

STATUS OF UNFAIR LABOR PRACTICE CHARGES AGAINST PASCO AND CLAY COUNTY SHERIFFS

We have prevailed at every stage so far regarding our unfair labor practices charges against the Clay and Pasco Sheriff's Offices. The Fraternal Order of Police filed these unfair labor practice charges to challenge the sheriffs' claim that they, rather than the county commissions were the "legislative body" for resolving collective bargaining impasses. Under Florida collective bargaining law, the public employer and the public employee organization must meet and try to resolve all the aspects of the collective bargaining agreement (union contract). If they cannot agree on certain terms of the contract, the "legislative body" makes a decision as to which proposal or provision should be inserted in the contract.

Florida came up with the "legislative body" scheme as a method of avoiding strikes amongst public employees. It is not a perfect method of resolving impasses, but it gives the employees an opportunity to make their case to another body. Traditionally, city commissions or county commissions have been recognized as the legislative bodies for most of the bargaining units around the state. The Sheriffs' Association came up with the notion that a sheriff himself was a "legislative body." The notion is very troubling because essentially a sheriff could engage in collective bargaining, and if he couldn't get the union to agree to his position, he could turn around and then just impose those conditions any way. Essentially, if the sheriffs were to win this issue, the right to collectively bargain with sheriffs' departments would effectively be ended.

The sheriffs of Clay and Pasco Counties asserted that they were the "legislative bodies" after impasses were reached with the FOP. The FOP then filed unfair labor practices with PERC. The first step in an unfair labor practice proceeding is for a hearing to be held with a hearing officer. The hearing officer is essentially a judge who hears the facts of the case and comes up with a recommendation. That recommendation can either be accepted or rejected by the Public Employees Relations Commission. PERC can only reject the factual recommendations in very limited circumstances, but can generally change the legal conclusions reached by the hearing officer.

In each of the Clay and Pasco County cases, we proceeded to a hearing before a PERC hearing officer. Each of the two PERC hearing officers issued rulings in our favor approximately one year ago. In each of the hearing officer's recommended orders, these persons held that under the facts of each of these cases, the county commission should be deemed the "legislative body" for the purposes of resolving any impasse between the FOP and the sheriffs.

After the hearing officers' recommended orders were issued, the sheriffs each objected to the recommended orders, and asked for hearings before PERC. PERC took the extremely unusual step of granting oral argument before the commission. These two cases constitute one of the most important issues that the commission has addressed in recent years and the commissioners therefore felt that they should provide every opportunity for the parties to explain their position. We conducted oral arguments before PERC and explained our position.

Following the oral argument, PERC made the determination that the county commissions themselves should be included as parties to these cases. PERC therefore sent both cases back to the hearing officers in October 2008 for entirely new recommended orders to be issued.

We then had to proceed again with hearings before the hearing officers. The facts were stipulated to so no physical hearing took place but the parties nevertheless had to present a substantial amount of legal argument and factual argument to the hearing officer so that the hearing officer could render a decision. In both the Pasco and Clay County cases, the hearing officers once again ruled with the FOP, concluding that the county commissions were the appropriate legislative bodies.

The sheriffs once again took exception to the hearing officers' recommended orders and requested hearings before the Public Employees Relations Commission. PERC once again granted oral argument, and an oral argument was held again in Tallahassee at which I appeared on the pass of the Fraternal Order of Police. PERC received an extension of time to issue an order in the case, and finally issued its orders on May 22, 2009. PERC agreed completely with our position, finding that the FOP was correct and that unfair labor practices by both sheriffs had been committed. The PERC orders directed the county commissions for Clay and Pasco Counties to conduct impasse hearings to resolve the disputed terms of the collective bargaining agreement.

Essentially, the FOP has won for each county twice before the hearing officer and once before PERC. The sheriffs then appealed the order of the Public Employees Relations Commission to the appellate court. The notice of appeal was filed and once a public entity files a notice of appeal in this kind of case, an automatic "stay" is in effect. That means that the order of the administrative tribunal (PERC) cannot take effect until such case as the appellate court has issued its ruling. We can apply for relief from the automatic stay, and we intend to reply for relief once a further logistical issue has been resolved. If we are successful in obtaining relief from the automatic stay, the county commissions would then resolve the impasse and the collective bargaining agreement issues can be decided. However, until either the stay is lifted or the appeals are decided in our favor, the automatic stay will remain in effect and PERC's order cannot be carried out.

These cases involve some extremely complex procedures and legal arguments. Cases such as this, which involve very important issues which will apply to all constitutional officers within the state, generally take some time to resolve. I realize that the membership has waited a very long time for these cases to be resolved, but the reality is that we have consistently won at every step of the process and I believe that we have a very strong case to continue winning on this issue. As I said before, the question presented by these cases is whether or not any collective bargaining will effectively take place with sheriffs or other constitutional officers in the State of Florida. Permitting a sheriff to simply resolve an impasse himself when he does not like the other party's position, renders the collective bargaining process largely meaningless. If we are able to maintain the victories we have won so far on appeal, the reality is that sheriff's deputies throughout the state will be entitled to make their cases to the elected county commissions in their county. County commissioners are generally elected by constituents who believe in strong independent law enforcement agencies. County commissioners are generally less concerned

with a sheriff's effort to retain all power within a sheriff's office to himself. While some county commissions may initially back a sheriff's position, the reality is that over time the FOP will have a greater and greater ability to influence the opinions of those commissioners and encourage them to support us in providing strong protections and benefits to deputy sheriffs in the various counties where we provide representation.

Our firm continues to diligently represent the interests of the FOP on this issue and I hope that I can soon provide you with some very good news regarding the additional progress in the case.

Very truly yours,

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