

Florida Public Employees Relations Commission



39th Annual Florida Educational Negotiators Conference – May 2019

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Navigating PERC's Certification Process

Representation Petitions,
Names Changes, &
Related Issues

Brief History of PERC

- **1968** - Article I, Section 6, Florida Constitution, titled “Right to Work” rewritten
- **1969** – FL Supreme Court upheld Art. 1, Sec. 6
- **1972** - *Dade County CTA v. Fla. Legislature*, 269 So. 2d 684 (Fla. 1972)
- **1974** - Public Employees Relations Act (PERA), Chapter 447, Part II, Florida Statutes
 - Jurisdiction to hear Representation and Unfair Labor Practice Cases arising out of PERA
- **1977** and **1979** changes to organization
- **1986** – Jurisdiction over career service appeals (§ 110.227)
- Later added whistleblower, veteran’s preference, and other jurisdictions

Representation Cases Under PERA

- Recognition-Acknowledgment Petition
- Representation-Certification Petition
- Representation-Decertification Petition
- Amendment to Certification Petition
- Unit Clarification Petition
- Presentation Petition Issues

Recognition-Acknowledgment (RA) Petition

- When a public employer enters into a bargaining relationship with an employee organization without first having a secret ballot election to determine the desire of employees. *See* § 447.307(1)(a).
- PERC empowered only to review the appropriateness of the proposed unit when deciding whether to certify the employee organization as the exclusive bargaining representative of all employees in the unit or dismiss the petition.

Representation-Certification (RC) Petition

- When the employer declines to recognize the employee organization voluntarily, or if the organization does not request voluntary recognition.
- Must be accompanied by statements dated more than one year prior to filing, signed by at least 30% of employees in the proposed unit who desire to be so represented (a.k.a. “showing of interest”)
- If sufficient, the Commission will define the proposed bargaining unit, determine which employees are qualified and entitled to vote, identify the employer for the purpose of collective bargaining, and order an election

Representation-Decertification (RD) Petition

- When a public employee included in the bargaining unit no longer desires to be represented by the certified bargaining agent
- Must be accompanied by statements dated more than one year prior to filing, signed by at least 30% of employees in the proposed unit who no longer desire to be so represented
- Can be filed only during the window period (between 150 days to 90 days immediately preceding the expiration date of a collective bargaining agreement, or at any time after it expires but prior to the effective date of any new agreement)
- If sufficient, the Commission will order an election to determine whether a majority of the bargaining unit employees desire continued representation

Amendment to Certification (AC) Petition

- Used when employer changes, to substitute one local for another, or to reflect a mere name change of certified bargaining agent
- Bargaining unit must remain intact with substantial continuity in representation
- Caveat: Does not work where an entirely new bargaining unit is created from the previously existing one

Unit Clarification (UC) Petition

- To modify existing bargaining units as to classifications that have been created or substantially altered after certification
 - “Inadvertence” standard → classification in existence at the time of certification but was omitted from unit due to *the Commission’s* clerical error or mistake
 - “Change in law” standard → rarely used
- Cannot be used to alter the scope of a unit or to reconsider which positions might have been included or excluded
- May only be filed by an employer or certified bargaining agent

Representation Petition Issues

- Registration/Certification Bar
- Contract Bar
- Election Bar
- Challenging Showing of Interest
- Unit Composition
- Over-fragmentation
- Community of Interest

Community of Interest

Factors that may be relevant in determining the existence of a community of interest:

- required education and certifications
- manner in which wages and other terms of employment are determined
- method by which jobs and salary classifications are determined
- interdependence of jobs and the interchange of employees
- desires of the employees
- history of employee relations/negotiation within the organization and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship.

See § 447.307(4)(f), Fla. Stat.

Reasons for Unit Exclusion

- Professional & Non-Professionals in Same Unit
- Supervisory Conflict of Interest
- Managerial Designation
- Confidential Designation
- Part-Time, Temp, or Seasonal Employees
- Bargaining History/Prior Unit Determinations

Professionals & Non-Professionals in Same Unit [§ 447.203(13)(a) & (b), Fla. Stat.]

- To be excluded, must **perform at least two** of the following:
 1. Work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work
 2. Work involving the consistent exercise of discretion and judgment in its performance
 3. Work of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time
 4. Work requiring a prolonged course of specialized intellectual instruction beyond a general academic education, an apprenticeship, or training.
- **OR** must have completed the course of specialized intellectual instruction and study described in #4 above **AND** performs related work under the supervision of a professional person to qualify to become a professional employee as defined above.

Supervisory Conflict of Interest

- Where employees exercise **effective** authority in personnel matters in the areas of hiring, firing, evaluations, promotions, scheduling, resolution of grievances, or discipline
- *Examples:*
 - Preparing evaluations for purpose of merit pay, discipline
 - Internal affairs, staff inspections, or other administrative-type assignments which cause conflict
 - Faculty Senate President serving on Board of Trustees
- **Balancing Test:** Conflict of Interest and community
- **Compare to:** working foremen/lead workers

Managerial Designation [§ 447.203(4), Fla. Stat.]

