 23 Cal. 3d 296, 591 P.2d 1, 152 Cal. Rptr. 903 (Cal. 1979). [Emphasis added].

Id. at 673.

Despite this clear holding, the First District rejected the standard articulated by this Court and said, "[W]e are not persuaded that this restrictive standard is constitutionally mandated or that is should be extended to 447.4095." *Headley v. City of Miami,* 118 So.3d at 893. The First District was required to follow *Chiles. See Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973) (holding that in the event of a conflict between a decision from a District Court of Appeal and the Supreme Court, the decision of the Supreme Court prevails). If the First District did not believe that *Chiles* was not properly decided it should have applied *Chiles* and certified the question to this Court. *William v. Stewart*, 291 So.2d 593 (Fla. 1974).

Despite the First District's skepticism about whether the *Chiles* standard was constitutionally mandated, this Court's holding in *Chiles* was based squarely on the Florida Constitution, "These conclusions are compelled by the Florida Constitution."[6] *Id.* at 673. It is long been the case that when governmental action impinges on a fundamental right, courts subject the action to strict scrutiny and require the state actor to demonstrate both a compelling state interest and that its actions are the least intrusive means of accomplishing the desired result. *See, e.g. State v. J.P.,* 907 So. 2d 1101, 1115-6 (Fla. 2004) (explaining that in order to justify the law at issue, the

[6] The Court in *Chiles* recognized that the separation of powers was not at issue. *Id.* Certainly, there is no separation of powers issues with local governments. In *Chiles*, the Court limited the power of the sovereign to change a CBA. Municipalities do not possess sovereign power.

city "must have a compelling governmental interest . . . and the ordinance must be narrowly tailored to accomplish [its] goals by the least intrusive means available."); *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985).

Further, in *Scott v. Williams,* 107 So.3d 379, 385 (Fla. 2013) this Court cited *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 30 (1977) for the appropriate contract clause analysis, where, as here, government seeks to alter its own contractual commitments:

> "[A] State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives" and "is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." *Id.* at 30-31. The government's significant impairment of its own contract is not justified by necessity if "the State could have adopted alternative means" of achieving its goals without altering the contract rights.

Id. at 30.

The First District did not articulate a reason not to apply the *Chiles* standard[7]. Possibly it did not fully appreciate the drastic nature of the contractual changes in this

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[7] In *Florida State Fire Service Association, et al.*, decided just a few months after *Headley*, the First District found that the State of Florida had committed an unfair labor practice when the Governor effectively circumvented the CBA by opening a provision of the CBA to a potential change by the Legislature without first negotiating the issue with the union. The Court concluded that the actions by the Governor amounted to a violation of the Union's right to collective bargaining.

case--changes even more drastic than what occurred in *Chiles*. In Chiles, the wages were not paid, but the actual terms of the contract were not changed. If in the next year of the CBA, if the state had more money, the employees would then receive their bargained for raise. In this case, the City actually and unilaterally modified the bargained for CBA and changed the terms. The FOP was then placed in the position of digging out of a hole that the City unilaterally created for them.

By not applying *Chiles*, the "collective" portion of collective bargaining has been eviscerated. Assume for the sake of argument that the Union did not represent the City's police officers. Had the City entered into individual written contracts of employment with each of its police officers establishing the very same wages, benefits, and conditions of employment found in the collective bargaining agreement, effective for precisely the same period of time as the collective bargaining agreement, the City would have no right under the financial urgency law to abrogate or modify those individual employment contracts. ("virtually no degree of contract impairment has been tolerated in this state." *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d 557 (Fla. 1975)).

The First District was required to interpret and apply § 447.4095, Fla. Stat. (2010) so as to render it constitutional, if possible. *See Haddock v. Carmody*, 1

Florida State Fire Service Association, IAFF, Local S-20 v. State of Florida, 128 So.3d 160, 165 (1st DCA 2013).

