

extension of time, the parties timely filed their arguments and these have been considered.² The hearing officer was given a similar extension of time to issue her recommended order. Neither party has requested attorney's fees.

FINDINGS OF FACT

Based upon the stipulations, exhibits, and the record as a whole, I make the following findings of fact:

1. The FOP is an employee organization within the meaning of Section 447.203(11), Florida Statutes.
2. The Sheriff is a public employer within the meaning of Section 447.203(2), Florida Statutes.
3. The FOP is the certified bargaining agent for a unit of full-time law enforcement officers in the classifications of deputy sheriff and corporal employed by the Sheriff. The FOP is also the certified bargaining agent for a unit of supervisory law enforcement personnel in the classifications of sergeant and lieutenant employed by the Sheriff.
4. The FOP and the Sheriff engaged in collective bargaining and reached tentative agreements on the following issues:³

²The Sheriff also filed a post-hearing brief on June 20. It appears to be a duplicate of the brief it filed on June 13. However, because it is untimely, it has not been considered.

³The tentative collective bargaining agreement for the supervisory bargaining unit of sergeants and lieutenants parallels that of the rank-and-file bargaining unit, with one exception noted in footnote 5.

Member Rights – Article 3⁴
Non-Discrimination – Article 5
Indemnification – Article 6
Prohibition of strikes – Article 7
Dues checkoff – Article 8
FOP business – Article 9
Labor management committee – Article 10
Workweek and overtime – Article 13
Assignments – Article 14
Layoffs and recall – Article 15
Workers compensation – Article 16
Wages – Article 17
Vacation Leave – Article 19
Sick leave – Article 20
Holidays – Article 21
Funeral/bereavement leave – Article 22
Military Leave – Article 23
Leaves of Absence – Article 24
Department vehicles/residency requirements – Article 25
Uniforms and equipment – Article 26
Drug/alcohol testing – Article 27
Promotions – Article 30⁵

(Exhibit 1)

5. During collective bargaining, the Sheriff was primarily represented by Wayne L. Helsby and Colonel Al Nienhuis. The FOP was primarily represented by Paul Noeske, the FOP's business agent. Both parties were also represented by other bargaining team members.

⁴"Article ____" refers to the appropriate article of the tentative collective bargaining agreement that the Sheriff delivered to the FOP on March 11.

⁵This article only appears in the tentative collective bargaining agreement for the bargaining unit consisting of sergeants and lieutenants.

6. Sheriff Bob White did not personally attend any of the parties' negotiations. However, Helsby and Nienhuis consulted with Sheriff White and attempted to represent his views during the collective bargaining process, pursuant to Section 447.309(1), Florida Statutes.

7. The County Commission did not participate in the parties' collective bargaining process. Neither Helsby nor Nienhuis consulted with nor attempted to represent the County Commission's views during collective bargaining negotiations.

8. While the parties reached tentative agreements regarding the issues listed above, the parties reached impasse concerning the following matters: 1) Management rights – Article 4; 2) Grievance procedure and performance and discipline – Articles 11 and 12; and 3) Member benefits – Article 18.

9. On March 25, 2007, the FOP sent a letter to the Commission, pursuant to Section 447.403(2), Florida Statutes, informing the Commission that the parties had reached impasse in negotiations. The FOP requested that the Commission assign a special magistrate to assist the parties in resolving the issues on impasse. See Exhibit 2.

10. On September 13, an evidentiary hearing was held before Special Magistrate Dr. John McCollister, during which the Sheriff and the FOP, through their respective representatives, addressed the issues on impasse. The County Commission did not participate in the evidentiary hearing. On October 5, 2007, the Sheriff and the FOP submitted their respective post-hearing memoranda. (Exhibits 4 and 5)

11. On October 15, Special Magistrate McCollister issued his report and recommendations regarding the parties' issues on impasse. McCollister recommended: 1) using the phrase "just cause" as opposed to "cause" as the standard of review for disciplinary actions against bargaining unit members; 2) handling disciplinary actions involving two day suspensions or less within the Sheriff's Office; 3) allowing bargaining unit members to appeal suspensions of more than two days or demotions to the Career Service Appeals Board;⁶ and 4) rejecting the FOP's application for GAP insurance.

