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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.,

Petitioner,

vs.

CITY OF MIAMI,

Respondent.

RESPONDENT'S JURIDICTIONAL BRIEF

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

This case involves the City of Miami's declaration of a financial urgency in 2010, pursuant to section 447.4095, Florida Statutes, which provides:

> In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his 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 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 ("FOP") filed an Unfair Labor Practice Charge ("ULP") with the Public Employees Relations Commission ("PERC"), asserting *inter alia* that the City's declaration of "financial urgency" did not meet the standards required by the Florida Constitution.

A hearing officer assigned by PERC conducted an evidentiary hearing on the ULP. The First District described the evidence as follows:

> [T]he City presented extensive evidence of the dire financial situation it was facing. The evidence established that the City's budget was approximately

> $500 million and that it faced a deficit of approximately $140 million for the 2010/2011 fiscal year; that the City had already implemented hiring freezes, completed all previously contemplated layoffs, ceased procurement, and instituted elimination of jobs as employees left; that labor costs comprised 80% of the City's expenses; that, if additional action was not taken to reduce expenditures, the City's labor costs would exceed its available funds, which would leave the City unable to pay for utilities, gas, and other necessities and render it unable to provide essential services to its residents; and that the City's unemployment rate was 13.5% and property values were in decline, with 49% of homes in the City having a negative equity.

After the evidentiary hearing, the hearing officer recommended dismissal of the ULP.

Upon review of the recommendation, PERC dismissed the ULP on the merits, adopting a definition of "financial urgency" consistent with constitutional standards, and finding that the financial situation facing the City constituted a "financial urgency" under the statute and pursuant to those standards.

The FOP appealed the decision of PERC to the First District Court of Appeal. The First District affirmed, approving the definition of "financial urgency" articulated by PERC and holding that the declaration of "financial urgency" by the City, given its financial state at the time, met the standards required by the Florida Constitution.

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal does not expressly or directly conflict with *Chiles v. United Faculty of Florida,* 615 So. 2d 671 (Fla. 1993). Review in this case is neither necessary nor warranted. Thus, the Supreme Court should decline jurisdiction over this case.

ARGUMENT

JURISDICTION SHOULD BE DECLINED BECAUSE THE DECISION OF THE FIRST DISTRICT DOES NOT CONFLICT WITH THE RULING OF THIS COURT IN *CHILES V. UNITED FACULTY OF FLORIDA*.

Section 447.4095 "provides an expedited collective bargaining process when invoked, with an impasse resulting in prompt (and preemptive) submission of the dispute to the Public Employees Relations Commission[.]" *City of Miami v. Fraternal Order of Police,* 98 So.3d 1236 (Fla. 3d DCA 2012).

Section 447.4095 does not define financial urgency. If the claim of a financial urgency is contested, as it was in this case, it is necessary for the union to file an unfair labor practice charge. As stated by the First District in *Manatee Educ. Ass'n v. School Bd. of Manatee County*, 62 So.3d 1176, 1178 (Fla. 1st DCA 2011):

> In that event, it is incumbent on PERC to decide whether a 'financial urgency' within the meaning of the statute—construed in keeping with the Florida Constitution—actually existed. If so, PERC should dismiss the charge. If not, PERC should order appropriate relief.

Without any preconditions, an employer may declare a financial urgency and proceed under Section 447.4095. *See id; City of Miami v. Fraternal Order of Police,* 98 So.3d 1236 . But the employer's declaration does not conclusively resolve the claim if contested by the union.

> 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' right to bargain collectively. *See* Art. I, § 6, Fla. Const.

Manatee Educ. Ass'n, 62 So.3d at 1178. Hence, PERC is charged with determining if the City established a "compelling state interest" to modify the collective bargaining agreements. The First District left it to PERC to determine whether a financial urgency exists on a case-by-case basis.

In this case, the First District articulated the test for the existence of a "financial urgency":

> The Legislature's use of the word "urgency" implies a financial condition requiring immediate action. The fact that there are other statutes that apply when a local government is facing a financial emergency or bankruptcy implies that a financial urgency is something less dire than those conditions. Thus, consistent with the

> definition adopted by PERC, we conclude that a financial urgency is a dire financial condition requiring immediate attention and demanding prompt and decisive action, but not necessarily a financial emergency or bankruptcy.
>
> The existence of such a financial condition is a compelling state interest that can justify a unilateral modification of a CBA, but based on the plain language of the statute, section 447.4095 may only be invoked if the financial condition *requires* modification of the agreement. Thus, if the financial condition can be adequately addressed by other reasonable means, then a modification of the agreement is not "required." If, however, the other reasonable alternatives available to the local government are not adequate to address the financial condition facing the local government, then section 447.4095 permits the local government to unilaterally modify the CBA. (Footnotes omitted.)

This test for evaluating the existence of a financial urgency and the ultimate factual issues for determination outlined by the court do not expressly and directly conflict with the decision in *Chiles* and are consistent with, and do not violate, the Constitutional right to collectively bargain.

This standard set forth by the First District may be worded slightly differently, but it is substantially similar, if not the same in actual application, as the standard enunciated in *Chiles v. United Faculty of Fla.*, 615 So. 2d 671 (Fla. 1993).