So.3d 1133, 1135 (Fla. 1st DCA 2009). *Chiles* sets forth the standard that must be applied. It was the duty of both PERC and the First District to apply that standard, and neither has done so.[8] The livelihood and future of the police were drastically altered by unilateral action of government, and the police are entitled to have their ULP judged under the appropriate constitutional standard.

There Were Measures That The City Could Have Taken To Save The Contract In Whole Or In Part.

The City Could Have Raised Revenue

This Court held in *Chiles* that before a legislature can reduce previously approved appropriations to pay public workers' salaries made pursuant to a collective bargaining agreement, the Legislature must demonstrate no other alternative means of preserving its contract with public workers, "either in whole or in part." *Chiles*, 615 So. 2d at 673. Yet the City made no effort to save the contract, even in part, when it had a range of options available.

[8] This case is an "as applied" challenge to the financial urgency statute. This case is not a facial challenge. It is important to note that the FOP also has a facial constitutional challenge to Section 447.4095 pending in this Court in SC 14-1639. In its facial challenge, the FOP has alleged that the statute not only abridges the fundamental right of collective bargaining, but is also void for vagueness, impairs the obligation of contract, denies equal protection, denies procedural process, and impairs the right to be rewarded for industry. In prosecuting this as applied challenge, the FOP in no way abandons its facial challenge.

First, it could have raised additional revenue. The City decided to receive less revenue from its ad valorem taxes that it received the previous year, even though it was facing a significant budget shortfall. As the City Manager testified, this was a political judgment: "there are also, from a *political* perspective, for the Mayor and the commissioners, they feel that *politically* the city is not in a position to increase taxes, ..." (R. Vol. 16: 235). In fact, the City Manager testified that he suggested that the City increase the millage rate. (R. Vol. 17: 323). The City did not even proffer a compelling reason why it did not raise taxes, or at least use the rolled back rate, which would have at least raised the same amount of ad valorem tax revenues that it received the previous year. Raising the millage rate to its maximum would have generated sixty million dollars in revenue. (R. Vol. 17: 324).

The Hearing Officer found that raising the millage rate to the maximum amount "could potentially result in the City receiving negative credit action" (R. Vol. 15: 2329) but never found that the City could not have used some of its taxing power. In fact, the City's bond rating was downgraded by Standard & Poors, in part by its unwillingness to raise taxes. (R. Vol. 17: 479). The City did not raise fees either. (R. Vol.16: 87, R. Vol. 16: 88).

Under the lax standard applied in this case, a City could always leave itself short of funds and thereby create a financial urgency, modify its union contracts, and not be subjected to exacting scrutiny. The Florida Constitution does not guarantee

the right of collective bargaining only when it is expedient for the politicians. In *Chiles* the Supreme Court warned that "the mere fact that it is politically more expedient to eliminate all or part of the contractual funds is not itself a compelling reason. Rather, the legislature must demonstrate that the funds were available from no other possible reasonable source." *Id.* at 673.

The City Had Management and Contractual Rights That It Could Have Exercised

Second, the City could have exercised certain management rights reserved to it under the broad management rights clause contained in Florida Statutes. Section 447.209, provides in relevant part that it "is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees,...and relieve its employees from duty because of lack of work or for other legitimate reasons."

Under this the City has the right, for example, to determine service or staffing levels. *Id.*; *Hillsborough CTA v. School Board of Hillsborough County,* 7 FPER ¶ 12411 (1981), *recon. denied*, 8 FPER ¶ 13074 (1982), *aff'd*, 423 So.2d 969 (Fla. 1st DCA 1983 (create or abolish positions). *See NAGE v. City of Casselberry*, 10 FPER ¶ 15205 (1984) and determine staffing levels. *See IAFF Local 2416 v. City of Cocoa,* 14 FPER ¶ 19311 (1988) (finding minimum manning levels to be a

management right). The City could have instituted unpaid furloughs as a management right. *Teamsters Local Union No. 769 v. Martin County Bd. of County Comm'rs*, 37 FPER ¶ 57 (2011). When there is an unpaid furlough, the employee will make less money, but will do less work. He or she is still paid at the bargained for rate for the work he or she performs – their wages are not lowered unilaterally. The City did not present any reason–certainly not a compelling one–why it did not institute unpaid furloughs to save all, or part of the CBA.