(Exhibit 3)

12. On December 28, the Sheriff filed its notice of substantial acceptance and partial rejection of the special magistrate's report in accordance with Section 447.403(3), Florida Statutes. The Sheriff accepted the special magistrate's recommendation that bargaining unit members continue to have the right to appeal suspensions of more than two days, including terminations to the Career Service Appeals Board. The Sheriff also accepted the recommendation that the Sheriff's Office internally handle those disciplinary actions involving suspensions of two days or less. Finally, the Sheriff accepted the special magistrate's recommendation to reject the FOP's application for GAP insurance.

(Exhibit 6)

⁶Although McCollister referred to the Civil Service Board in his recommendation, the correct name is the Career Service Appeals Board. See Exhibit 15.

13. In addition, the Sheriff rejected the special magistrate's recommendation that demotions be subject to appeal. Further, the Sheriff rejected the special magistrate's recommendation in favor of a "just cause" standard of review of disciplinary actions. (Exhibit 6)

14. On January 4, 2008, the FOP filed its response to the special magistrate's report. The FOP accepted the special magistrate's report regarding eligibility of demotions and suspensions of two or more days to be appealed to the Pasco County Civil Service Board, subject to the County Commission's amending the Civil Service Appeal Ordinance to give the Civil Service Board jurisdiction over these disciplinary actions and providing that "just cause" was the standard of review. The FOP rejected the special magistrate's recommendation that the Sheriff should not provide GAP insurance. (Exhibit 7)

15. Based on the parties' responses to the special magistrate's recommendations, the issues on impasse were ripe for submission to the "legislative body" as defined in Section 447.443(4), Florida Statutes.

16. On January 7, 2008, Nienhuis sent a letter to the Sheriff, asking him, as the legislative body for the Sheriff pursuant to Section 447.403(4)(a), Florida Statutes, to hold a public hearing during which both parties would discuss their positions with regard to the special magistrate's report and to take actions to resolve the parties' issues on impasse. (Exhibit 8)

17. On January 14, the FOP sent a letter to the Sheriff, opposing the request for a public hearing before the Sheriff as the legislative body. On the same date, the FOP also sent a letter to the County Commission notifying it of the FOP's position that the County Commission is the appropriate "legislative body" pursuant to Section 447.403, Florida Statutes. The FOP requested that the County Commission refrain from scheduling a hearing until a judicial determination is made with regard to this issue of statutory interpretation. (Exhibits 9 and 10)

18. On March 4, the Sheriff conducted a public hearing to resolve the issues on impasse in accordance with Section 447.403(4)(a), Florida Statutes. The FOP did not participate in the public hearing.

19. On March 7, the Sheriff issued his resolution of impasse issues (resolution). In his resolution, the Sheriff agreed with the recommendation of the special magistrate that suspensions of three days or more can be appealed as already provided for by the Civil Service Ordinance. The Sheriff disagreed with the special magistrate's recommendation that disciplinary actions involving a demotion of just one rank be subject to review by the Career Service Appeals Board. The Sheriff also disagreed with the special magistrate's recommendation that the standard of review for all disciplinary actions as provided in the Civil Service Ordinance be changed to "just cause." In addition, the Sheriff agreed with the recommendation of the special magistrate and rejected the FOP's request that the Sheriff provide GAP insurance to Sheriff's Office retirees. (Exhibit 11)

20. On March 10, the FOP filed the instant unfair labor practice charge with the Commission alleging that the Sheriff had violated Section 447.501, Florida Statutes. The basis of the charge is that the Sheriff refused to submit the parties' issues on impasse to the County Commission as the legislative body while the Sheriff held a public hearing purporting to be the legislative body himself. On March 14, the Commission's General Counsel issued a Notice of Sufficiency. (Exhibits 12 and 13)

