

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

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

Charging Party,

v.

SHERIFF OF PASCO COUNTY,

Respondent,

v.

PASCO COUNTY BOARD OF
COUNTY COMMISSIONERS,

Intervenor.

Case No. CA-2008-026

FINAL ORDER

Order Number: 09U-148

Date Issued: May 22, 2009

Stuart A. Rosenfeldt and Brianne M. Strohsahl, Fort Lauderdale, attorneys for charging party.

Wayne L. Helsby and Mark E. Levitt, Winter Park, attorneys for respondent.

Jeffrey N. Steinsnyder, New Port Richey, attorney for intervenor.

On March 11, 2008, the 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 (2008).¹ The Commission's General Counsel found the charge sufficient and a hearing officer was appointed. The FOP and Sheriff stipulated to the facts and filed briefs in support of their respective positions.

¹All statutory citations to the Florida Statutes are to the 2008 edition.

The hearing officer concluded that the Sheriff does not satisfy the definition of a legislative body in Section 447.203(10), Florida Statutes, because he lacks the authority to appropriate funds and lacks unbridled authority to establish policies governing his employees' terms and conditions of employment. According to the hearing officer, the County Commission is the appropriate legislative body to resolve the impasse issues between the Sheriff and the FOP. Thus, the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes, by acting as the legislative body for the purpose of resolving disputed issues remaining after the special magistrate proceedings.

The Sheriff filed exceptions to the recommended order and a motion for oral argument. On October 13, after oral argument, the Commission remanded the case to the hearing officer to reopen the record and provide the County Commission with the opportunity to present any evidence and legal argument it wanted the hearing officer to consider in determining the appropriate legislative body for resolving impasse disputes between the Sheriff and the FOP. The hearing officer granted the County Commission's request to intervene and the parties agreed to include additional factual stipulations. The County Commission argued that the Sheriff is the appropriate legislative body to resolve the impasse.

On January 8, 2009, the hearing officer issued a supplemental recommended order in which she again determined that the County Commission is the appropriate legislative body for resolving the impasse between the Sheriff and the FOP. The Sheriff and the County Commission filed exceptions to the supplemental recommended order,

and the Sheriff filed a motion for oral argument. On March 26, 2009, a second oral argument was conducted.²

Determining the appropriate legislative body for resolving an impasse requires interpreting and applying Section 447.203(10), Florida Statutes, which defines the term “legislative body” as:

“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 an 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. For purposes of s. 447.403, the Board of Governors of the State University System, or the board’s designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of the community college.

Section 447.203(10), Florida Statutes, identifies two classes of entities as legislative bodies: named and unnamed. Sheriffs are not, and have never been, named in the statute as a legislative body. However, the absence of a specific statutory reference to sheriffs is not dispositive of the question. This is because “legislative body” also includes “the governing body of an 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

²The Sheriff’s unopposed motion for an extension of time for the Commission to render its final order, pursuant to Section 120.569(2)(l), Florida Statutes, is GRANTED.

bargaining unit.” In applying this statutory standard, we conclude that the legislature intended that all three prongs of the test must be satisfied based on its use of the conjunction “and,” which links all three parts of the test. We reject the parties and the hearing officer’s contrary interpretations of Section 447.203(10), Florida Statutes.

The first prong of the statutory test is whether the entity in question has authority to appropriate funds. The hearing officer relied on the court’s holdings in 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) and United Faculty of Florida, FEA/United, AFT, AFL-CIO, Local 1880 v. Board of Regents, 365 So. 2d 1073, 1075 (Fla. 1st DCA 1979), as well as the Commission’s holding in Brevard County Police Benevolent Association v. Brevard County Sheriff’s Department, 2 FPER 21, 22 (1976), to conclude that the Sheriff does not satisfy the first prong of the test because he does not have authority to appropriate funds. Rather, the Sheriff disperses funds that are appropriated by the County Commission. We agree with the hearing officer that the Sheriff lacks authority to appropriate funds. Thus, it is unnecessary to consider the remaining two parts of the test.

Because sheriffs are not a named entity and the Sheriff fails to satisfy the three-part test for unnamed entities, we agree with the hearing officer that the Sheriff is not a legislative body. Given the plain language of the statute and the facts found by the hearing officer, such a conclusion is required. See State v. Jett, 626 So. 2d 691, 693 (Fla. 1993) (“It is a settled rule of statutory construction that unambiguous language is

not subject to judicial construction, however wise it may seem to alter the plain language.”); see also Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (holding that courts are “without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms”).

We turn next to the FOP’s contention that the County Commission is the appropriate legislative body to resolve the impasse. Section 447.203(10), Florida Statutes, specifically identifies the board of county commissioners as a legislative body. Arguably, our analysis could end here. However, the fact that the County Commission is a named entity does not necessarily establish that it is the legislative body for the Sheriff’s employees. For the sake of completeness, we also apply the three-part test for unnamed entities to the County Commission.

