

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1882
Lower Case No.: 1D12-2116

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

Petitioner,

v.

CITY OF MIAMI, FLORIDA

Respondent.

**PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF
JURISDICTION TO REVIEW A DECISION OF THE DISTRICT COURT
OF APPEAL FOR THE FIRST DISTRICT OF FLORIDA**

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Introduction

After briefs on jurisdiction were filed, the Fourth District issued its decision in Hollywood Fire Fighters, Local 1375, IAFF, Inc., v. City of Hollywood, 2014 WL 51693 (Fla. 4th DCA January 8, 2014). The Petitioner was permitted to file a Supplemental Brief on Jurisdiction to address the conflict with Hollywood. We do not include a new Statement of Case and Facts, as it is unnecessary. This Brief is in addition to that which we stated in our Initial Brief.

SUMMARY OF ARGUMENT

The decision of the District Court of Appeal expressly and directly conflicts with Hollywood Fire Fighters, Local 1375, IAFF, Inc., v. City of Hollywood, 2014 WL 51693 (Fla. 4th DCA January 8, 2014) concerning the constitutional standard that must be met before government can unilaterally renege on and change the terms of a collective bargaining agreement (CBA) with a public employee union. Hollywood relied on Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla. 1993), which held that Florida's Constitution does not permit a governmental entity to change the terms of an existing CBA with a public employee union without demonstrating that there are "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part" and that before changing the CBA, the government must demonstrate that "the funds are available from no other possible reasonable source." Id. at 673. The decision of

the court below explicitly rejected that standard and the conflict is evident and should be resolved.

ARGUMENT

AN EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN THE FIRST DISTRICT'S DECISION BELOW AND THE FOURTH DISTRICT'S DECISION IN HOLLYWOOD FIRE FIGHTERS, LOCAL 1375, IAFF, INC V. CITY OF HOLLYWOOD CONCERNING THE CONSTITUTIONAL STANDARD THAT MUST BE MET BEFORE A GOVERNMENTAL ENTITY CAN UNILATERALLY CHANGE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT WHILE THE AGREEMENT IS STILL IN EFFECT. THE ANSWER TO THAT QUESTION AFFECTS PUBLIC SECTOR COLLECTIVE BARGAINING AND SHOULD BE RESOLVED

The Fourth District in Hollywood certified its decision as being in conflict with the decision of the First District in this case. Hollywood Fire Fighters, 2014 WL 51693, *4. In Hollywood, the District Court stated that "because we disagree with the appropriate constitutional standard to be applied [to the financial urgency statute] we certify conflict with the first district decision in Headley v. City of Miami, 118 So. 3d 885 (Fla. 1st DCA 2013)." Id. at *4. "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." Id. at *4.

In this case, the First District explicitly rejected the Chiles standard and announced a more lax standard:

The local government is not required to demonstrate that funds are not available from any other possible reasonable source to preserve the agreement; instead 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.

Headley, at 893. The decision below recognizes that its standard differed significantly from the Chiles standard (followed by Hollywood), by referring to the Chiles standard as “restrictive.” The test it developed focuses on addressing “the dire financial condition facing the local government,” while Hollywood, following Chiles, focuses on what steps can be taken to preserve the collective bargaining agreement with public workers, “either in whole or in part.” The First District’s standard is a deferential standard, akin to a rational basis test, and not the strict scrutiny standard requiring that government use the least restrictive means when impinging constitutional rights.

Since conflict has been certified, this Court has discretionary jurisdiction. The Court should exercise that discretionary jurisdiction here. The existence of the financial urgency statute looms large in Florida’s public sector collective bargaining. Even without a declaration of financial urgency, the threat of such a declaration places the union at a huge disadvantage and under heavy pressure to

make concessions without there being a declaration of financial urgency. Public employers and public employee unions need certainty about the analytic framework that will be applied in a financial urgency case.

It is important to collective bargaining negotiations that unions and employers alike be certain of what the Florida Constitution requires before the terms of a CBA are changed while the bargained for promises are in effect. Collective bargaining is the same as other contract formations, with the parties wanting certainty in the deal.

CONCLUSION

WHEREFORE and for all the foregoing reasons, this Court should grant review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent to: **John A. Greco, Assistant City Attorney**, City of Miami, Office of the City Attorney, 444 SW 2nd Avenue, Suite 945, Miami, Florida 33130; **William D. Salmon**, Staff Counsel, Public Employees Relations Commission, 4050 Esplanade Way, Tallahassee, Florida 32399-0950; **Michael Mattimore**, Allen, Norton & Blue, P.A., 906 N. Monroe Street, Tallahassee, FL 32303; **Luke Savage**, Allen, Norton & Blue, P.A., 121 Majorca Avenue, Suite 300, Coral Gables, FL 33134; **Victoria Mendez**, City Attorney and **Diana Vizcaino**, Assistant City Attorney, 444 SW 2nd Avenue, Suite 945, Miami, Florida 33130; **Thomas W. Brooks**, Meyer, Brooks, Demma and Blohm, P.A., 131 North Gadsden Street, P.O. Box 1547, Tallahassee, Florida 32302; **Paul A. Donnelly**, Donnelly and Gross, P.A., 2421 NW 41st Street, Suite A-1, Gainesville, Florida 32606; **G. Hal Johnson**, Florida Police Benevolent Association, P.O. Box 11239, Tallahassee, Florida 32301; **Richard A. Sicking**, Florida Professional Firefighters, Inc., International Association of Firefighters, AFL-CIO, 1313 Ponce de Leon Blvd., #300, Coral Gables, Florida 33134; and **David C. Miller, James C. Crosland**, Bryant Miller Olive, SunTrust International Center, 1 SE 3rd Avenue, Suite 2200, Miami, Florida 33131 on this 3rd day of March, 2014.

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CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this brief is in Times New Roman 14 Point
Font and is in compliance with Rule 9.210, Fla. R. App. P.

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