- Those employees who: (a) perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs, AND
- (b) to whom one or more applies:
 - formulate or assist in formulating policies which are applicable to unit employees.
 - may reasonably be required on behalf of the employer to assist in preparing for the conduct of collective bargaining negotiations.
 - have a role in the administration of agreements resulting from negotiations.
 - have a significant role in personnel administration.
 - have a significant role in employee relations.
 - included in the definition of administrative personnel contained in s. 1012.01(3).
 - have a significant role in preparing budgets for a public employer.

Managerial Designation (cont'd)

- The Commission can consider historic relationships of the employee to the public employer or to co-employees.
- Because managerial employees are not considered “public employees” with collective bargaining rights, this definition is narrowly construed and applied.

Confidential Designation [§ 447.203(5)]

- A confidential employee is one who:
 - acts in a confidential capacity to assist or aid managerial employees, OR
 - has regular access to confidential information concerning anticipated changes resulting from collective bargaining negotiations.
- Must report to a managerial employee
- Mere access to confidential information alone, even if it involves labor relations, will not support a confidential designation.
- The Commission narrowly construes this definition by applying the “**labor nexus test**”

Part-time Employees [§ 447.307(4)]

- Historically included in bargaining units with regular employees if their employment can be described as “**regular**,” rather than “temporary” or “casual”
- Must analyze various factors to determine community of interest with full-time employees:
 - regularly employed
 - reasonable expectation of continued employment
 - share a community of interest with full-time employees (i.e., job duties, working conditions, supervision, method of pay, fringe benefits, work schedules, and number of hours)

Bargaining History/Prior Unit Determinations

- The Commission considers the history of employee relations with the employer . . . and the interests of the parties in the **continuation of a traditional, workable, and accepted negotiation relationship** when defining an appropriate bargaining unit.
- A heavy burden is placed upon the party seeking to change the bargaining unit to show that the unit, previously deemed appropriate, is unworkable, or “otherwise inappropriate.”

Example: *UFF v. Lake-Sumter State College* *Board of Trustees* (RC-2018-005)

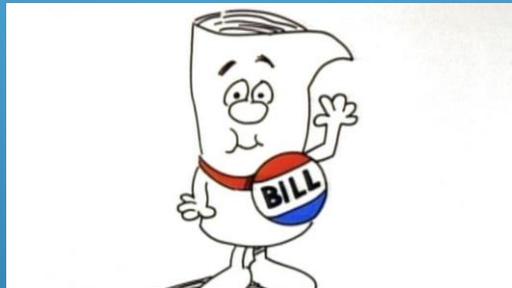
INCLUDED:

- **Instructor**, assistant professor, associate professor, **professor**, senior professor, **librarian**, **lecturer**, **full-time temporary** instructor, **assistant department chair**, and instructor/applied nursing simulation lab coordinator.

EXCLUDED:

- All **managerial**, administrative, **supervisory**, and **confidential** employees including, but not limited to, those job titles categorized as follows: **administrative and professional**, career service, other professional services, **part-time** employees, **adjunct faculty**, **acting or interim faculty**, **program manager**, **department chair**, and all other employees of the College not expressly included.

Discussion of Recent Legislation and Specific Cases



Recent Legislation

Section 1012.2315(4)(c), Florida Statutes (2018):

Requires bargaining agent for units of instructional personnel as defined in s. 1012.01(2) to include following information in its annual registration renewal application:

1. The number of employees in the bargaining unit who are eligible for representation by the employee organization.
2. The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.

Recent Legislation (cont'd)

- The new legislation also provided that employee organizations that provide information, but whose dues paying membership is less than fifty percent of the employees eligible for representation, are required to petition the Commission for recertification.
- An employee organization that does not comply with these new provisions has its certification revoked.
- Legislation is being challenged in circuit court in Leon County

Instructional Units

- Union filed a registration renewal application, but did not provide the information required by section 1012.2315(4)(c), Florida Statutes
- Union argued that it did not represent any instructional units and that the new statutory provisions were not applicable.
- The Commission entered order to show cause why its certification should not be revoked for failing to comply with the new law
- Union provided the required information. Accordingly, the order to show cause was discharged and the union's certification was not revoked.

*In re Teachers Association of Lee County, Certification No. 144, 45 FPER ¶ 76, Order No. 18E-203 (PERC 2018)
[Case No. CQ-2018- 001]*

Joint Unit Clarification Petition

- Union and School District sought to add classification of registered nurse to bargaining unit that included classroom teachers, guidance counselors, and other instructional staff.
- Parties provided joint statement of facts, copy of job description, and copy of the collective bargaining agreement.
- Unit had not been clarified since 1975 and nurse petition was created in 1981.

Baker County Education Association v. School District of Baker County, Florida, 43 FPER ¶ 84, Order No. 16E-221 (PERC Aug. 23, 2016) [Case No. UC-2016-008]

Showing of Interest

- Competing union filed a petition seeking to represent a previously-defined bargaining unit.
- Certified bargaining agent challenged showing of interest, but failed to file an alphabetized list of employees in accordance with the Commission's decision in *PACE v. City of Jacksonville*, 27 FPER ¶ 23061 (2001).

