

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

HEARING OFFICER'S
SUPPLEMENTAL
RECOMMENDED ORDER

T.A. Delegal, III, Jacksonville, attorney for charging party.

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

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

CROMAR, Hearing Officer.

On July 1, 2008, I issued an order, based on a stipulated record, concluding that the Pasco County Board of County Commissioners (County Commission) is the appropriate legislative body to resolve the impasse issues between the Sheriff of Pasco County (Sheriff) and the Florida State Lodge, Fraternal Order of Police, Inc. (FOP). On October 13, the Commission remanded this case to me with instructions "to reopen the record and provide the [County Commission] with the opportunity to be made a party and

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present any evidence which it wants the hearing officer to consider in determining whether it is the appropriate legislative body to resolve impasse disputes between the [Sheriff and the FOP].” See Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Pasco County, 34 FPER 223 (2008). On October 15, I issued an order directing the County Commission to file a response stating whether it desired to be a party in this case and to state the nature of any evidence it believes is relevant to the issue in this case. On November 7, the County Commission filed a motion to intervene. On November 17, without objection, I granted the motion. In addition, I directed the parties to file additional joint stipulations or request a hearing and provided a briefing schedule.

On December 1, the parties filed joint additional stipulations. In addition, the County Commission, without objection, requested that I take official recognition of Chapter 90-491, Laws of Florida and Sheriff's Office Civil Service Ordinance, Ordinance No. 90-12, dated September 28, 1990, and Ordinance 03-04 amending Ordinance 90-12. Copies were provided by the County Commission to the Sheriff and the FOP.

None of the parties requested an evidentiary hearing and none of them provided additional evidence other than that provided in the joint additional stipulations and the documents provided by the County Commission noted above. Consequently, the record was closed on December 3. Subsequently, the parties requested a seven-day extension

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of time to file their written arguments. The Commission granted the request and the parties' written arguments have been considered.¹

SUPPLEMENTAL FINDINGS OF FACT

1. Pasco County is a political subdivision of the State of Florida pursuant to the Florida Constitution, Article VIII, § 1.

2. Pasco County operates as a non-charter county as contemplated by the Florida Constitution, Article VIII, § 1(f).

3. As a non-charter county, Pasco County has all powers of local self-government provided by general law or special law. As the governing body of Pasco County, the County Commission may enact county ordinances not inconsistent with general or special law.

4. The County Commission has taken the position that it is not the appropriate legislative body to resolve issues at impasse between the FOP and the Sheriff as defined by Section 447.203(10), Florida Statutes, but rather that the Sheriff is the appropriate legislative body under the statute.

¹The Commission granted a similar extension for the issuance of this supplemental recommended order.

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5. The budget of the Sheriff, as submitted to the County Commission under Section 30.49(2), Florida Statutes, and as approved, is organized into three functional categories: general law enforcement; corrections and detention alternative facilities; and court services, excluding service of process. § 30.49(2)(a), Fla. Stat. Additionally, each functional category is subdivided into five separate itemizations: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves. § 30.49(2)(b), Fla. Stat. The Sheriff has the sole authority to shift or reallocate budgeted funds among the various expenses and cost centers that may be encompassed within any particular itemization, but cannot shift or reallocate funds between itemizations of the same category or of different categories without a budget amendment approved by the County Commission.²

SUPPLEMENTAL DISCUSSION AND ANALYSIS

The FOP alleges that the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes (2008),³ by refusing to submit issues on impasse to the County Commission for resolution and the Sheriff's holding of a public hearing. The FOP contends that the

²The parties' stated purpose of this stipulation is to clarify joint stipulation 41 previously submitted on May 8, 2008, by the FOP and the Sheriff. With the exception of the last phrase of the third sentence, this supplemental finding of fact restates findings of fact twenty-six, twenty-seven, and thirty-four in my recommended order issued on July 1.

³All statutory references are to the 2008 edition of the Florida Statutes.

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County Commission, rather than the Sheriff, is the appropriate legislative body for resolving issues following an impasse pursuant to Section 447.403. The Sheriff and the County Commission take the opposite view and contend that the Sheriff is the appropriate legislative body.

In its remand order, the Commission established a three-part test for determining the appropriate legislative body under Section 447.203(10). See Sheriff of Pasco County, 34 FPER 223 (2008). The three-part test, as contemplated by the Commission, describes an entity that first, has the "authority to appropriate funds." Second, the entity must have the authority to "establish policy governing the terms and conditions of employment." Third, the entity must be the one "which, as the case may be, is the appropriate legislative body for the bargaining unit." See § 447.203(10), Fla. Stat. The Commission instructed me to determine the appropriate legislative body based upon this three-part test. In support of their respective positions, each party has articulated a different approach for determining the appropriate legislative body for the purpose of impasse resolution under a portion of Section 447.203(10).

In its brief on remand the FOP argues that the third prong of the three-part test is somewhat tautological because it provides no means of determining the propriety of a potential legislative body other than by reference to the first two prongs. Thus, if the County Commission is the appropriate legislative body under the first two prongs, nothing in the third undefined prong may render the other two prongs irrelevant.

