Public Employees Relations Commission

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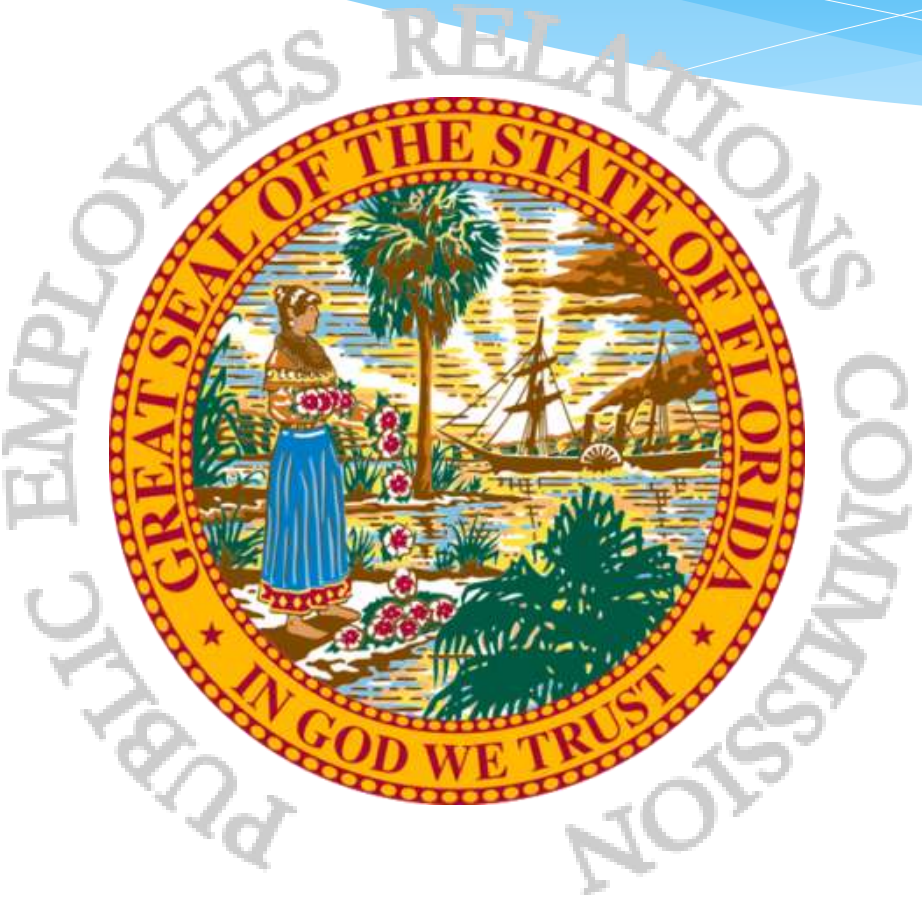
PERC: History & Jurisdiction



Constitutional Right to Collective Bargaining

* 1968 - Article I, Section 6, Florida Constitution entitled "Right to Work":

  The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

PERC Origin

* 1968 - Dade County CTA v. Fla. Legislature, 225 So.2d 903 (1968)
* 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

PERC History

* Jurisdiction to hear Representation and Unfair Labor Practice Cases arising out of PERA
* 1977 and 1979 changes to organization
* 1986 - Commission is given jurisdiction over Career Service appeals, § 110.227, Fla. Stat.

PERC History (continued)

* Subsequently given jurisdiction over:
  * Veteran's Preference Appeals, Ch. 295, Fla. Stat
  * Whistleblower Act Appeals
  * Drug-Free Workplace Act Cases, § 112.0455, Fla. Stat.
  * Age Discrimination pursuant to § 112.044, Fla. Stat., and appeals regarding termination or transfer of employees aged 65 and over pursuant to § 110.124, Fla. Stat.

PERC as Currently Organized

* Members of Commission – Chair and two Commissioners appointed by the Governor
* Hearing Officers that preside over Labor and Employment Cases
* Clerk's Office
* Elections Division
* Registration of Unions
* Impasse Resolution and Mediation

Representation Cases

* Commission certifies a particular union to be the bargaining agent for a specific group of employees
* Showing of Interest
* Contract and Election/Certification Bars
* Unit Composition
  * Community of Interest among proposed unit employees (e.g., professionals and non-professionals, public safety personnel)
  * Fragmentation
  * Supervisory Conflicts
  * Managerial and Confidential Designations
  * If proper, unit is approved and election held

Unit Clarification

- Granted when a position has been created or substantially altered after certification, when a position was included or excluded inadvertently or through misunderstanding, or when there have been significant changes in statutory or case law requiring clarification of the unit
- Also, can also be used to update mere changes in job titles
- Is not appropriate to totally restructure a bargaining unit.