21. On March 11, pursuant to Section 447.309, Florida Statutes, Nienhuis sent the FOP a collective bargaining agreement which included all the articles to which the parties had tentatively agreed and incorporated those resolutions reached by the Sheriff with regard to the parties' issues on impasse. (Exhibit 1)

22. On March 31, the FOP sent a letter to Nienhuis stating that it would not submit the Sheriff's proposed collective bargaining agreement to its members because it disputed that the Sheriff was the legislative body. However, the FOP stated that if the Sheriff was determined to be the legislative body by the Commission or the Circuit Court, it would then submit the proposed collective bargaining agreement for ratification. (Exhibit 14)

23. The Sheriff has no authority to amend any of the provisions of the Pasco County Civil Service Ordinance. However, the Sheriff has the right to seek amendment, alteration, or repeal of any of the provisions contained in the Civil Service Ordinance through an act by the County Commission. Section 54-32 of the Civil Service Ordinance

expressly states that “the right is reserved by the sheriff to seek the modification or amendment of this article or any section of this article at any time.” (Exhibit 15)

24. The Sheriff has no taxing authority. Rather, the Sheriff’s primary funding is provided by the County Commission, based on ad valorem taxes. The Sheriff may receive additional funding from other sources, such as other municipalities (e.g., through interlocal agreements to provide law enforcement services) and federal and state grants.

25. Pursuant to Section 129.03(2), Florida Statutes, the Sheriff must certify a proposed budget to the County Commission for carrying out of the powers, duties, and operations of the sheriff’s office for the ensuing fiscal year by June 1 of each year. § 30.49(1), (9), Fla. Stat. Exhibit 16 is a copy of the Sheriff’s proposed budget for the fiscal year 2007-2008.

26. Within the proposed budget, the Sheriff must state that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the sheriff’s office for the ensuing year. The Sheriff must also state the estimated amounts of all proposed expenditures for operating and equipping the Sheriff’s Office, and categorize the same in accordance with three functional categories: 1) general law enforcement; 2) corrections and detention alternative facilities; and 3) court services, excluding service of process. § 30.49(2)(a), Fla. Stat.

27. Within the appropriate functional category, the Sheriff must further itemize the proposed expenditures as follows: a) personal services; b) operating expenses; c) capital outlay; d) debt service; or e) non-operating disbursements and contingency reserves. § 30.49(2)(b), Fla. Stat.

28. At hearings held pursuant to Section 200.065, Florida Statutes, the County Commission may amend, modify, increase, or reduce any or all items of expenditure in the Sheriff's proposed budget and must then approve the budget, as amended, modified, increased, or reduced. § 30.49(4), Fla. Stat.

29. The County Commission must give the Sheriff written notice of its action and specify in the notice the specific budget items amended, modified, increased, or reduced. The approved budget must include the salaries and expenses of the Sheriff's Office; cost of operation of the Pasco County jail; purchase, maintenance and operation of equipment, including patrol cars; radio systems, transporting prisoners, court duties, and all other salaries, expenses, equipment, and investigation expenditures of the entire Sheriff's Office for the previous year. § 30.49(4), Fla. Stat. Exhibit 17 is a copy of the County Commission's notice to the Sheriff regarding the Sheriff Office's budget for the fiscal year 2007-2008.

30. Within thirty days of receiving written notice of the approved budget by the County Commission, the Sheriff may appeal of the County Commission's actions by filing a petition with the Administration Commission. The petition must set forth the budget

proposed by the Sheriff and the budget as approved by the County Commission. The petition must also state the grounds for appeal. § 30.49(4), Fla. Stat.

31. The Administration Commission is composed of the Governor and the Cabinet. The Governor is the chair of the Administration Commission. § 14.202, Fla. Stat.

