IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC17-1434
Lower Court Case Nos. 1D16-618; CA-2015-076

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL S-20, FLORIDA STATE FIRE SERVICE ASSOCIATION,

Petitioners,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

On November 25, 2015, the Florida State Fire Association ("FSFSA") filed an unfair labor practice charge with the Florida Public Employees Relations Commission ("PERC" or the "Commission") asserting that Governor Scott failed to bargain in good faith, in violation of §447.501 (1) (a) and (c), Florida Statutes, by vetoing a wage adjustment for FSFSA bargaining unit members included within the 2015 general appropriation act ("GAA"). The FSFSA and the Governor had previously bargained to impasse over the wage adjustment. The parties had then presented their respective positions regarding the special wage adjustment to a joint select committee appointed by the President of the Senate and the Speaker of the House of Representatives. The charge also asserted that the Governor's veto of the competitive wage adjustment violated §447.403 (4) and (5), Florida Statutes, which provides that the legislature's actions resolving disputed impasse issues are final and binding, and therefore, not subject to veto.

On February 1, 2016, the Commission issued an final order which recited the factual allegations of the charge, as previously summarized by the Commission's Designated Agent, and then affirmed his summary dismissal. The Commission wrote that an appropriations bill cannot be considered final until the Governor has had an opportunity to veto specific appropriations in the bill, and the Legislature has had the opportunity to override any veto. Because the FSFSA failed to show that the

Legislature overrode the Governor's veto, the Commission concluded that "[t]he State's presentation of a proposed agreement to bargaining unit members without the special wage adjustment was lawful."

The FSFSA then appealed PERC's final order to the Florida First District Court of Appeal. On June 6, 2017, in a two-to-one decision, the majority held that the Governor possessed explicit constitutional authority veto appropriations within the General Appropriations Act. Further, while it was true that public employees possess important, constitutionally protected collective bargaining rights, the Legislature could not "force the Governor's hand" to approve and sign the general appropriations act, or specific appropriations therein. Finally, the majority stated that the "[L]egislature here retained and exercised its ultimate authority to resolve the impasse after the Governor's veto, but chose not to override the veto and to maintain the status quo."

SUMMARY OF THE ARGUMENT

The lower court's decision expressly construed Article III section 8 of the Florida constitution when it held that the Governor's power to veto all or part of a general appropriations act includes the power to veto a portion of a general appropriations act that resolves a collective bargaining dispute. It also, by interpreting the PERA, expressly construed Article I section 6 of the Florida Constitution, which affords all employees, including state employees, the right to

bargain collectively, when it held that the constitutional right to bargain collectively is necessarily circumscribed by the Governor's constitutional right to veto a portion of a GAA resolving a collective bargaining dispute.

The lower court's decision also expressly affects a class of constitutional or state officers, in this case the members of the Florida legislature, because it holds that the Governor may veto the Legislature's resolution of a collective bargaining dispute, much as he may veto any other portion of a general appropriations act.

The lower court's decision also directly conflicts with *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993), which held that a branch of government, which in that case was the legislature, has the power to reduce previously approved appropriations made pursuant to a collective bargaining agreement, but only where it can demonstrate a compelling state interest.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction under the following provisions: (1) Article V, section (b) (3) (b) to review a decision of the district court of appeal that expressly construes a provision of the state constitution; (2) Article V, section 3 (b) (3) of the Florida Constitution because the lower court's decision expressly affects a class of constitutional or state officers; and (3) Article V, section 3 (b) (3) because it expressly and directly conflicts with a decision of the supreme

court on the same question of law, to wit: the court's previous decisions relating to the right to bargain under Article I, section 6 of the Florida Constitution.

ARGUMENT

A.