The CBA also contains a broad management rights clause, reserving to the City the right to "reduce, change, modify, or alter the composition and size of the work force, including the right to relieve bargaining unit members from duties because of lack of work or funds." (R. Vol. 1: 15-16). Thus, the City could have laid off some workers. PERC stated "the City considered additional layoffs in lieu of reductions in pension and personnel costs; however this would have necessitated the layoff of 1,300 employees or 1/3 or the City's work force, these layoffs would have depleted hundreds of police and fire positions, impacted essential services to the citizens, and potentially endangered the health and safety of city residents." (R. Vol. 15: 2474). PERC is saying that since the City would have had to lay off 1300 people to obtain *all* the savings, it did not have to lay off anyone. Surely, some of the savings could have come from some layoffs. Not every employee is of equal necessity. The parties bargained for layoffs in the event of "lack of work or funds."

The City did not show that it could not have laid off some police officer and have saved the "contract either in whole or in part," as required by *Chiles*.

Merely asserting that layoffs/furloughs were unreasonable is not enough. It is exactly this type of broad brush analysis that the strict scrutiny standard prohibits. Furloughs, layoffs, reductions in services—distasteful surely, not only to the police, but to the politicians and citizens as well.

The City's Claim That It Had to Modify The Contract In Order to Deliver A Balanced Budget Because the FOP Would Not Agree to Concessions Is Not Correct

The Hearing Officer found the following reason for the declaration of financial urgency:

> The decision to declare financial urgency was based on the City's determination that there was insufficient time to successfully negotiate agreements with the three labor organizations in order to manage expenses and deliver a balanced budget to the State on September 30, 2010.

(R. Vol. 15: 2337). The need to pass a balanced budget is not a compelling state interest justifying the unilateral changing of a CBA. It could have passed a budget with the same projected savings from personnel costs without actually implementing the savings by September 30. In *Taylor County Board of County Commissioners*, 10 FPER ¶ 15067 at 1081 (1984) PERC explained that "[o]nly when a budget proposal or adoption is coupled with a refusal to continue good faith negotiations seeking modifications to a proposed or adopted budget may an unfair labor practice

occur." (citation omitted). The City's obligation to adopt a balanced budget prior to the start of each fiscal year has never been construed by PERC as a justification for making unilateral changes, nor is a budget carved in stone. *See, e.g. IBEW Local Union No. 1965 v. Taylor County Board of County Commissioners*, 10 FPER ¶ 15067 (1984); cf., *Local No. 301 Laborers International Union v. City of Jacksonville*, 6 FPER ¶ 11047 (1980). This is because the adoption of a budget does not signal an end to negotiations. § 447.309(2), Fla. Stat. (2010), ensures that a previously enacted and implemented budget may be modified to accommodate a subsequent collective bargaining agreement. See *Broward County Classroom Teachers Association v. School Board of Broward County*, 4 FPER ¶ 4264 at 485 (1978). The evidence shows that the City has amended budgets during and even after the budget year. R. Vol. 16: 295-296. *See* § 166.241(3) Fla. Stat. (2010) ("The governing body of each municipality at any time within a fiscal year or within 60 days following the end of the fiscal year, may amend a budget for that year ..."). The CBA under which the parties were operating before the changes were made, was not even agreed to until well after its effective date, indicating that the parties continued to negotiate even after the City had to pass a balanced budget. (R. Vol. 5: 641).