32. The Sheriff must also file the petition with the Executive Office of the Governor and serve a copy of the petition upon the County Commission or the Clerk of the Circuit Court for Pasco County. The County Commission thereafter has five days to file a reply to the petition with the Executive Office of the Governor and must serve a copy of its reply upon the Sheriff. § 30.49(4), Fla. Stat.

33. Upon receipt of the Sheriff's petition, the Executive Office of the Governor will hold a budget hearing at which the issues presented in the Sheriff's petition and the County Commission's reply are considered. A report of the findings and recommendations of the Executive Office of the Governor are then submitted to the Administration Commission. As to each separate item, the Administration Commission will either approve the action of the County Commission, approve the budget as proposed by the Sheriff, or amend or modify the budget within the limits of the expenditures as approved by the County Commission within thirty days. The budget as approved, amended, or modified by the Administration Commission is final. § 30.49(5), Fla. Stat.

34. Once the Sheriff receives the final budget, regardless of whether it is approved by the County Commission or the Administration Commission on appeal, the Sheriff has the authority to shift money within the functional categories listed in Section 30.49(2), Florida Statutes.

35. In 1990, former Sheriff Jim Gillum, in his official capacity as Sheriff of Pasco County, appealed the County Commission's approved budget to the Administration Commission in accordance with Section 30.49(4), Florida Statutes. Upon considering this appeal, the Administration Commission increased the Sheriff Office's budget over \$200,000.00

36. Funding for GAP insurance coverage falls in the expenditure category of "personal services." § 30.49(2)(b)(1), Fla. Stat. However, even if the County Commission provided funding for GAP insurance in this expenditure category, the Sheriff could allocate such funding to other expenditures within the same category, such as salaries for necessary additional personnel. The Sheriff has shifted and/or reallocated funding in accordance with the Sheriff Office's needs on numerous occasions.

37. The Sheriff has established General Orders to address various working terms and conditions. The County Commission has no authority to direct the Sheriff to create or change General Orders and no authority to set and/or establish policies and procedures for the Sheriff's Office. (Exhibit 18)

38. The County Commission has no authority to direct the Sheriff to agree to any of the mandatory subjects of collective bargaining, including but not limited to, those subjects listed in finding of fact four. Therefore, the County Commission has no legal authority to mandate the Sheriff to provide GAP insurance coverage for Sheriff's Office retirees.

DISCUSSION AND ANALYSIS

The FOP and the Sheriff negotiated for a new collective bargaining agreement. Although they reached an agreement on many issues, they reached an impasse concerning the issues of management rights, grievance procedures, and GAP insurance for retirees. The parties invoked the statutory impasse procedures of Section 447.403, Florida Statutes, and an evidentiary hearing was held before a special magistrate. After the special magistrate issued his report and recommendation, both the Sheriff and the FOP filed notices in response to the report, each rejecting certain recommendations made by the special magistrate.

Section 447.403(4), Florida Statutes, provides, in pertinent part:

If either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special magistrate:

- (a) The chief executive officer of the governmental entity involved, shall within 10 days after rejection of a recommendation of the special magistrate, submit to the legislative body of the governmental entity involved a copy of the findings of fact and recommended decision of the special magistrate, together with the chief executive officer's

recommendation for settling the disputed impasse issues. The chief executive officer shall also transmit his or her recommendations to the employee organization;

- (b) The employee organization shall submit its recommendations for settling the disputed impasse issues to such legislative body and to the chief executive officer;
- (c) The legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the rejected recommendations of the special magistrate;
- (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. . . .

Section 447.203(10), Florida Statutes, provides:

“Legislative body” means the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of a instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which as the case may be, is the appropriate legislative body for the bargaining unit.