THE LOWER COURT HAS RESOLVED A CONFLICT BETWEEN CONSTITUTIONAL PROVISIONS IN A WAY THAT HAS EFFECTIVELY REDUCED THE CONSTITUTIONAL RIGHT TO BARGAIN TO A MERE "NULLITY"

This case presents the court with a clash between two state constitutional provisions: the Governor's veto authority under Article III, section 8 of the Florida Constitution and the fundamental constitutional right of public employees to collectively bargain under Article I, section 6 of the Florida Constitution. The constitutional right to bargain collectively is not self-executing. *Dade County Classroom Teachers Association. v. The Legislature*, 269 So. 2d 684 (Fla. 1972). Rather, it has been implemented by Chapter 447, Florida Statutes, the "Public Employees Relations Act" ("PERA" or the "PERA"). PERA is in turn interpreted by the Public Employees Relations Commission ("PERC").

When public employees exercise their constitutional right to bargain at the state level, PERA designates the Governor as the "employer" and the Legislature is the "legislative body." Should there be an impasse in bargaining between the employer and state employees, the impasse is resolved pursuant to Section 447.403 of the PERA, which in pertinent part reads:

> ***(2) . . . (b) If the Governor is the public employer, no special magistrate shall be appointed. The parties may proceed directly to the Legislature for resolution of the impasse pursuant to paragraph (4)(d).***
> . . .
> ***(4)(d) Thereafter, the legislative body shall 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; and***
>
> (5)(a) By the first day of the regular session of the Legislature, each party shall notify the President of the Senate and the Speaker of the House of Representatives as to all unresolved issues. Upon receipt of the notification, the presiding officers shall appoint a committee to review the position of the parties relating to all issues at impasse. No later than the 14th day of the regular session of the Legislature, the committee shall conduct a public hearing to take testimony regarding the issues at impasse. During the legislative session, the Legislature shall take action in accordance with this section.
>
> (b) Any actions taken by the Legislature shall bind the parties in accordance with paragraph (4)(c).

By this procedure, impasses are resolved by the Legislature.

1. <u>The Lower Court Effectively Rewrote the PERA</u>

Here, the lower court rejected the plain language of PERA, which effectuates the fundamental constitutional right of employees to bargain. The court determined that the veto power was legally superior to the constitutional right to bargain as effectuated by Section 447.403. The court essentially rewrote the PERA to grant the Governor two opportunities to influence the Legislature in the impasse resolution process (via the veto). The dissent put it this way:

> The State asserts that public employees, who accomplished a herculean task by convincing a majority of both houses of the Legislature to grant a positive ruling on an impasse, must then return to the Legislature and convince **two-thirds** of the membership to override the veto, in order to preserve the Legislature's resolution of the impasse. To impose such a requirement on public employees in essence holds that public employees have no effective constitutional right to collective bargaining, as they must in fact accomplish not simply a herculean task, but instead achieve a near-impossible feat of persuading the Legislature to exercise its override authority, an extremely rare occurrence, precisely because of the grave political ramifications an override necessarily causes between the Executive and Legislative branches.
>
> To avoid a result that renders hollow the constitutional right of collective bargaining, the Public Employees Relation Act should be interpreted to require that the Governor demonstrate a compelling public interest, such as a budgetary emergency, [*10] to sustain a gubernatorial veto of a legislative resolution of impasse. While public employees have no right to receive a favorable resolution from the Legislature on collective bargaining, once the Legislature has ruled in the public employees' favor and against the Governor, it cannot be reconciled with Article I, section 6 of the Florida Constitution to allow the Governor to render the Legislature's decision a nullity through the veto authority.

IAFF Local S-20, No. 1D16-0618 at 9-10 (Fla. 1st DCA June 6, 2017) (dissent) (emphasis original). A decision of this magnitude is appropriately made by this Court.

2. <u>The Lower Court Did Not Harmonize The Conflicting Provisions</u>

The court gave short shrift to the constitutional right to bargain, saying

- "[t]hat Appellant's members possess constitutional bargaining rights does not alter the Governor's constitutional authority with respect to the GAA . . . [and]"
- "while it is true that public employees possess important, constitutionally protected collective bargaining rights, the Legislature cannot force the Governor's hand . . . ."