The City could have adopted a budget which incorporated reductions in personnel costs, even if not agreed to. There was no need to actually implement the

reductions to wages and benefits as of October 1, 2010. As the FOP's expert testified, without refutation in the record, the City could have realized the same savings even if wage reductions and pension modifications had been implemented later in the year, after completion of the impasse resolution process. (R. Vol. 16: 169-170; R. Vol. 16: 204-205). The City never proffered a reason as to why it did not proceed in that fashion.

II. WHETHER A FAILURE TO ABIDE BY THE MANDATES OF THE IMPASSE RESOLUTION PROCESS, INCLUDING THE RIGHT TO A HEARING BEFORE A NEUTRAL SPECIAL MAGISTRATE IS ERROR REQUIRING REVERSAL

Standard of Review

Florida Statutes set forth the procedures to be used in modifying a CBA under the financial urgency statute. The interpretation of those statutes are questions of law. Questions of law are subject to *de novo* review. *Southern Baptist Hosp. of Florida, Inc. v. Welker*, 908 So.2d 317, 319- 320 (Fla. 2005).

Even if the City Was In a State of Financial Emergency It Could Not Modify the CBA Without Proceeding Through the Full Impasse Resolution Process

Assuming, *arguendo,* that the City was in a state of financial urgency requiring modification of the collective bargaining agreement, the First District erred by concluding that the City could implement changes in the agreement prior to completing impasse resolution proceedings under Section 447.403, Florida Statutes. Section 447.4095 specifically requires that the financial urgency process

concludes as follows in the event of an imasse concerning financial urgency: *The parties shall then proceed pursuant to the provisions of s. 447.403.* [Emphasis added].

Section 447.403, Fla. Stat. provides an orderly procedure for the resolution of impasses. This is an important section, because public employees in Florida do not have the right to strike, and there must be a method of resolving impasses in collective bargaining. Section 447.403 requires (unless mutually waived) that a special magistrate hold a hearing in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. Section 447.403(3), Florida Statutes. The Special Magistrate sets the date for the hearing and is required, within 15 calendar days after the close of the hearing, to transmit his or her recommended decision to PERC and to the representatives of both parties. *Id.* The parties are required to discuss it. The recommended decision is deemed approved by both parties unless specifically rejected by either party within 20 calendar days. *Id.* If it is rejected, the legislative body must "forthwith conduct a public hearing" and then "take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues." Section 447.403(4)(c) and (4)(d), Florida Statutes.

If the legislative body action is ratified by the bargaining unit a new contract is formed. If it is rejected by the bargaining unit, the legislative body action

takes effect retroactively from the date of the public hearing for the remainder of the fiscal year. Section 447.403(4)(e), Florida Statutes. The Act's impasse resolution procedure thus bars an employer from changing terms and conditions of employment until *after* the special magistrate's hearing, *after* the legislative body's hearing, and *after* a failed ratification vote by the bargaining unit.

As the former Dean of Stetson Law School, the late W. Gary Vause wrote in the Florida Bar Journal, the Special Magistrates recommended decision is hugely important in determing the ultimate fairness of the legislative bodies action:

> the legislative body must proceed in strictest observance of the principles fairness and impartiality. ...The public employer/legislative body's duty of fairness attaches once the special master's recommended decision is rejected by one of the parties and the cause is submitted to the public employer/legislative body for the purpose of a hearing pursuant to §447.403(4)(c) of the Act.
>
> * * *
>
> Thus, upon rejection of the special master's report, the Act contemplates that the status of the public employer/legislative body converts from disputant to representative of the general public. The public employer/legislative body must divorce itself from its role as a negotiating party and its impasse resolution action must be based upon consideration of the interests of all the parties including those of the employees.