Santa Rosa Education Association v. School District of Santa Rosa County, Florida v. Santa Rosa Professional Educators, Order No. 17E-160 (PERC June 16, 2017) [Case No. RC-2017-011]

Recognition-Acknowledgment Opt-in Petition

- The Commission adopted the hearing officer's recommendation that school psychologists should be included in the existing bargaining unit of school district employees and certified the union as the bargaining agent.
- Approximately 101 employees in the unit.

The Orange County Classroom Teachers Association, Inc. v. School District of Orange County, Florida, 43 FPER ¶ 300, Order No. 17E-112 (PERC Apr. 28, 2017) [Case No. RA-2017-001]

Sworn Law Enforcement Units

- Petition filed to recognize a bargaining unit of rank-and-file law enforcement officers employed by the school district.
- Newly constituted police department within the district; employees in the school resource officer classification

International Union of Police Associations, AFL-CIO v. School District of Sarasota County, Florida, 45 FPER

¶ 231, Order No. 19E-006 (PERC 2019)

[Case No. RC-2018-035]

Over-fragmentation

- The Commission rejected a petition sought recognition of a bargaining unit of paraprofessionals, lab assistants, and IT techs.

United Teachers of Monroe, Local 3709, FEA, AFT, AFL-CIO v. School District of Monroe County, Florida, Order No. 19E083 (PERC Mar. 20, 2019) [Case No. RC-2018-014]

- The Commission dismissed a recognition-acknowledgment petition seeking to recognize the union as the exclusive bargaining agent for a unit of twelve sign language interpreters based on the Commission's longstanding rejection of overly-fragmented bargaining units.

Service Employees International Union (SEIU) Florida Public Services Union (FPSU), Change To Win (CTW) v. School District of Lake County, Florida, 45 FPER ¶ 69, Order No. 18E-196 (PERC 2018) [Case No. RA-2018-004]

Clarifying Older Unit Descriptions

- Unit clarification petition to add several newly-created classifications.
- Unit in question had been originally defined in 1975 and had not been updated since 1979.
- Unit included classifications of “teachers of educable mentally retarded, teachers of trainable mentally retarded, teachers of the emotionally disturbed, teachers of the visually handicapped, and teachers of the socially maladjusted.”
- The Commission commented that some of these classification names appeared to be anachronistic and encouraged parties to file a separate unit clarification petition.

Manatee Education Association, FEA, AFT (Local #3821), AFL-CIO v. School District of Manatee County, Florida, 45 FPER ¶ 291, Order No. 19Eo67 (PERC 2019) [Case No. UC-2018-044]

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Public Employees Relations Commission

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Public Employees Relations Commission

The Commission

Pursuant to [Chapter 447, Part II](#), Florida Statutes, the Public Employees Relations Commission (PERC) consists of three commissioners appointed by the governor for overlapping terms of four years, subject to Senate confirmation. One of the commissioner positions is designated as Chair. The Chair of PERC serves as chief executive and administrative officer of the agency.

Members of the Commission

[Chair Donna Maggert Poole](#)
[Commissioner James Bax](#)
[Commissioner Curt Kiser](#)

Overview

PERC employs eight hearing officers who are licensed attorneys with more than five years experience. The hearing officers hold hearings throughout the state on labor and employment disputes. PERC and its staff review hearing officers' recommendations. PERC issues a final order, which may be appealed directly to the District Courts of Appeal.

Labor Cases

Public employees in the State of Florida have the constitutional right to collectively bargain. "Public employees" means employees of the state, counties, school boards, municipalities, and special taxing districts. This includes all fire, police, corrections, school teachers and support personnel, attorneys, medical personnel, state troopers, toll collectors, sanitation employees, clerical employees, etc. It is estimated that there are well over 600,000 public employees in bargaining units throughout the State of Florida. The Commission holds hearings and resolves disputes about the composition of bargaining units and alleged unfair labor practices.

Employment Cases

PERC has jurisdiction over career service appeals in the State of Florida. There are state employees who have civil service privileges under the Florida Constitution concerning discipline, such as discharge, demotion and suspensions. They have the right to appeal these actions to PERC which will appoint a hearing officer to hold an evidentiary hearing to determine if there was cause for the discipline and, in certain cases, whether the discipline should be mitigated. In addition, PERC exercises jurisdiction over other employment cases, including veterans preference appeals pursuant to [Chapter 295](#), Florida Statutes; Drug-Free Workplace Act appeals pursuant to [Section 112.0455](#), Florida Statutes; age discrimination appeals pursuant to [Section 112.044](#), Florida Statutes; Whistle-Blower Act appeals pursuant to [Section 112.31895](#), Florida Statutes; and appeals regarding the termination or transfer of employees aged 65 or older pursuant to [Section 110.124](#), Florida Statutes.

PERC has an [Elections](#) division. This division conducts elections when public employees express the desire to be represented by a union.

What's New!

[ePERC - Electronic Filing](#)

"[Important Notice](#)" regarding the Elimination of Court Reporting Service at PERC hearings.

List the PERC [schedule](#) for Hearings and Oral Arguments.

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Thank you!

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