IAFF Local S-20, No. 1D16-0618 at 5, 7 (Fla. 1st DCA June 6, 2017). For these propositions, the lower court cited *State v. Florida Police Benevolent Association*, 613 S. 2d 415, 418-19 (Fla. 1992). That case, however, does not stand for the proposition that the constitutional right to bargain is to be ignored.

Indeed, the lower court overlooked *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993), which limited *Florida Police Benevolent Association* to its facts. Moreover, *Chiles* shows how two putatively conflicting provisions can be harmonized. In *Chiles*, the Court held that the legislature may not unilaterally change a negotiated benefit once it has provided sufficient funds to implement the benefit as negotiated, unless a reduction in the previously approved appropriation served a compelling state interest. *See also Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017) (*Chiles* standard applied where employer declares "financial urgency").

The present case falls under *Chiles*. Here, at the end of the statutory impasse resolution procedure, the Legislature appropriated the amount required to fund a pay

raise for the affected firefighters. The appropriation should not have been vetoed, unless it can be shown that the veto served a compelling state interest.

B.

THE LOWER COURT'S DECISION CONFLICTS WITH ITS RECENT DECISION IN DADE COUNTY

Here, the lower court's decision is directly at odds with the interpretation of the PERA given by the First DCA in *Dade County Police Benevolent Association v. Miami-Dade County Board of County Commissioners*, 160 So.3d 482 (Fla. 1st DCA 2015). There, the court held that the Mayor of Miami-Dade County violated PERA when he vetoed the legislative body's resolution of an impasse. The court based its holding upon a plain reading of the unambiguous language of §447.403. According to the Court, §447.403 (4) (d) contemplated that the legislative body would resolve the impasse and the mayor would play no role in the impasse resolution process beyond that of an advocate for the public employer.

The lower court explained that:

> The language in paragraph (4)(d) clearly and unambiguously contemplates that ***the impasse will be resolved exclusively by the legislative body***, and as observed by PERC Commissioner Delgado in his dissent below, "[t]here is nothing in the impasse resolution proceeding that allows a chief executive officer to reject the resolution of the impasse issues by the legislative body." Indeed, it is clear from subsection (4) as a whole that the chief executive officer's role in the impasse process is limited to that of an advocate for the governmental entity's position on the impasse issue.

Id at 486.

To be sure, the lower court in the instant case attempted to sidestep *Miami-Dade* by pointing out that it did not involve the explicit constitutional authority to veto the GAA. That, however, is not the point. Here, it is the Union's position that the Legislature crafted the PERA to implement the right to bargain, *fully aware that the Governor (the employer) possessed the authority to veto*, yet structured PERA in such a way as to end the involvement of the employer (whether it be a state or local "employer") after the legislative body issued its decision; no room was left to allow the employer a second bite at the apple if it disagreed with the legislative body's resolution of the impasse.

C.

THE DECISION AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS

The court authorizes the governor to veto the Legislature's resolution of a collective bargaining impasse. This decision affects a class of constitutional officers – namely, legislators. See *League of Women Voters of Florida v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013).

Currently there are ten separate bargaining units representing over 100,000 state employees. Each unit bargains with the governor and submits unresolved issues to the impasse resolution process prescribed by §447.403, Florida Statutes. According to the majority, the governor may then veto the legislature's resolution of any that was the subject of the statutory impasse resolution process. Thus, this issue

affects a large number of employees working in numerous departments and agencies of state government. It will arise every time the legislative resolves a disputed impasse involving any state bargaining unit. In fact, it will chill the exercise of the right to bargain collectively regardless of whether any particular dispute becomes the subject of a statutory impasse resolution procedure.

CONCLUSION

The court should exercise discretion to review the decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic mail on August 10, 2017 to the following:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.