The County Commission meets the first prong of the test because it has authority to appropriate funds to the Sheriff. Second, the County Commission has authority to establish policy governing the Sheriff’s employees’ terms and conditions of employment pursuant to Article III, Section 14, of the Florida Constitution, which establishes civil service boards to “prescribe the qualifications, method of selection and tenure of such employees and officers.” The Florida Supreme Court has recognized the existence of civil service laws as a check on the independence afforded to sheriffs under Section 30.53, Florida Statutes, as it applies to the retention of employees. See Ison v. Zimmerman, 372 So. 2d 431, 435 (Fla. 1979). Moreover, in Chapter 90-491, Laws of Florida, the County Commission is authorized by the Florida Legislature to enact

provisions which affect the processes and procedures by which the Sheriff may take discipline against his employees. Sections 2 through 17 of Chapter 90-491 are repeated in Sheriff's Office Civil Service Ordinance No. 90-12. As to the third prong, "which, as the case may be, is the appropriate legislative body for the bargaining unit," there is no evidence that any entity other than the County Commission appropriates funds for the Sheriff's employees and has authority to establish policy regarding the Sheriff's employees' terms and conditions of employment. Accordingly, the County Commission is the appropriate legislative body to resolve the disputed issues between the Sheriff and the FOP. If we were to conclude otherwise, the Sheriff's employees would be left with no mechanism for resolving the impasse and their constitutional right to collective bargaining would be rendered meaningless. Art. I, § 6, Fla. Const.; § 447.201, .301, and .403, Fla. Stat. The Sheriff and County's exceptions are denied.

We accept the hearing officer's findings of fact. Furthermore, we agree with the hearing officer's analysis, as modified, her conclusions, and recommendation that the County Commission is the appropriate legislative body to resolve the collective bargaining impasse between the Sheriff and the FOP.³ Accordingly, the hearing officer's recommended order, as modified, is incorporated herein.

³We have reached the same outcome in Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Clay County, Case No. CA-2008-029 (Fla. PERC May 22, 2009).

Accordingly, the Sheriff is ORDERED to:

1. Cease and desist from:
 - (a) Declaring himself to be the legislative body pursuant to Section 447.203(10), Florida Statutes, for the purpose of resolving collective bargaining issues at impasse with the FOP;
 - (b) Conducting public impasse hearings;
 - (c) Resolving impasse disputes with the FOP;
 - (d) Refusing to submit the contractual articles at impasse to the Pasco County Board of County Commissioners for resolution; and
 - (e) 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) Submit the impasse issues to the Pasco County Board of County Commissioners, 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 the Sheriff's employees are customarily posted the attached Notice to Employees, stating that the Sheriff shall cease and desist from his actions set forth in paragraph 1 above, and will take the affirmative action set forth in paragraph 2. The notice shall be signed by the Sheriff's authorized representative prior to posting and should be posted by the Sheriff immediately upon receipt.⁴ The Sheriff shall take reasonable steps to ensure that the notices are not altered, defaced or covered by other material; and

⁴In the event that the Commission's order is appealed and is affirmed by the District Court of Appeal the words in the notice "posted by order of the Public Employees Relations Commission" shall be altered to read "posted by order of the Public Employees Relations Commission, affirmed by the District Court of Appeal."

- (c) Notify the Commission by affidavit or other proof of the date of posting and of final compliance with this order.

This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes (2008), and the Florida Rules of Appellate Procedure.

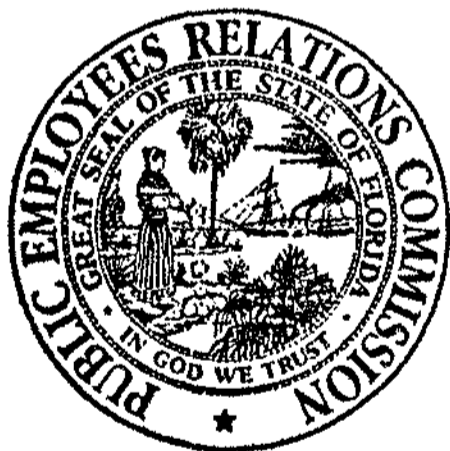
It is so ordered.

RAY, Chair, VARN and DELGADO, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on May 22, 2009.

BY: *Barry Edum*
Clerk

/bjk



NOTICE TO EMPLOYEES



POSTED PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYEES RELATIONS COMMISSION

AN AGENCY OF THE STATE OF FLORIDA

BASED ON A STIPULATED FACTUAL RECORD IN WHICH ALL PARTIES HAD AN OPPORTUNITY TO PRESENT EVIDENCE, IT HAS BEEN DETERMINED THAT I HAVE VIOLATED THE LAW AND I HAVE BEEN ORDERED TO POST THIS NOTICE. I INTEND TO CARRY OUT THE ORDER OF THE PUBLIC EMPLOYEES RELATIONS COMMISSION AND ABIDE BY THE FOLLOWING:

I WILL NOT declare myself to be the legislative body pursuant to Section 447.203(10), Florida Statutes, for the purpose of resolving collective bargaining issues at impasse.

I WILL NOT conduct public impasse hearings.

I WILL NOT resolve collective bargaining impasse issues.

I WILL NOT refuse to submit the contractual articles at impasse to the Pasco County Board of County Commissioners for resolution.

I WILL NOT in any like or related manner interfere with, restrain, or coerce public employees in the exercise of any right guaranteed them under Chapter 447, Part II, Florida Statutes.

I WILL submit the impasse issues to the Pasco County Board of County Commissioners to resolve the impasse.

Sheriff of Pasco County

DATE

BY

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for **60** consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Commission.

(ULP)

**** Transmit Confirmation Report ****

P.1
PERC

Fax:850-488-9704

May 22 2009 12:52pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
619545278663	Normal	22, 12:40pm	4' 26"	10	O K	BrdCast
617278478021	Normal	22, 12:45pm	4' 55"	10	* O K	BrdCast
Allen W Park	Normal	22, 12:50pm	1' 32"	10	# O K	BrdCast

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