After impasse, the Sheriff interpreted the statutory phrase “legislative body” to include the Pasco County Sheriff’s Office, and scheduled and held a public hearing on March 4, 2008, to resolve the pending impasse issues pursuant to Section 447.403(4)(a). Thereafter, the Sheriff resolved all the impasse issues in his favor.

The FOP argues that the County Commission is the appropriate legislative body to resolve the pending impasse issues between the FOP and the Sheriff. The FOP alleges that the Sheriff’s interpretation of Sections 447.203(10) and 447.403(4), Florida Statutes,

and his subsequent actions have effectively deprived the FOP of its rights to bargain collectively.

The Sheriff is a constitutional officer pursuant to Article VIII, Section I, of the Florida Constitution and responsible for the efficient and effective operations of the Sheriff's Office. It is undisputed that the Sheriff is the public employer of the employees in the two bargaining units. The Sheriff contends that because it is the public employer, it is also the legislative body for purposes of impasse.

Sheriff's offices have not been expressly designated as a legislative body in Section 447.203(10). Other entities, such as the board of county commissioners, district school boards, and the boards of community colleges have been designated as legislative bodies. Consequently, the test set forth in Section 447.203(10) for legislative body status must be examined to determine whether the Sheriff satisfies it.

There are two specific criteria set forth in Section 447.203(10). The first is that the governing body must possess the authority "to appropriate funds." Second, this same governing body must have the power to "establish policy governing the terms and conditions of employment . . . for the bargaining unit."

The Commission has opined that the ability to appropriate funds is an essential element of legislative body status. See Florida School for the Deaf and the Blind v. Florida School for the Deaf and the Blind, Teachers United, 483 So. 2d 58 at 60 (Fla. 1st DCA 1986), aff'g 11 FPER ¶ 16080 (1985). In the only Commission case relating to a constitutional officer's status as the legislative body, the Commission determined that

the Clerk of the Circuit Court of Alachua County had sufficient legal distinctiveness to carry out the functions of a public employer but that because he did not have the authority to appropriate funds, he was not the legislative body pursuant to Section 447.203(10), Florida Statutes. In the Matter of: A. Curtis Powers, Clerk of the Circuit Court of Alachua County, Florida, 4 FPER ¶ 4099 (1978). The Commission stated:

The Clerk now has control over all operations of his office with the exception of the appropriation of funds. He still must submit a request to the County Commission which has the power to modify, increase or reduce it. Budgetary control, however, does not establish public employer status. The Legislature in enacting Chapter 447, Part II, Florida Statutes (1975), as amended by, Chapter 77-343, Laws of Florida (the Act), specifically recognized that a governmental entity other than a public employer may appropriate funds for the use of the public employer. The Act defines "public employer" as the governmental entity "which the commission determines has sufficient legal distinctiveness properly to carry out the functions of the a public employer." Section 447.203(2). The governmental entity having the authority to appropriate funds is designated as the "legislative body." Section 447.203(10). Furthermore, while Section 447.309(1) provides that the public employer and its chief executive officer are responsible for negotiating a collective bargaining agreement with a certified employee organization, Section 447.309(2) recognizes that the funding of the agreement rests solely with the legislative body. Thus, taxation and appropriation powers are indication of a governmental entity's role as legislative body, not status as a public employer, and are not sufficient to warrant a determination of joint employer status. (emphasis in original) (footnote omitted) (citation omitted)

Id.

In affirming the Commission's decision in Florida School for the Deaf and the Blind, the First District Court of Appeal rejected the argument that the Board of Trustees of the School for the Deaf and the Blind was the legislative body based on its ability to

transfer monies between categories once funds had been appropriated. The Court held that such action was not appropriating funds, but transferring money already appropriated for use in approved categories. Florida School for the Deaf and the Blind, 483 So. 2d 58 at 60 (Fla. 1st DCA 1986). The instant case has similar facts.

