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SUPREME COURT
STATE OF FLORIDA

FILED

SUPREME COURT

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HILLSBOROUGH COUNTY GOVERNMENTAL
EMPLOYEES ASSOCIATION, INC.,
HILLSBOROUGH COUNTY POLICE
BENEVOLENT ASSOCIATION, INC., and
PUBLIC EMPLOYEES RELATIONS COMMISSION,

Petitioners,

vs.

CASE NO. 68,336

HILLSBOROUGH COUNTY AVIATION AUTHORITY
and HILLSBOROUGH COUNTY CIVIL SERVICE
BOARD,

Respondents.

INITIAL BRIEF ON THE MERITS OF PETITIONERS
HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, INC.
AND HILLSBOROUGH COUNTY POLICE BENEVOLENT ASSOCIATION, INC.

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PRELIMINARY STATEMENT

The parties to this appeal shall be referred to in this Brief as follows:

Respondent Hillsborough County Aviation Authority	"Authority"
Respondent Hillsborough County Civil Service Board	"Board"
Petitioner Florida Public Employees Relations Commission	"PERC"
Petitioner Hillsborough County Police Benevolent Association, Inc.	"P.B.A."
Petitioner Hillsborough County Governmental Employees Association, Inc.	"G.E.A."
P.B.A. and G.E.A. will be referred to collectively as the	"Associations"

All statutory citations will be to the 1983 version of the Florida Statutes unless otherwise noted.

STATEMENT OF THE CASE

This case arises out of two nearly identical unfair labor practice charges filed with PERC by the P.B.A. and the G.E.A. against the Authority. The charges alleged that the Authority had committed an unfair labor practice by refusing to implement certain provisions of the collective bargaining agreements reached with the P.B.A. and the G.E.A.

PERC determined that the Authority had committed unfair labor practices in violation of Section 447.501(1)(a) and (c), Florida Statutes (1983) by refusing to implement certain provisions contained in the 1984 ratified contract agreements with the P.B.A. and the G.E.A. concerning the issues of holidays, funeral leave, seniority and layoffs. In reaching its determination, PERC relied primarily on Section 447.601, Florida Statutes; its order in Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶12395 (1981) and the opinion of the First District Court of Appeal affirming PERC in Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So.2d 1017 (Fla. 1st DCA 1983).

The Authority appealed PERC's decision. The Second District Court of Appeal reversed PERC's order and held that the Authority did not commit unfair labor practices. In reaching its determination, the Court relied primarily on Section 447.309(3), Florida Statutes and its opinion in Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority, 347 So.2d 801 (Fla. 2nd DCA 1977).

In rendering its opinion, the Second District Court of Appeal recognized the apparent and substantial conflict between the Pinellas and Escambia court opinions. Because of the significance of the issue involved and the likelihood that the issue would arise again in the future, the Court certified to the Florida Supreme Court the following question to be of great public importance:

WHEN PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT WHICH HAS BEEN ENTERED INTO BY A PUBLIC EMPLOYER CONFLICT WITH CIVIL SERVICE RULES AND REGULATIONS AND THE GOVERNMENTAL BODY HAVING AMENDATORY POWER OVER THE CIVIL SERVICE RULES AND REGULATIONS REFUSES TO AMEND THOSE RULES AND REGULATIONS IN SUCH A MANNER AS TO ELIMINATE THE CONFLICT, DOES SECTION 447.309(3) APPLY TO CIVIL SERVICE RULES AND REGULATIONS AND THEREFORE GOVERN THE EFFECTIVENESS OF THE COLLECTIVE BARGAINING AGREEMENT?

Based upon the decision of the Second District Court of Appeal, the P.B.A. and the G.E.A. filed a petition to invoke the discretionary jurisdiction of the Florida Supreme Court. On February 19, 1986, this Court accepted jurisdiction of the case.

STATEMENT OF THE FACTS

As set forth in PERC's final order, the parties stipulated to the facts in the unfair labor practice cases. Those facts are as follows:

1. On March 13, 1975, Pinellas County Police Benevolent Association, Inc. (hereinafter Pinellas County P.B.A.) filed a representation petition with PERC (Case Number 8H-RC-756-2079) pursuant to Section 447.009(2), Florida Statutes, Chapter 74-100, Laws of Florida (1974) and PERC Rules 8H-3.02-.04, Fla. Admin. Code. The petition sought to represent certain employees employed by the Hillsborough County Aviation Authority. On June 16, 1975, the parties (P.B.A. and Authority) executed a consent election agreement stipulating that the appropriate employee unit for collective bargaining purposes was one including all sergeants and patrolmen and excluding all other sworn personnel. The consent election agreement also stipulated to the details of conducting a secret ballot election among the employees in the appropriate unit and the agreement was subsequently approved by the Chairman of PERC.

