

Dear FOP Members:

In 2003, the Florida Supreme Court issued a groundbreaking ruling regarding the rights of Florida deputies to collectively bargain matters involving their employment. For approximately 40 years, the standard in the State of Florida had been that deputy sheriffs were treated as persons who were less than employees. The old standard, establishing in the case of *Murphy v. Mack* had stated that deputy sheriffs were not employees, but were rather extensions of the sheriff. Since the sheriff was a constitutional officer, these "extensions of the sheriff" were considered employees and did not have the same rights as other public employees.

Through the years, the Florida legislature passed a number of statutes following the "*Murphy v. Mack*" rationale. Each of these statutes placed limitations on the rights of deputy sheriffs, and sought to prevent deputy sheriffs from fully participating in the laws protecting employees. Some progress was made by including deputy sheriffs in certain aspects of the Florida Law Enforcement Officers Bill of Rights. However, until deputy sheriffs remained persons who were considered "less than employees."

The Florida Supreme Court in its 2003 opinion changed that analysis. The Florida Supreme Court held that deputy sheriffs, just as other employees, have a constitutional right to collectively bargain matters involving their employment. The question has been, since that time, how to implement the right to collectively bargain. The Fraternal Order of Police has been aggressive in pursuing the rights of deputy sheriffs to participate in collective bargaining. Approximately two years ago, the FOP sought a declaratory action to establish that county commissions rather than deputy sheriffs were the "legislative body" to resolve any impasse between a sheriff and his deputies in the collective bargaining process. The Public Employee Relations Commission (PERC) held at that time that it could not rule on the question until an actual controversy was brought before it. Since that time, the FOP has continued to litigate the issue by bringing the two pending cases to PERC. We believe that PERC will issue a ruling in the very near future. The FOP is the only law enforcement organization that has addressed these issues on behalf of its members.

The issue of who serves as the "legislative body" is critical for deputy sheriffs. In collective bargaining, the employer and the employee organization meet and try to resolve various articles governing the employment relationship. The parties will try to resolve issues regarding the amounts of pay, the rights to appeal disciplinary action, the amounts of compensation for insurance and holidays, etc. Usually, collective bargaining agreements contain 30 or 40 different articles and address all types of matters. If the parties to the collective bargaining cannot agree on a term of the collective bargaining agreement, one or more party will declare "impasse." When a party declares impasse, somebody has to make the decision as to which proposals, the union's or management's – will be implemented. In Florida, the decision to resolve an impasse is made by the "legislative body."

The current issue before PERC involves the identity of the legislative body. The sheriffs have taken the position that they themselves are "legislative bodies." The FOP has vigorously opposed such an interpretation. Essentially, if a sheriff can declare himself as the "legislative body", he or she can bargain with the union over certain terms and conditions of employment,

and if the union doesn't agree to the sheriff's position, he can turn around and impose what he wants. Effectively, there will be no collective bargaining if the sheriff is declared the "legislative body." It is virtually impossible to bargain against somebody who has absolute authority to overrule any proposal that you may make. We have taken the position that the county commissions should be deemed the legislative bodies for the various sheriff's offices, since they have control over the budgeting for the sheriff's offices, and also have authority to enact ordinances governing the employment of sheriff's deputies.

So far, we have engaged in substantial litigation in both Clay and Pasco counties. We filed unfair labor practices last year. Those unfair labor practices have to first be heard by an attorney for PERC who determines whether or not the charges are sufficient. Our charges were deemed sufficient, and the charges next went to be decided by a PERC hearing officer. Hearing officers were assigned to both the Clay and Pasco County cases. Each of the parties submitted lengthy memoranda addressing the various legal arguments supporting their positions. In the end, each of the two hearing officers sided with the FOP and issued recommended orders supporting our position.

After the hearing officers make their rulings, the case then has to go to PERC for the three PERC commissioners to make a final decision. Each of the parties has the right to file "exceptions" to the hearing officers' recommended order. Exceptions were filed in both the Clay and Pasco County cases. The FOP filed an additional set of briefs in both of these cases in response to the exceptions, and an oral argument was held before the Public Employees Relations Commission.

It is extremely rare for the Public Employees Relations Commission to hear an oral argument in a case. I want to stress that these cases are groundbreaking. They will effectively determine whether or not collective bargaining will continue for deputy sheriffs in the State of Florida. PERC heard the arguments of both sides, and in the end concluded that additional information needed to be provided before it can make a final decision.

PERC made a decision that the standard that was previously used for addressing the identity of the "legislative body" needed to be changed and it added an additional prong to the previous two-part test, and required that the hearing officer address the "appropriateness" of the legislative body. Essentially, PERC ruled that the hearing officer must address three issues: one, which entity appropriates money for the collective bargaining unit; two, which entity can determine the terms and conditions of employment for the unit; and three, which entity is the most "appropriate" to serve as the legislative body. PERC also ruled that the boards of county commissioners in both Clay and Pasco counties should be included as parties to this action. The case therefore went back to each of the two hearing officers and the parties again submitted evidence, and filed recommended orders and briefs to the hearing officers.

Each of the two hearing officers again ruled for the FOP. The attorneys for the county commission and the sheriff in Clay County filed exceptions to the Clay County recommended order, and the FOP has filed a response to those exceptions. The exceptions to the Pasco County order will likely be filed in the next week and the FOP will likewise file a response to the exceptions.

We anticipate that PERC will rule soon on these issues. All the briefs have to be filed in order for PERC to rule. I am not sure whether or not PERC will hold another oral argument on this matter but if so an attorney from my law firm as well as representatives from the FOP will attend the oral arguments. We believe that we have a very solid legal position, as evidenced by the four different recommended orders in our favor we have received to date. It is much more rare for PERC to reject a recommended order than it is to accept the recommendations from their designated hearing officers.

I want to reiterate that the issues being addressed at this point are truly historic ones for deputy sheriffs in the State of Florida. Although this process seems like it has taken a long time, the truth is that these issues are extremely important for the future of collective bargaining. If the sheriffs are successful, they will effectively be able to shut down the collective bargaining process. If we are successful, we will be able to appeal to the county commissions in each of the counties to ultimately rule on impasse issues. The county commissioners should ultimately decide these issues and should do so because they should be able to act as more of a neutral third party than the sheriffs. I hope to be able to provide more positive news in the near future.

Very truly yours,

Tad Delegal