It is undisputed that the Sheriff does not possess the authority to appropriate funds. The parties have stipulated that the primary funding for the Sheriff is provided by the County Commission, and that it is based on ad valorem taxes. The Sheriff must present an itemized proposed budget of expenditures for carrying out the powers, duties and operations of the Sheriff's office for the ensuing fiscal year to the County Commission. The County Commission may amend, modify, increase, or reduce any or all proposed expenditures in approving the Sheriff's budget. Once the Sheriff receives the final budget, regardless of whether it has been appealed to the Administration Commission, the Sheriff only has the authority to transfer money between categories. Consequently, I conclude that the County Commission has budgetary control over the Sheriff's office. See Abusaid v. Hillsborough County Board of County Commissioners, 406 F. 3d 1298, 1312 (11th Cir. 2005) (holding that neither the state's administrative review process for county budgeting decisions, nor its standardized salary provisions for county officials, alters the fact that a sheriff is required to submit his budget to the county for approval; a sheriff is financially accountable to his county since he must pay any money his office earns into the county treasury; and a county can avoid allocating any salary or budget to the sheriff by abolishing his office and assigning his duties

elsewhere); see also Op. Att'y Gen. Fla. 2006-33 (2006) (determining that a sheriff may enter into lease-purchase contracts without obtaining the approval of the county commission, but concluding that the sheriff has no authority to bind the county commission to appropriate funds for a multi-year contract and recommending that any multi-year lease recognize the sheriff's fiscal limitations by allowing the lease to terminate in one year if the legislative body fails to appropriate funds to make lease payments); Op. Att'y Gen. Fla. 1983-30 (1983) (noting that the board of county commissioners is the "entity having budgetary control over sheriff's office"). Therefore, the Sheriff does not satisfy the first part of the definition of "legislative body" because it does not have the authority to appropriate funds.

To qualify as a legislative body under the second part of Section 447.203(10), Florida Statutes, a governing body or unit of government must have the power to "establish policy governing the terms and conditions of employment." Section 30.53, Florida Statutes, provides:

The independence of the sheriffs shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to s. 14, Art. III, of the Constitution of Florida, provided, further that nothing contained in ss. 30.48-30.53 shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

Counties are authorized by the Florida Constitution to establish civil service boards to “prescribe the qualifications, method of selection and tenure of such employees and officers.” Art. III, § 14, Fla. Const. Additionally, the Florida Supreme Court has recognized the existence of civil service laws as a check on independence afforded to sheriffs under Section 30.53, Florida Statutes, as it applies to the retention of employees. Ison v. Zimmerman, 372 So. 2d 431, 435 (Fla. 1979). Consequently, a sheriff’s independence with regard to hiring, firing and setting salaries for his personnel is limited in that it cannot interfere with the powers afforded to the county’s civil service system.

The Career Service Appeals Board hears and adjudicates employees’ appeals of disciplinary actions taken against them which are a result of violations of policy in the General Orders which are promulgated exclusively by the Sheriff. The Career Service Appeals Board as established by the Pasco County Civil Service Code acts as a check and balance on the Sheriff’s authority to discipline employees. The parties have stipulated that the Sheriff does not have the authority to amend the Civil Service Code. Rather, the Sheriff’s authority is limited to petitioning the Board of County Commissioners to amend, alter, or repeal the Civil Service Code. Thus, the Sheriff is not an independent entity in regard to policymaking. Consequently, although the Sheriff may initially set the policy under which bargaining employees may be disciplined, he does not have unbridled authority to “to establish policy governing the terms and conditions of employment . . . for

the bargaining unit.” Cf. Florida School for the Deaf and the Blind Teachers United v. Florida School for the Deaf and the Blind, 11 FPER ¶ 16080 (1985) (determining that employer’s policymaking authority was limited because it was required to submit its operational rules to the State Board of Education for approval or disapproval and further, was required to act at all times under the general policies of the State Board of Education).