Pursuant to the consent election agreement and in accordance with PERC 8H-3.28, Fla. Admin. Code, a secret ballot election among eligible employees employed in the appropriate unit was held on July 15, 1975. The results of this election, which were certified on July 16, 1975 by the neutral party conducting the election, indicated that a majority of the unit employees casting valid ballots had designated the Pinellas

County P.B.A. as their exclusive agent for purposes of collective bargaining. On July 31, 1975, PERC certified the Pinellas County P.B.A. as the exclusive collective bargaining agent for all sergeants and patrolmen employed as sworn personnel by the Authority, whereupon the Authority became subject to a statutory duty to bargain collectively in good faith with P.B.A. regarding wages, hours, and other terms and conditions of employment of the employees in the certified unit pursuant to Section 447.309(1), Florida Statutes.

2. On August 7, 1978, the Pinellas County P.B.A. disclaimed interest in representing the above mentioned certified unit. Simultaneously, by agreement of the Parties, the Hillsborough County P.B.A., Inc./Florida P.B.A., pursuant to Section 447.301(1), Florida Statutes (1977) and Fla. Admin. Code R. 8H-2.05, petitioned PERC for certification. On November 14, 1978, the Commission, pursuant to 447.207(b), Florida Statutes (1977), granted certification.

3. Since 1975, the Pinellas County P.B.A. or Hillsborough County P.B.A. and the Authority have been signatories to a series of collective bargaining agreements. A copy of the most recent collective bargaining agreement is attached hereto as Exhibit A.

4. The Aviation Authority is a public agency created by Chapter 23339, Laws of Florida Acts of 1945, a Special Act of the Legislature. The Authority is funded by its own revenues. It has the authority to raise revenues, enter into contracts, appropriate funds and generally administer the public aviation facilities in Hillsborough County, Florida.

The Authority consists of five members. One member is the Mayor of the City of Tampa. Another member is a member of the Board of County Commissioners of Hillsborough County and that member is selected by the County Commissioners themselves. The three remaining members are appointed by the Governor. It is not a subdivision of nor is it responsible to Hillsborough County or the Hillsborough County Commission.

5. The Hillsborough County Civil Service Board was created subsequent to the Charter of the Authority under Special Laws of Florida Chapters 69-1121, 70-1003 and 71-675. The authority for these special acts is set forth in Article 3, Section 14 of the Florida Constitution. Said special acts created and defined the statutory authority of the Civil Service Board. Specifically, the Board was given the exclusive power to establish rules and regulations dealing with rates of pay, hours of work, and other working conditions for employees in the "classified service." Its members are appointed by the Governor and by Special Act, it was given rule-making authority over Authority employees.

6. Pursuant to said authority, the Civil Service Board has adopted a number of rules and regulations covering terms and conditions of employment. A copy of said rules and regulations is attached hereto as Exhibit B.

7. The Hillsborough County Police Benevolent Association, Inc., is an employee organization within the meaning of Section 447.203(11), Florida Statutes, and the certified bargaining agent for certain law enforcement personnel employed by the Hillsborough County Aviation Authority as set forth in PERC Certification Number 433, as amended.

8. The Hillsborough County Aviation Authority is a public employer within the meaning of Section 447.203(2), Florida Statutes.

9. In July, 1984, the P.B.A. and the Authority entered into collective bargaining negotiations.

10. In August, 1984, the P.B.A. and the Authority completed collective bargaining negotiations. New benefits secured for bargaining unit members through the bargaining process included:

- a. Bumping Rights - Article XIV, Section 2 (Seniority and Layoff)
- b. 3 Personal Holidays Designated by Employee - Article XV, Section 2 (Holidays)
- c. Additional Hours of Funeral Leave - Article XV, Section 9 (Funeral Leave)
- d. \$50.00 Increase Clothing Allowance - Article XV, Section 15 (Uniform Cleaning Allowance)

11. In late August, 1984, the bargaining unit employees, represented by the P.B.A. ratified the collective bargaining agreement.