Issues

* Financial Urgency
* Impasse Negotiations
* Processing Grievances
* Notice Posting
* Six Month Statute of Limitations
* Backpay Proceedings
* Ratification Votes
* Discriminatory Practices
* Internal Union Affairs
* Veterans' Preference

Financial Urgency

Financial Urgency

* Section 447.4095, Florida Statutes:

  In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission. The parties shall then proceed pursuant to the provisions of s. 447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

Walter E. Headley, Jr., Miami Lodge # 20, FOP v. City of Miami, 38 FPER ¶ 330 (2012), aff'd, 118 So. 3d 885 (Fla. 1st DCA 2013), oral argument held, Case No. SC13-1882 (Fla. April 7, 2015).

* First Commission decision in series of cases involving Section 447.4095, Fla. Stat.
* Commission determined that declaration of financial urgency was appropriate – decision was appealed
* First DCA agreed and affirmed the Commission's Final Order
* Florida Supreme Court accepted jurisdiction and held oral argument this week

Hollywood Firefighters, Local 1375 v. City of Hollywood, 133 So. 3d 1042 (4th DCA 2014), reversing, 39 FPER ¶ 54 (2012), Case No. CA-2011-101

* Commission found financial urgency was properly invoked under the same definition as Headley case
* Union appealed to Fourth DCA
* Court determined that Florida Supreme Court's decision in Chiles v. United Faculty of Florida, 615 So.2d 671 (Fla.1993) required demonstrating that funds were not available from other source
* Reversed and remanded to PERC to apply the Chiles standard to determine whether City engaged in a ULP
* Certified conflict with the 1st DCA's Headley decision

Miami Association of Fire Fighters , Local 587 of the International Association of Fire Fighters of Miami, Florida v. City of Miami, 145 So. 3d 172 (Fla. 3d DCA), aff'g, 38 FPER 352 (2014), Case No. CA-2010-124 (2012).

* Second financial urgency decision from Commission, which ruled in favor of City's decision to declare financial urgency
* Appealed to 3rd DCA
* PCA decision with citation to Headley
* Appealed to Florida Supreme Court
* Stayed pending resolution of Headley

Impasse Negotiations

Section 447.403, Florida Statutes (2014), governs when a dispute exists between a public employer and a bargaining agent concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement.

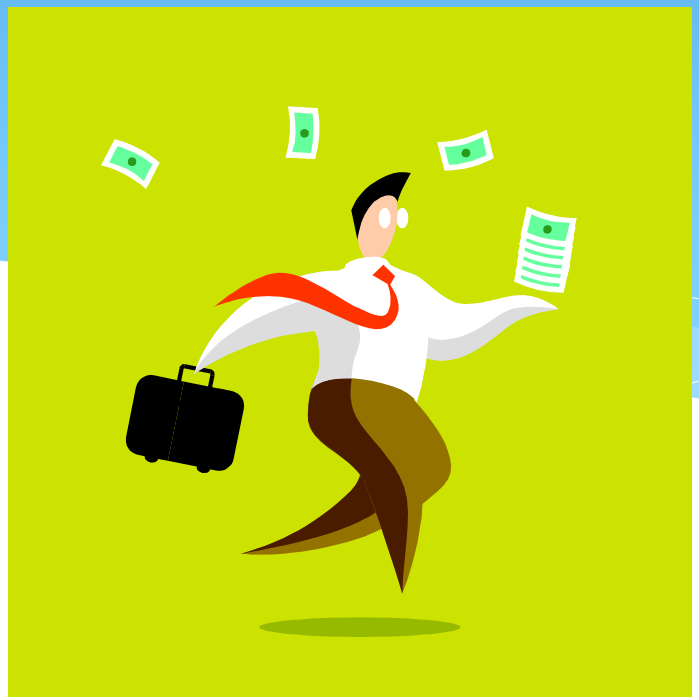
Amalgamated Transit Union, Local 1593 v. Hillsborough Area Regional Transit Authority, 139 So. 3d 345 (Fla. 2d DCA 2014), reversing and remanding, 39 FPER ¶ 175, Case No. CA-2012-012 (2012).