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The Sheriff takes another approach and argues in its brief that the Commission has rejected the traditional two-part test, under which the appropriate legislative body would have to satisfy both prongs in favor of a three-part balancing test. Under this test, the appropriate legislative body would be determined by weighing the three essential elements in relation to each other and then balancing them as a whole: 1) the authority to appropriate funds; 2) the authority to establish policy governing the terms and conditions of employment; and 3) the "appropriateness" of the body "as the case may be."

In its brief, the County Commission argues that the three part-test focuses first on whether the entity has the authority to appropriate funds, and second whether the entity has the authority to establish policy governing the terms and conditions of employment. However, the County Commission asserts that there may be instances where there is not a clear and decisive fit for the first two prongs. Regardless of the analysis under the first two prong of the test, the County Commission contends that the third prong controls the question whether the entity is the legislative body for impasse resolution purposes. The County Commission argues that the third prong reconciles any dispute between the first two prongs such that they are subordinate and must yield to its overarching imperative.

Section 447.203(10) defines the term "legislative body" as follows:

"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

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which, as the case may be, is the appropriate legislative body for the bargaining unit. For purpose of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed 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.

This provision specifically delineates the following legislative bodies: the state legislature, boards of county commissioners, district school boards, the governing bodies of municipalities, the board of governors of the state university system or the board's designee, and the board of trustees of a community college. None of the above-referenced legislative bodies are in question in this case, other than the boards of county commissioners. County sheriffs are not specifically delineated as legislative bodies.

In addition, Section 447.203(10) provides that 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. As indicated above, the Commission's three-part test requires an examination of whether the governing body of an instrumentality or unit of government at issue has (1) the authority to appropriate funds, (2) establish policy governing the terms and conditions of employment, and (3) which, as the case may be, is the appropriate legislative body for the bargaining unit.

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I have considered the parties' arguments and none of them are persuasive because all of them fail to take into consideration the plain language used by the Legislature in Section 447.203(10). The Legislature's use of the term "and" as a conjunctive, as opposed to the disjunctive "or," necessarily requires each prong of the three-part test to be met in order for the governing body of an instrumentality or unit of government to be determined a legislative body for purpose of impasse resolution under Section 447.403, Florida Statutes. It appears that the third prong is triggered when the evidence demonstrates that more than one governing body of an instrumentality or unit of government meets the first two prongs, and a decision must be made regarding which is the appropriate legislative body for the affected bargaining unit.

In my recommended order I concluded that the evidence in this case does not support a conclusion that the Sheriff possesses the authority to appropriate funds as required by the first prong of the Commission's test. The additional evidence submitted by the parties further supports my conclusion that the County Commission rather than the Sheriff has the authority to appropriate funds. In their joint stipulation, the parties stipulated that the Sheriff has the sole authority to shift or reallocate budgeted funds among the various expenses and cost centers that may be encompassed within particular itemization, but he cannot shift or reallocate funds between itemizations of the same category or of different categories without a budget amendment approved by the County. See Supplemental Finding of Fact 5. No evidence has been submitted demonstrating that the Sheriff has the authority to appropriate funds.

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The First District Court of Appeal has held that appropriations authority 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); United Faculty of Florida, FEA/United, AFT, AFL-CIO, Local 1880 v. Board of Regents, 365 So. 2d 1073, 1075 (Fla. 1st DCA 1979); see also Brevard County Police Benevolent Association v. Brevard County Sheriff's Department, 2 FPER 21, 22 (1976) (ruling that the County Commission, because of its taxation and appropriations powers over the funding of the sheriff's operation, is the appropriate legislative body and, therefore, not an indispensable party in a representation proceeding involving the Sheriff as the public employer).

I also previously concluded that the record evidence fails to establish that the Sheriff meets the second prong of the Commission's test because he does not have unbridled authority to establish policy governing the terms and conditions of employment for Sheriff's Office employees, particularly those in the bargaining units represented by the FOP. The additional enactments provided by the County Commission do not change my earlier conclusion. 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 merely repeated in Sheriff's Office Civil Service Ordinance No. 90-12.

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As I have analyzed this case, the Sheriff does not meet the first two prongs of the Commission's test. The third prong, which cannot be considered in isolation due to the conjunctive structure of the applicable portion of Section 447.203(10), does not warrant a conclusion that the Sheriff is the appropriate legislative body in this case. Therefore, I reiterate my conclusions and recommendations set forth in my initial recommended 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 8th day of January, 2009.


SHARON E. CROMAR
Hearing Officer

SEC/bjk

**NOTICE
EFFECTIVE OCTOBER 10, 2003**

Pursuant to the Uniform Facsimile Signature of Public Officials Act, Section 116.34, Florida Statutes, this order is being issued to you by facsimile delivery. You will NOT receive a duplicate paper copy by mail. Accordingly, please retain this facsimile as your copy of the order. If you have encountered problems with the electronic delivery of the copy, please contact the Commission's Clerk at (850) 488-8641.