12. On September 6, 1984, the Authority ratified the collective bargaining agreement reached with the P.B.A.

13. On September 26, 1984, pursuant to Fla. Stat. 447.309(3), the Authority presented to the Board a request that it amend its rules and regulations in order to eliminate conflicts between those rules and regulations and the collective bargaining agreement reached with the P.B.A. Those areas sought to be amended were holidays, funeral leave, seniority and layoffs. The proposed amendments to the civil service rules were consistent with the contractual provisions described in Paragraph 10(a), (b) and (c).

14. On September 26, 1984, the Board refused to amend its rules and regulations in order to eliminate conflicts between those rules and regulations and the collective bargaining agreement reached between the P.B.A. and the Authority.

15. On October 2, 1984, the Authority notified the P.B.A. that based upon the action of the Board, the Authority refused and would not implement those contractual provisions described in Paragraph 10(a), (b) and (c).

16. The Hillsborough County Governmental Employees Association, Inc. (G.E.A.) is an employee organization within the meaning of Section 447.203(11), Florida Statutes. It is the certified bargaining agent for certain non-clerical and non-administrative personnel employed by the Hillsborough County Aviation Authority as set forth in PERC Certification Number 511.

17. In July, 1984, the G.E.A. and the Authority entered into collective bargaining negotiations.

18. In August, 1984, the G.E.A. and the Authority completed collective bargaining negotiations. New benefits secured for bargaining unit members through the bargaining process included:

- a. Bumping Rights - Article XIV, Section 3 (Seniority and Layoff)
- b. 3 Personal Holidays Designated by Employee - Article XV, Section 2 (Holidays)
- c. Additional Hours of Funeral Leave - Article XV, Section 8 (Funeral Leave)
- d. Clothing Allowance for Tour Guides - Article XII, Section 1 (Uniform Cleaning Allowance)

19. In late August, 1984, the bargaining unit employees, represented by the G.E.A. ratified the collective bargaining agreement.

20. On September 6, 1984, the Authority ratified the collective bargaining agreement reached with the G.E.A.

21. On September 26, 1984, pursuant to Fla. Stat. 447.309(3), the Authority presented to the Board a request to amend its rules and regulations in order to eliminate conflicts between those rules and regulations and the collective bargaining agreement reached with the G.E.A. Those areas sought to be amended were holidays, funeral leave, seniority and lay-offs. The proposed amendments to the Civil Service Rules were consistent with the contractual provisions described in Paragraph 18(a), (b) and (c).

22. On September 26, 1984, the Board refused to amend its rules and regulations in order to eliminate conflicts between those rules and regulations and the collective bargaining agreement reached between the G.E.A. and the Authority.

23. On October 2, 1984, the Authority notified the G.E.A. that based upon the action of the Board, the Authority refused and would not implement those contractual provisions described in Paragraph 18(a), (b) and (c).

24. On October 12, 1984, the P.B.A. and the G.E.A. filed Unfair Labor Practice Charges against the Authority. The substance of said charges are outlined in paragraphs seven through twenty-three above.

25. On October 17, 1984, the General Counsel filed its Notice of Sufficiency in the cases at bar.

26. On October 30, 1984, the Authority filed its Answer and Affirmative Defenses to the cases at bar.

27. On November 1, 1984, the P.B.A. and the G.E.A. filed its Motion to Proceed in Accordance with Section 120.57(2), Florida Statutes.

28. On November 2, 1984, the Commission granted Changing Party's Motion to Proceed in Accordance with Section 120.57(2), Florida Statutes (1983) in the cases at bar.

RELEVANT STATUTORY PROVISIONS

Section 447.309(3), Florida Statutes:

(3) If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.

Section 447.601, Florida Statutes:

447.601 Merit or civil service system; applicability.-The provisions of this part shall not be construed to repeal, amend, or modify the provisions of any law or ordinance establishing a merit or civil service system for public employees or the rules and regulations adopted pursuant thereto or to prohibit or hinder the establishment of other such personnel systems unless the provisions of such merit or civil service system laws or ordinances or rules and regulations adopted pursuant thereto are in conflict with the provisions of this part, in which event such laws, ordinances, or rules and regulations shall not apply, except as provided in s. 447.301(4).

ISSUE CERTIFIED BY THE COURT

WHEN PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT WHICH HAVE BEEN ENTERED INTO BY A PUBLIC EMPLOYER CONFLICT WITH CIVIL SERVICE RULES AND REGULATIONS AND THE GOVERNMENTAL BODY HAVING AMENDATORY POWER OVER THE CIVIL SERVICE RULES AND REGULATIONS REFUSES TO AMEND THOSE RULES AND REGULATIONS IN SUCH A MANNER AS TO ELIMINATE THE CONFLICT, DOES SECTION 447.309(3) APPLY TO CIVIL SERVICE RULES AND REGULATIONS AND THEREFORE GOVERN THE EFFECTIVENESS OF THE COLLECTIVE BARGAINING AGREEMENT?