* The hearing officer found violations for refusing to resume negotiations after the failed ratification vote and by conducting the legislative body impasse hearing and implementing the items resolved at the impasse hearing.
* The Commission held that parties were at impasse at the legislative resolution stage of the process.
* The court held that the parties were required to resume bargaining.

Dade County PBA v. Miami-Dade County Board of County Commissioners, 40 FPER ¶ 198 (2013), rev'd and remanded, 40 Fla. L. Weekly D528 (1D13-6108) (Fla. 1st DCA February 26, 2015)

* Commission found county committed ULP by issuing layoff notices to after promising not to do so.
* The union and the county negotiated a tentative agreement, and the union agreed to concessions to avoid layoffs.
* The legislative body (BOCC) resolved insurance impasse issue at a public hearing by imposing no health care contribution.
* Mayor vetoed the resolution imposing no contribution and issued layoff notices to police officers. BOCC revisited issue and imposed 4% contribution
* A majority of the Commission concluded that the BOCC was an independent body from the mayor and complied with a strict duty of fairness despite the mayor's veto of the county's resolution concerning employee health care contributions.
* First DCA reversed holding that mayor's veto was a ULP

Processing Grievances



Pensacola Junior College Faculty Association v. Pensacola Junior College Board of Trustees, 50 So. 3d 700 (Fla. 1st DCA 2010)

* Procedural issues regarding whether arbitration is appropriate should be submitted to arbitrator
* Only in cases "where it can be said with 'positive assurance' that the arbitration clause may not be interpreted in a way to cover the dispute" should arbitration be denied. Id. at 702
* "Even claims that appear to be frivolous should be permitted to proceed to the arbitrator." Id.
* If there is doubt about whether a claim is covered by a CBA such that it should be sent to arbitration, the doubt "should be resolved in favor of coverage." Id. at 702-703.

Eguino, Spira, and Chang-Muy v. City of Miami, 40 FPER ¶ 185 (2013), Case Nos. CA-2013-037, CA-2013-038, and CA-2013-039, appeal docketed 3D13-3067 (3rd DCA Dec. 6, 2013).

* Charging parties did not allege a (1)(f) violation but (1)(a) covered as a derivative charge
* Employer failed to send grievances to arbitration arguing various procedural arguments as to why arbitration was inappropriate
* Commission determined that employer's failure to send grievances to arbitration was a ULP
* Procedural issues are appropriately decided by arbitrator under Pensacola Junior College Faculty Association

Rothal v. School District of Miami-Dade County, Florida, 41 FPER ¶ 7, Case No. CA-2014-009 (June 3, 2014).

* CBA did not allow grievances challenging a performance rating to go to arbitration.
* General Counsel dismissed amended charge lacked facts supporting a conclusion that the contractual waiver impinged on a right designed to protect the public interest.
* The Commission affirmed the General Counsel stating, among other things, that parties are encouraged to provide their own solutions to settle disputes

Jones v. Miami-Dade Transit, 40 FPER ¶ 275 (2014), Case No. CA-2014-004

* General Counsel issued summary dismissal of charge alleging failure to process a grievance
* Although charging party alleged failure to advance grievance at pre-arbitral step, charge was insufficient because there were no facts that employee requested to proceed to the next step
* Commission affirmed – there was no evidence presented that employer prevented charging party from proceeding to arbitration
* *See also* Charles E. Brookfield Lodge 86, FOP v. Orange County, 41 FPER ¶92 (G.C. Sumary Dismissal 2014)

Orange County Classroom Teachers Association v. School District of Orange County, 40 FPER ¶ 23 (2013), CA-2012-080, per curiam aff'd, 5D13-2153 (Jan 28, 2014)

* Charging parties had a prior grievance related to similar issue
* Employer failed to send grievances to arbitration arguing earlier grievance procedurally precluded new grievances
* Commission determined that employer's failure to send grievances to arbitration was a ULP
* Procedural issues are appropriately decided by arbitrator under Pensacola

Notice Posting

Orange County Classroom Teachers Association, Inc. v. School District of Orange County, 40 FPER ¶ 157 (2013), Case No. CA-2013-029, appeal docketed, No. 5D13-3609 (Fla. 5th DCA Oct. 16 2013).