Pursuant to Section 447.309(1), Florida Statutes, when the public employer and the legislative body are the same entity, the chief executive officer, is required to consult with, and attempt to represent the views of the legislative body of the public employer. See also City of Winter Haven v. Florida Public Employees Relations Commission, 358 So. 2d 1374, 1376 (Fla. 1st DCA 1978) (holding that the chief executive officer is to consult with and attempt to represent the views of the legislative body). For example, in the case of a city with the chief executive officer being the city manager, the city manager is required to consult with the city council as the legislative body during collective bargaining negotiations. The Sheriff asserts that because neither Helsby nor Nienhuis consulted with the County Commission during the collective bargaining process, the Sheriff is the legislative body.⁷ Helsby and Nienhuis did consult with the Sheriff during collective bargaining negotiations.

⁷I reject the parties’ assertion in their joint stipulation and the Sheriff’s statement in its brief that Nienhuis is the chief executive officer for the Sheriff’s Office. See Joint Stipulation ¶¶ 14, 18 and 24; Respondent’s Brief to Hearing Officer at pages 11 and 12. Rather, the Sheriff is the chief executive officer and he may delegate his duties to others as he sees fit, as he apparently did when he appointed Nienhuis.

However, there can be a bifurcation between the public employer and the legislative body. Such is the case here. The Commission has previously held that the failure to consult the legislative body as provided in Section 447.309(1), Florida Statutes during collective bargaining negotiations is not sufficient to find an unfair labor practice within the meaning of Section 447.501(1)(c), Florida Statutes, when the public employer is different from the legislative body. See United Faculty of Florida FEA/United, AFT, AFL-CIO, Local 1880 v. State University System, Board of Regents, 3 FPER 266 (1977).⁸ Consequently, I reject the Sheriff's argument that because Helsby and Nienhuis did not consult with the County Commission but did consult with the Sheriff during collective bargaining negotiations, supports a finding that the Sheriff is the legislative body.

Accordingly, I conclude that the Sheriff is the public employer but the County Commission is the legislative body for the rank-and-file and supervisory law enforcement bargaining units. By purporting to resolve disputed impasse issues, the Sheriff interfered with employees' rights to have the County Commission resolve those issues. Accordingly, the Sheriff committed an unfair labor practice within the meaning of Section 447.501(1)(a) and (c), Florida Statutes. School for the Deaf and the Blind, 11 FPER ¶ 16080 at 263.

⁸See also Florida School for the Deaf and the Blind, 11 FPER ¶ 16080 (1985), where the public employer did not consult with the legislative body; that was the basis of the unfair labor practice charge, albeit in impasse resolution as in the case here.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this case.
2. The FOP is an employee organization within the meaning of Section 447.203(11), Florida Statutes, and is the certified bargaining agent for rank-and-file and supervisory law enforcement personnel employed by the Sheriff.
3. The Sheriff is a public employer within the meaning of Section 44.203(2), Florida Statutes.
4. The Sheriff is not the appropriate legislative body to resolve the impasse issues between the Sheriff and the FOP pursuant to Section 447.203(10), Florida Statutes.
5. The Pasco County Board of County Commissioners is the appropriate legislative body to resolve the impasse issues between the Sheriff and the FOP pursuant to Section 447.203(10), Florida Statutes.
6. The Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes, by acting as the legislative body for the purposes of resolving disputed issues remaining after special master proceedings.

RECOMMENDATION

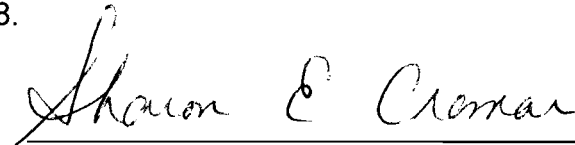
I recommend that the Commission adopt the foregoing findings of fact, analysis, and conclusions of law and require the Sheriff to:

1. The Sheriff shall cease and desist from:
 - (a) Purporting to act as the legislative body of the Sheriff of Pasco County within the meaning of Sections 447.203(10) and 447.403(4)(d), Florida Statutes; and
 - (b) In any like or related manner interfering with, restraining, or coercing public employees in the exercise of rights guaranteed by Sections 447.301 and 447.403(4).