SUMMARY OF ARGUMENT

The P.B.A. and the G.E.A. have a problem in their negotiations with the Authority. They reach agreement with the Authority only to have substantive terms of the collective bargaining agreements rejected by the Board and rendered ineffective. Thus, collective bargaining negotiations are a nullity.

There are two approaches to the problem. The procedure outlined above for resolving conflicts between provisions of a collective bargaining agreement and civil service rules is that of the Second District Court of Appeal. Such an approach unconstitutionally abridges the fundamental right to collectively bargain.

PERC and the First District Court of Appeal have adopted a different approach to the conflict issue. That procedure honors the civil service rules when no conflict is present. If a conflict between the provisions of a collective bargaining agreement and civil service rules occurs respecting "wages, hours and terms and conditions of employment," the provisions of the agreement are honored.

The approach of PERC and the First District Court of Appeal accomodates the rights and interests of all parties. It should be approved by the Court which should hold that Section 447.309(3), Florida Statutes does not apply to conflicts between provisions of a bargaining agreement and civil service rules.

ARGUMENT

SECTION 447.309(3), FLORIDA STATUTES DOES NOT APPLY TO CIVIL SERVICE RULES AND REGULATIONS. INSTEAD, SECTION 447.601, FLORIDA STATUTES, GOVERNS THE RELATIONSHIP BETWEEN A COLLECTIVE BARGAINING AGREEMENT AND CONFLICTING CIVIL SERVICE RULES AND REGULATIONS.

The P.B.A. and the G.E.A. have a problem in their collective bargaining relationship with the Authority. They bargain with the Authority; proposals are advanced, concessions are made and employment benefits are obtained. Ultimately, collective bargaining agreements are reached and ratified. The P.B.A., the G.E.A., the Authority and, most importantly, the employees represented by the Associations are satisfied.

Next, the Authority takes the ratified agreements to the Board. The Authority requests that the Board permit it to implement certain provisions of the agreements which are in conflict with the civil service rules and regulations. The Board rejects this request.

Based on the Board's action, the Authority contacts the P.B.A. and the G.E.A. It advises them that the collective bargaining agreements are in effect except for those provisions rejected by the Board. Furthermore, the Authority advises the P.B.A. and G.E.A. that the rejected provisions are not in effect and will not be placed into effect. The employment benefits gained by the P.B.A. and the G.E.A. have been lost.

That is the problem and it is a very real problem. In 1984, three-quarters of the major employment benefits achieved by the P.B.A. and the G.E.A. through collective bargaining negotiations and contained in 1984-1985 bargaining agreements were rendered ineffective because the Board refused to permit the Authority to implement them. Those provisions rendered ineffective by the Board included such fundamental employment issues as layoff rights, holiday leave and funeral leave. In reality, the Board's action nullified collective bargaining negotiations for the employees represented by the P.B.A. and G.E.A. for the 1984-1985 fiscal year.^{1/}

It must be understood that the scenario just set forth for resolving conflicts between provisions of a collective bargaining agreement and civil service rules is that of the Second District Court of Appeal. It is based upon a strict reading of Section 447.309(3), Florida Statutes, as interpreted by that Court in the case of Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority, 347 So.2d 801 (Fla. 2nd DCA 1977).

^{1/} As early as 1982, a special master sitting in review of negotiations between the Authority and the P.B.A. noted in his decision on impasse issues that the Hillsborough County Civil Service Act "appears to infringe upon the constitutionally guaranteed right of collective bargaining between the Authority, and the Association, as those rights were evaluated in the Escambia Decision recently decided by PERC." Hillsborough County P.B.A. v. Hillsborough County Aviation Authority, Case No. SM-82-82 at 11. (Decision of the Special Master, May 14, 1982).

The P.B.A. and G.E.A. would respectfully assert that the conflict resolution procedure outlined by the Second District Court of Appeal in Pinellas constitutes an unconstitutional abridgement of the fundamental right to collectively bargain in violation of Article I, Section 6 of the Florida Constitution and this Court's holding in the case of City of Tallahassee v. Public Employees Relations Commission, 410 So.2d 487 (Fla. 1981).^{2/} Fortunately, the conflict resolution procedure favored by the Second District Court of Appeal is not shared by PERC (the State agency charged with the initial interpretation and application of Chapter 447, Part II, Florida Statutes) nor the First District Court of Appeal. See, Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 7 FPER ¶12395 aff'd. 426 So.2d 1017 (Fla. 1st DCA 1983).