* Commission found ULP based on District's reaction to lapse in the union's registration
* On appeal, 5th DCA affirmed but questioned the remedy of posting requirements for notices
* Noted that there may be more practical ways of giving notice given advancements in technology
* Nevertheless, did not direct any notice because record lacked evidence of cost, lack of necessity, burdensomeness, or impracticality to show that posting was an unnecessary expense
* Decision was cited in later case Orange County Classroom Teachers Association v. School District of Orange County, 40 FPER ¶ 157 (2013)m Case No. CA-2013-029, aff'd 2014 WL 4374705 (Fla. 5th DCA Sep. 5. 2014)

Orange County Classroom Teachers Association v. School District of Orange County, 40 FPER ¶ 23 (2013), CA-2012-080, per curiam aff'd, 5D13-2153 (Jan 28, 2014)

* Underlying case involved a ULP by District and part of remedy was to post Commission-prepared notice where notices to bargaining unit members were customarily placed
* District posted notice, but also posted its own notice regarding the case
* Charging party filed a motion to compel compliance with the Commission's final order
* Commission denied motion, stating that charging party was required to pursue enforcement in circuit court pursuant to §§ 120.69 and 447.5035, Fla. Stat.

Six Month Statute of Limitations

Six Month Requirement

* Section 447.503(6)(b), Florida Statutes, states that an unfair labor practice charge is untimely if it is based on events which occurred more than six months prior to the filing of the charge, unless the filing was delayed by service in the armed forces. E.g. Local 1464, ATU v. City of Tampa, 17 FPER ¶ 22012 (1990) (holding that the six month period is initiated when the charging party "knew or should have known" of the complained of actions).

Teamsters, Chauffeurs and Helpers, Local Union No. 79 v. Hillsborough Area Regional Transit Authority, 40 FPER ¶ 163 (2013), Case No. CA-2013-015.

* Local 79 alleged that the Authority failed to bargain in good faith when it unilaterally changed the conditions of employment by classifying a red light violation as a reckless driving disciplinary offense for bargaining unit employees.
* Between 2008 and 2012, the bargaining unit employees received reckless driving discipline for running red lights
* Employees should have known that they were subject to discipline for red light violations

Hollywood, Florida, City Employees Local 2432 of the American Federation of State, County and Municipal Employees, AFL-CIO v. City of Hollywood, 40 FPER ¶ 100 (G.C. Summary Dismissal 2014)

* Union had previously filed ULP charge based on City's declaration of financial urgency, but withdrew after Commission's decision in Hollywood case
* 2013 Florida Auditor General releases report regarding financial urgency declaration
* Union filed new ULP alleging that City misled Commission and union concerning financial condition
* General Counsel dismissed charge based, in part, on timeliness and doctrine of decisional finality

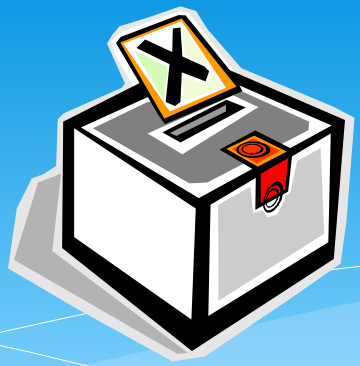
Back Pay Proceedings

Vickery v. Department of Corrections, Case No. BP-2014-015 (Fla. PERC April 1, 2015); Harrell v. Department of Corrections, Case No. BP-2014-017 (Fla. PERC April 1, 2015)

* Commission clarified and changed law regarding back pay proceedings
* Clarified that comparability standard was not a requirement for entitlement to back pay
* Eliminated the evidentiary requirement of providing contemporaneous documentation
* Held that evidence of unemployment compensation was some proof of a good faith job search
* Reiterated that obtaining a job ended the need to mitigate damages from loss of job

Ratification Votes

Levy County Education Association v. School District of Levy County, 40 FPER ¶ 218 (2013), Case No. CA-2013-042.