W. Gary Vause, *The Special Master in Public Sector Labor Disputes*, 52 Fla. B. J. 123 (1979).

PERC and the First District departed from "[o]ne of the fundamental rules of statutory construction is that when the language under review is clear and unambiguous, it must be given its plain and ordinary meaning." [9] *Hayes v. David,* 875 So. 2d 678, 680 (Fla. 1st DCA 2004); *Metropolitan Casualty Insurance Co. v. Tepper,* 2 So. 3d 209, 214 (Fla. 2009); *Ross v. Gore,* 48 So. 2d 412, 415 (Fla. 1950). § 447.4095, Fla. Stat. (2010), the financial urgency statute, provides very directly that [t]he parties shall then proceed pursuant to the provisions of § 447.403, the Special Magistrate process. § 407.403 specifically requires that a Special Magistrate can only be bypassed, "if the parties agree in writing to waive the appointment of a special magistrate." § 447.403(2)(a), Fla. Stats. (2010).

The First District erroneously concluded the City did not have to complete the impasse process prior to implementation of the modifications because 4095 only calls for impact bargaining and PERC case law allows implementation of a management right before completion of the impasse process when impact bargaining is involved. *See Jacksonville Supervisors Association v. City of Jacksonville*, 26 FPER ¶ 31140 at 255-256 (2000), *rev'd in part on other grounds*, 791 So.2d 508 (Fla.1st DCA 2001). First, collective bargaining under the financial urgency statute is not impact bargaining, and even if it was, the statute still directs

[9] The FOP contends that this language is clear and unambiguous.

that changes to the CBA not be made without proceeding through the impasse resolution process.

Financial urgency bargaining is not impact bargaining. Impact bargaining involves the concept that even though a public employer has the right to unilaterally exercise a management right, if the exercise of that management right impacts wages, hours and terms and conditions of employment, the impacts of that management right have to be bargained. The decision to exercise a management right does not have to be bargained. *See FOP Lodge 86 v. Orange County Bd. Of Comm'rs*, 33 FPER ¶ 322 (2008). *See e.g. School District of Indian River County v. Florida Public Employees Relation Commission*, 64 So.3d 723, 728-729 (Fla. 4th DCA 2011); *FOP Lodge 86 v. Orange Cnty.*, 33 FPER ¶ 322, 738 (2008) (citations omitted). Examples of managment rights are the closing of a fire station, or switching from a trimester to a semester system.

Impact bargaining results from management making decisions outside of the scope of an agreement; bargaining under financial urgency seeks to change the terms of the agreement itself. Impact bargaining requires a threshold determination as to whether the employer's decision even affects employees' wages, hours, or working conditions; bargaining under financial urgency inherently seeks to change wages, hours, and working conditions.

With mandatory subjects of bargaining such as wages and pensions, a public employer must first bargain in good faith to impasse, and then follow the statutorily prescribed impasse resolution process (absent waiver or exigent circumstances). The management rights at issue in the usual impact bargaining case -- the closing of a fire station, the change from a trimester to a semester -- are fundamentally different from management unilaterally change in the wages of employees, or to change their retirement. The financial urgency statute requires bargaining over mandatory subjects of bargaining, the financial matters such as pay and retirement income, that lie at the heart of the employment relationship. PERC and the First District have essentially held that 447.4095 gives a unit of local government, once it has a financial urgency, to exercise a management right to not pay what the contract calls for, and to decide unilaterally what to pay. The notion there is a management right to cancel and change a contract does not comport with this Court's acknowledgment of and respect for the constitutional right of collective bargaining and prohibition of the impairment of contract.

Assuming *arguendo*, that the financial urgency statute only calls for impact bargaining the entire impasse resolution process must still be followed. As shown above, the statute unamibuously provides for it.

Contrary to what PERC says in its Final Order (R. Vol. 8 at 1458), Florida courts have not approved PERC's determination that an employer need not complete

the Section 447.403 process before implementing changes in mandatory subjects of bargaining resulting from impact bargaining. It was not an issue litigated in the First District's decision in *City of Jacksonville v. Jacksonville Supv's Ass'n,* 791 So. 2d 508 (Fla. 1st DCA 2001), which turned on whether there was any obligation to bargain at all, not when changes subject to impact bargaining could be implemented. To the contrary, Florida court decisions indicate just the opposite. *Sch. Dist. of Indian River Cnty. v. Fla. Pub. Emps. Rel. Comm'n,* 64 So. 3d 723 (Fla. 4th DCA 2011) (the appropriate time to impact bargain is prior to implementation of a change); *Leon County Police Benevolent Ass'n v. City of Tallahassee*, 8 FREP ¶ 13, 200, 746 (1982).

