

Gentlemen,

I wanted to update you on the status of PERC proceedings. As you know, the Sheriffs of Clay and Pasco Counties filed appeals from the orders issued by the Public Employees Relations Commission. The First District Court of Appeal issued an order approximately a month ago, questioning whether or not it had jurisdiction over the appeal. The reason for the First DCA's order is that PERC failed to follow the required format for final administrative orders. Under the Florida Statutes, a final order in an administrative proceeding must accept or reject the exceptions filed by a party, and must do so with specificity. Essentially, the PERC order adopted our position in the case, but failed to explain why it rejected the positions of the sheriffs.

On Thursday the First District Court of Appeal issued a dismissal of the appeals, on the grounds that two of the orders issued by the PERC was not a legitimate final order. While it may seem a good thing that the First DCA issued such an order dismissing the appeal, the reality is that I'm not sure that we can enforce the PERC order unless it complies with the law. PERC has so far been unwilling to revise its own order. If we were to obtain a revised order, I'm sure that the sheriffs will once again file appeals. However, if we simply file to enforce the existing PERC order, I don't believe that the Circuit Court will take any action because PERC's order is simply not enforceable under Florida law (since an appellate court has already ruled it to be an invalid order). We are thus left in somewhat of a Catch-22.

For these reasons, I think it's preferable for us to seek some relief from PERC and request that PERC issue a revised order. I've been in contact with the attorney for Clay County, Mark Struby, regarding their strategies for obtaining a revised order. Sometimes we have to work with the opposing party to reach a result – right now the invalid status of the PERC order may not help any party to the proceedings since we are all in limbo. It is my hope that we can clear this situation up in the near future so that we can go about seeking to enforce the PERC order.

One good thing that has happened is that PERC recently issued an order within the last two weeks finding that the automatic stay provisions of the Florida Appellate Rules do not apply to orders issued by PERC. That means that the sheriffs and the counties are not entitled to have the PERC order stayed during the course of the appeal. Instead, the sheriffs would have to specifically request and obtain a stay of the PERC order, and failing to do otherwise would result in their being liable for refusal to comply with the PERC order. We had previously believed that a newly revised Florida statute eliminating the automatic stay provisions for some administrative cases would not have applied to PERC orders, but would only apply to orders which were issued through process involving the Department of Administrative Hearings. The new PERC makes it clear that the automatic stay provisions do not apply to PERC orders either. That is some good news because it should make it easier from a procedural standpoint to enforce the order which has been issued by PERC. However, we still need to get around the fact that PERC's order is currently invalid as a matter of law and needs to be revised before we can effectively enforce it.

I'm sorry about all the procedural problems in this case. Frankly, they are very confusing and they have confused all of the attorneys involved in this case. I hope that I can give you some good news in the near future, but I just wanted to keep you updated.

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