* The Commission found school district committed ULP by refusing to resume bargaining and by implementing a collective bargaining agreement after flawed ratification vote
* The Commission determined that the proper remedy was to rescind the school district's unlawful action.
* The Commission denied the union's request for prevailing party attorney's fees.
* Relied on Hays v. Tampa Bay Area Transit Workers Union, Inc., 38 FPER ¶ 23 (2011)

Discriminatory Practices

Koren v. School Board of Miami Dade County, 97 So. 3d 215 (Fla. 2012)

* Impacts the standard that PERC should apply in evaluating the sufficiency of unfair labor practice charges
* Teacher alleged that he had been discriminated against for engaging in protected concerted activity
* General Counsel issued summary dismissal based on Pasco test and Third DCA affirmed
* Florida Supreme Court accepted based on conflict with Second DCA's Gibbons decision

Koren (continued)

* Supreme Court approved the sufficiency standard from Gibbons:

  [P]roof of a prima facie case of retaliation requires a showing that: 1) the plaintiff was engaged in protected activity; 2) the plaintiff was thereafter subjected by his employer to an adverse employment action; and 3) there is a causal link between the protected activity and the adverse employment action.

* Reversed 3rd DCA and remanded to Commission
* Significant change to the sufficiency review process

International Union of Police Associations, AFL-CIO v. Sheriff of Lee County, 40 FPER ¶ 172 (2013), Case No. CA-2013-023.

* Sheriff paid bonuses to all employees that were unrepresented and denied bonuses to represented employees
* Union filed a ULP charge arguing that status quo was for all employees to receive bonuses and that Sheriff was motivated by anti-union animus
* Commission determined there was no past practice, but that anti-union statements were not protected and were a ULP
* Fees were awarded
* Sheriff was given the option of recouping bonuses or paying uniform bonuses to all employees

Bernard v. Seminole State College Board of Trustees, 40 FPER ¶ 270 (2014), Case No. CA-2013-047

* The Commission clarified the appropriate standard for determining whether the charge was sufficient to proceed to hearing and the standard to be applied at the hearing
* In assessing the sufficiency of this type of charge, the General Counsel must use the three prong test articulated in Koren v. School Board of Miami-Dade County, 97 So. 3d 215 (Fla. 2012).
* Once this type of charge has been found sufficient, the standard applied at hearing is the two prong test from Pasco County School Board v. PERC, 353 So. 2d 109 (Fla. 1st DCA 1977).

Internal Union Affairs

Clarke v. Transportation Workers Union , Local 291, AFL-CIO and Transport Workers Union of America, AFL-CIO, CB-2014-008 (August 22, 2014), appealed docketed 3D14-2254 (Fla. 3rd DCA September 19, 2014)

* General Counsel summary dismissed charge involving allegations by charging party that he had been unfairly suspended from union
* Commission agreed that the charge was factually insufficient and likely untimely
* Commission reiterated its long-standing policy of not interfering with union's internal affairs absent some demonstration that the actions were taken for an unlawful purpose
* Provided examples of cases involving unlawful purpose

Algeri v. Tampa Bay Area Transit Workers Union, Inc., 41 FPER ¶ 115, Case No. CB-2014-007 (Sept. 2, 2014)

* Charging party alleged that union interfered with her statutory rights by suspending her from union shortly after accusing union leaders of theft, corruption and gross disloyalty
* Found sufficient to proceed to hearing
* Hearing officer found determined that employee's suspension was not the result of unlawful purpose, but charging party's admitted violations of union by-laws
* Commission affirmed hearing officer and dismissed charge

Veterans Preference

Brennan v. City of Miami, 146 So. 3d 119 (Fla. 3d DCA Sep. 3, 2014), reversing 39 FPER ¶ 164 (2012) (Promotional Opportunity case).

* City's Employment Application required filing of DD-214
* Court held that the requirement was not consistent with either Florida Administrative Code Rule 55A–7.0111 or Section 295.09, Florida Statutes.
* No requirement that a veteran submit veterans' preference documentation or a Form DD–214.

Expansion of Eligibility for Preference

* Amendments to Section 295.07, Florida Statutes (2014) cover new categories of individuals:
  * Disabled Veterans
  * Spouse of disable or missing veterans
  * Wartime veterans
  * Unremarried widow or widower who died of a service connected disability
  * Mother, father, legal guardian, or unremarried widow or widower of armed forces member who died in combat conditions
  * Veterans as defined in section 1.01(14), Fla. Stat.
  * Current members of the reserves

Attorney's Fees

Standards for Award

* Prevailing Petitioner/Charging Party awarded fees if respondent knew or should have known that its conduct was unlawful.
* Prevailing respondent awarded fees if charge was frivolous, groundless, or unreasonable when filed, or the charging party continued the litigation after it became clear the charge was without merit.
* Expert witness required to support any fee claim.

Questions?

Website

http://perc.myflorida.com