The City Deprived the FOP of the Special Magistrate Hearing Because the FOP Did Not Agree to the City's Demands

PERC says that the requirement of proceeding through the entire impasse process as required by the plain terms of the statute "effectively eliminates the City's ability to address a financial urgency in a prompt and decisive manner." Not so. (R. Vol. 15: 2480). The City's financial condition existed for months before it declared financial urgency. Even the City Manager testified that the City could have declared an impasse much earlier than when it declared financial urgency;

> When we started running out of time, and we –all along- and I believe that Sergent Aguilar said that he – early on was not willing to give us any wage decreases, so we could have declared an impasse. We could have declared

> an impasse at any time, but we kept trying to negotiate with them. When, at that point in time, we had run out of time, we had to declare financial urgency, so we could meet our deadline of balancing the budget by September 30. [Emphasis added].

(R. Vol. 16:283-284).

The City waited and waited to declare financial urgency on the FOP, three months after it had declared it on the Firefighters, and then claimed it was too late to to use the impasse procedure. If the City had not waited to declare an impasse there would have been more than enough time to complete the impasse process by the start of the new fiscal year.

The FOP was prejudiced by the City's failure to follow the procedure. The impasse resolution process ends with the legislative body determining the terms and conditions of employment, and is therefore one sided to begin with. There are important statutory protections in the impasse resolution process and the Special Magistrate is one of them. After the Special Magistrate issues a recommended decision, "such recommended decision shall be discussed by the parties." § 447.403(3) allows a neutral—with no political dog in the fight—to make recommendations to both sides and then requires those recommendations to be discussed. If either side rejects them, there is then an "insulated period." In *IAFF Local 2135 v. City of Ocala*, 5 FPER ¶ 10252 (1979), the Commission established an "insulated period" during which representatives of parties at impasse are

prohibited from free communication with the legislative body. The insulated period is between the partial or total rejection of the Special Magistrate's recommended decision and the convening of the legislative body hearing to break the impasse. This insulated period is required to insure the neutrality of the legislative body, which is essential to the § 447.403, Fla. Stat., impasse resolution process. *City of Orlando*, 9 FPER ¶14133 (1983).

As the dissenting PERC said about the changes being implemented before the impasse resolution process is complete:

> This application of the statute is backwards. The public employer is allowed to make financial changes to the contract and then negotiate over the changes that had already been implemented. The paradox is what could be the impacts, other than the financial changes that have already been implemented?

(R. Vol. 8 at 2485).

CONCLUSION

In the usual case when an agency applies an incorrect legal standard, the remedy is to remand the matter to the agency for further fact finding. *City of Coral Gables v. Coral Gables Walter F. Strathers Memorial Lodge 7, Fraternal Order of Police*, 976 So. 2d 57, 66 (Fla. 3d DCA 2008). However, where the undisturbed findings of the order under review are sufficient to sustain reversal, remand is unnecessary. *Id.* Here, there was not a finding that there were no other reasonable alternative sources of money to save the CBA. Also, the City invited this result,

because it convinced the PERC to use the wrong standard. Under these circumstances, reversal is appropriate and the parties should be returned to the status quo prior to the modifications. In the alternative, the case should be remanded to PERC for application of the *Chiles* standard.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 22, 2014, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal and a copy furnished to the following recipients via electronic mail:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Rule 9.210 of the Florida Rules of Appellate Procedure because this brief is in Times New Roman 14 Point Font.

Dated: October 22, 2014.

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