The procedure established by PERC for the resolution of conflicts between provisions of a collective bargaining agreement and civil service rules is based on Section 447.601, Florida Statutes. It represents an accommodation of the constitutional rights provided in Article I, Section 6 (collective bargaining) and Article III, Section 14 of the

^{2/} The Second District Court of Appeal expressly refused to pass on the constitutionality of Section 447.309(3) in the Pinellas case. 347 So.2d at 803.

Florida Constitution (civil service systems) rather than the selection of one right to the exclusion of another, more fundamental right, the right to collectively bargain.

Under the PERC procedure, the civil service system controls completely until employees in a bargaining unit elect a collective bargaining representative. Even then, the civil service rules continue to apply to bargaining unit employees so long as the rules and the negotiated collective bargaining agreement do not conflict on matters concerning "wages, hours, and terms and conditions of employment."^{3/} If a conflict develops between the negotiated provisions of a bargaining agreement and the civil service rules over "wages, hours, and terms and conditions of employment", the negotiated provisions of the agreement will prevail. 7 FPER at 871.

This procedure is based on a plain reading of Section 447.601 which specifically limits the applicability of civil service rules in situations where they conflict with rights provided for under Chapter 447, Part II, Florida Statutes. Section 447.309(3) does not come into play since PERC interprets it to apply to laws or regulations other than laws or regulations relating to a civil service system. 7 FPER at 874.

^{3/} Section 447.309(1) Florida Statutes, requires a bargaining representative and a public employer to "bargain collectively in the determination of the wages, hours, and terms and conditions of employment" of employees within the bargaining unit.

When the PERC conflict resolution procedure is applied to the facts in this case, the problem which confronted the P.B.A., the G.E.A. and the employees they represent is resolved. The provisions of the collective bargaining agreement covering layoffs, holidays and funeral leave would apply to bargaining unit employees. Thus, the benefits obtained through the collective bargaining process are honored, as is the fundamental right to collectively bargain. The interests of the P.B.A., the G.E.A., the Authority and the employees represented by the Associations are satisfied.

The Board's interests are also satisfied. Its rules and regulations continue to apply in all respects to employees not represented by a collective bargaining representative. Additionally, its rules and regulations continue to apply to all employees within the civil service system except when a public employer, the bargaining representative and bargaining unit employees agree, through a ratified bargaining agreement, that different provisions relating to "wages, hours, and terms and conditions of employment" should apply.

In summary, the conflict resolution procedure established by PERC accomodates all parties' rights and interests. Its construction of Section 447.309(3) and Section 447.601 removes any doubt that a broadly termed civil service law will operate "as a wholesale impediment to collective bargaining." 7 FPER at 874. Its construction also eliminates the "grave constitutional doubts" expressed by the First District Court of Appeal

which would result from the strict reading of Section 447.309(3) favored by the Second District Court of Appeal. Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So.2d 1017, 1019 (Fla. 1st DCA 1983).

CONCLUSION

The interpretation of Section 447.309(3) and Section 447.601 expressed by PERC and affirmed by the First District Court of Appeal in the Escambia case is proper and a fair accomodation of rights. This Court should approve that interpretation and hold that Section 447.309(3) does not apply to civil service rules. This Court should further hold that Section 447.601 governs the relationship between a collective bargaining agreement and conflicting civil service rules and regulations.

DATED this 7th day of April, 1986.

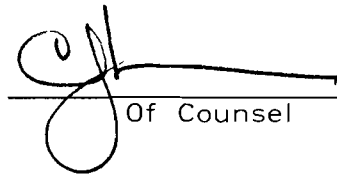
Respectfully submitted,



GENE "HAL" JOHNSON
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail, to J. RONALD WIGGINTON, General Counsel, Hillsborough County Civil Service Board, 300 North Franklin Street, Tampa, Florida 33602; PETER W. ZINOBER, Esquire and RICHARD C. McCREA, JR., Esquire, Hillsborough County Civil Service Board, Post Office Box 3239, Tampa, Florida 33601; PHILLIP QUASHNICK, Esquire, Public Employees Relations Commission, Turner Building, Suite 100, 2856 Seagate Drive, Tallahassee, Florida 32301; LUCIUS M. DYAL, Esquire and MARK HANLEY, Esquire, Post Office Box 3324, Tampa, Florida 33601 this 7th day of April, 1986.



Of Counsel