2. Take the following affirmative action:
 - (a) For the purpose of resolving disputed issues remaining after special magistrate proceedings, treat the Board of County Commissioners of Pasco County as the appropriate legislative body within the meaning of Sections 447.203(10) and 447.403(4)(d), Florida Statutes;
 - (b) post for sixty days in conspicuous places where notices to bargaining unit employees are customarily posted, copies of the notice to employees which states that the Sheriff will cease and desist from the actions set forth in paragraph one above; and
 - (c) Notify the Commission by affidavit or other proof of the date of posting and of final compliance with this order.

Any party may file exceptions to my recommended order, but exceptions must be received by the Commission within **fifteen** days from the date of this order. See Fla. Admin. Code Rule 28-106.217(1). An extension of time for filing exceptions will not be granted unless good cause is shown.

ISSUED and SUBMITTED to the Public Employees Relations Commission in accordance with Florida Administrative Code Rule 28-106.216 and SERVED on all parties this 1st day of July, 2008.


SHARON E. CROMAR
Hearing Officer

SEC/bjk

cc: Stuart A. Rosenfeldt, Esquire
401 East Las Olas Boulevard
Fort Lauderdale, Florida 33301

Mark E. Levitt, Esquire
1477 West Fairbanks Avenue
Suite 100
Winter Park, Florida 32789

**** Transmit Confirmation Report ****

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STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

FLORIDA STATE LODGE,
FRATERNAL ORDER OF
POLICE, INC.,

Charging Party,

v.

SHERIFF OF PASCO COUNTY,

Respondent

Case No. CA-2008-026

HEARING OFFICER'S
RECOMMENDED ORDER

Stuart A. Rosenfeldt, Fort Lauderdale, attorney for charging party.

Mark E. Levitt, Winter Park, attorney for respondent.

CROMAR, Hearing Officer.

On March 11, 2008, Florida State Lodge, Fraternal Order of Police, Inc. (FOP) filed an unfair labor practice charge alleging that the Sheriff of Pasco County (Sheriff) violated Section 447.501(1)(a) and (c), Florida Statutes (2007), by refusing to submit the parties' issues on impasse to the Pasco County Board of County Commissioners (County Commission) for resolution and the Sheriff's holding of a public hearing.¹ On March 14, the Commission's General Counsel issued a notice of sufficiency. The undersigned hearing officer was appointed and a hearing was scheduled.

Subsequently, the parties agreed to resolve this case by submitting a stipulated record. Thus, this case is resolved pursuant to Section 120.57(2), Florida Statutes. On May 8, the parties filed a joint stipulation accompanied by exhibits. On June 13, after an

¹All statutory references are to the 2007 edition of the Florida Statutes.

**** Transmit Confirmation Report ****

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STATE OF FLORIDA

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FLORIDA STATE LODGE,
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CROMAR, Hearing Officer.

On March 11, 2008, Florida State Lodge, Fraternal Order of Police, Inc. (FOP) filed an unfair labor practice charge alleging that the Sheriff of Pasco County (Sheriff) violated Section 447.501(1)(a) and (c), Florida Statutes (2007), by refusing to submit the parties' issues on impasse to the Pasco County Board of County Commissioners (County Commission) for resolution and the Sheriff's holding of a public hearing.¹ On March 14, the Commission's General Counsel issued a notice of sufficiency. The undersigned hearing officer was appointed and a hearing was scheduled.

Subsequently, the parties agreed to resolve this case by submitting a stipulated record. Thus, this case is resolved pursuant to Section 120.57(2), Florida Statutes. On May 8, the parties filed a joint stipulation accompanied by exhibits. On June 13, after an

¹All statutory references are to the 2007 edition of the Florida Statutes.