The FOP focuses on the statement in *Chiles* that "the legislature must demonstrate that the funds are available from no other possible reasonable

source." The First District declined to use this language, instead holding that "the local government must only show that other potential cost-saving measures and alternative funding sources are unreasonable or inadequate to address the dire financial condition facing the local government."

Nonetheless, the First District decision does not conflict with *Chiles*. The *Chiles* case predated and therefore did not construe the financial urgency statute. *Chiles* involved the State's attempt to withdraw pay raises after appropriating monies to fund a labor contract. At the time of the *Chiles* decision, section 447.309(2) provided that failure to appropriate monies to fund a collective bargaining agreement was not evidence of an unfair labor practice.[1]

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[1] *Chiles* also involved a claim of impairment of contracts which is not implicated by this case because the operative labor contract, which post-dated section 447.4095, must necessarily be construed to incorporate state law including the financial urgency statute. *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.").

After *Chiles,* in 1995, the financial urgency statute was enacted and created a statutory method to balance the interests of both public employer and employee. The statute provided unions with rights that they did not have under section 447.309(2)—the right to expedited impact bargaining and the right to file an unfair labor practice charge if they disputed the existence of a financial urgency. Moreover, the language of 447.4095 requires not only a compelling state interest, but that the financial urgency actually "requires" the modification of the labor contract. This scheme addresses and supplants the "reasonable alternative means" standard by creating a system that is the least intrusive means to accomplish its ends and that safeguards the employees' rights. *Cf. State v. Cunningham,* 712 So.2d 1221 (Fla. 2d DCA 1998) (finding that state statute was constitutional where the statute employed least intrusive means to accomplish its goal).

The intent of the Legislature in codifying 447.4095, while repealing Section 447.309(2) with respect to local governmental entities, was to provide the local public employer with a process by which it could effectively and timely take action with regard to an urgent financial circumstance. *See,* e.g. *Sarasota County Sch. Dist. v. Sarasota Classified Teachers Ass'n,* 614 So.2d 1143, 1146 (Fla. 2d DCA 1993) ("We conclude that the statute applies whenever a legislative body . . . is requested to

appropriate public funds to satisfy an obligation which arises out of collective bargaining. If we were to accept the agency's interpretation of section 447.309(2), a public employee would have a right he did not bargain for, i.e. an unconditional right to receive funding[.]"). This is consistent with the distinction recognized by the Court between public and private sector collective bargaining. *See, e.g., State v. Florida Police Benevolent Ass'n, Inc.,* 613 So.2d 415, 418 (Fla. 1992); *United Teachers of Dade FEA/United AFT, Local 1974 v. Dade County Sch. Bd.,* 500 So.2d 508, 512 (Fla. 1986); *Miami v. F.O.P., Miami Lodge 20,* 571 So.2d 1309, 1326-1327 (Fla. 3d DCA 1990). Thus, the standard articulated by this Court satisfies the Florida Constitution; the *Chiles* "no other reasonable alternative means" test need not and should not be applied to section 447.4095.[2]

The FOP further requests that the First District decision be reviewed suggesting that the opinion is of great public importance, although the First District declined certification. While the decision is important, further review of this case is neither necessary nor warranted.

Section 447.4095 has seldom been invoked since its enactment in 1995. There are only a few administrative opinions and cases addressing

[2] As argued below, there was competent substantial evidence in support of the fact that the funds were not available from any other possible reasonable

the statute since that time. The substantive operation of the statute had not even been addressed until the First District's opinion in *Manatee Educ. Assoc. v. Sch. Bd. of Manatee Cnty.*, 62 So. 3d 1176 (Fla. 1st DCA 2011). Given the infrequency in which the statute is invoked, although there is the potential for the statute to be applied to other labor agreements in Florida, there is no certainty that this decision will actually affect a large segment of the population in the foreseeable future.

Furthermore, determinations of the existence of "financial urgency" under section 447.4095 are fact intensive. The circumstances under which the City of Miami declared a financial urgency under the statute were extremely serious and particularized. The First District found that the evidence established that the City's budget was approximately $500 million and that it faced a deficit of approximately $140 million for the 2010/2011 fiscal year; that the City had already implemented hiring freezes, completed all previously contemplated layoffs, ceased procurement, and instituted elimination of jobs as employees left; that labor costs comprised 80% of the City's expenses; that, if additional action was not taken to reduce expenditures, the City's labor costs would exceed its available funds, which would leave the City unable to pay for utilities, gas, and other necessities

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source which would have satisfied the statement in *Chiles* in any event.

and render it unable to provide essential services to its residents; and that the City's unemployment rate was 13.5% and property values were in decline, with 49% of homes in the City having a negative equity. The application of the statute to the facts giving rise to financial urgency in different situations will vary widely therefore reducing the possibility of conflicting decisions. This Court should decline review in this case.

CONCLUSION

Based on the foregoing, the City of Miami respectfully requests that this Court decline discretionary jurisdiction over the decision of the First District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been emailed this 25th day of OCTOBER, 2013 to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman and the size is 14-point font.

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