Appellate Decisions

PERC Labor Cases

(Including Veteran's Preference, Whistle-Blower's Act, and Drug-Free Act Cases)

Public Employees Relations Commission

INTRODUCTION

In order to assist the practitioners and parties who appear before the Commission, this publication summarizes Florida appellate court cases involving all cases within the Commission's jurisdiction except career service appeals. The case summaries are listed in approximate chronological order, preceded by alphabetical and subject matter indices. Citations for cases in which orders were affirmed without opinion appear in a separate section following the case summaries. Throughout this document, the Public Employees Relations Commission is referred to as "PERC."

Although the entire legal staff deserves recognition for contributing to the accuracy of this publication, the Commission would like to acknowledge the following staff members for their special contributions. Alyssa S. Lathrop served as the editor. Barbara J. Kirkland provided word processing and publication functions.

FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION

Donna Maggert Poole, Chair
James Bax, Commissioner
Curt Kiser, Commissioner

DISCLAIMER

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APPELLATE COURT OPINIONS

1. Dade County CTA v. Ryan, 225 So. 2d 903 (Fla. 1969).

Except for a right to strike, public employees have the same rights of collective bargaining as do private employees under the provision of the Florida Constitution stating that the right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.

The Florida Legislature must enact appropriate legislation setting out standards and guidelines and otherwise regulate collective bargaining.

Section 839.221 (repealed in 1974 by legislation enacting the PERA) stating that no person or group of persons, by intimidation or coercion, could compel any employee to join or refrain from joining a labor organization, was compatible with the constitutional provision granting employees the right to bargain collectively through a labor organization and precluded the labor organization from acting as the sole bargaining agent for all teachers of the school system where all teachers in the system have not agreed to the organization acting as their bargaining agent.

Dues check-off for a labor organization which did not represent all of the teachers in a school system would be valid only where the teacher of his or her own volition agreed there might be such a check-off as to his or her salary, and check-off could be afforded only during the existence of a current teaching contract.

Where a labor organization did not represent all of the teachers in the school system, the school board could properly allow the organization access to interschool mail facilities and bulletin board space, furnish it with teacher lists, and permit it to hold meetings on school property so long as the same privileges were afforded all teachers or their collective bargaining organizations, but any such privileges or considerations would be subject to cancellation by the school board at any time in its sound and sole discretion.

Where a labor organization did not represent all of the teachers in the school system, any grievance procedures conducted by it pursuant to agreement with the school board would not apply to non-consenting teachers.

2. Dade County CTA v. Legislature, 269 So. 2d 684 (Fla. 1972).

The doctrine of separation of powers prohibits issuance of a writ of mandamus to compel the legislature to enact collective bargaining guidelines.

If the legislature does not act within a reasonable time, the Florida Supreme Court will be forced to fashion guidelines to meet the constitutional requirements.

3. Local 532, AFSCME v. City of Ft. Lauderdale, 273 So. 2d 441 (Fla. 4th DCA 1973), appeal after remand, 294 So. 2d 104 (Fla. 4th DCA 1974).

Although public employees have the constitutional right to organize, any employee organization which asserts the right to strike is not entitled to recognition.

Many of the problems incident to collective bargaining could be avoided by the enactment of statutory guidelines. Dade County CTA, 269 So. 2d 684.

4. Town of Palm Beach v. Palm Beach Local 1866, 275 So. 2d 247 (Fla. 1973).

A general law covering collective bargaining for fire fighters that is an overall revision of the law on the same subject supersedes any special law regulating collective bargaining for local fire fighters.

5. Local 532, AFSCME v. City of Ft. Lauderdale, 294 So. 2d 104 (Fla. 4th DCA 1974).

A trial court's finding that the union should not be recognized because it endorsed a strike by conduct was affirmed.

6. City of Gainesville v. State ex rel. IAFF, Local 2157, 298 So. 2d 478 (Fla. 1st DCA 1974).

A city fire department budget proposal, which was prepared in the normal and required course of municipal business, was a public record and, under the Public Records Act, the city was required to make the proposal available to all citizens, including the fire fighters' union, for their inspection.

Statute exempting from the Public Records Act all work products developed by a public employer in preparation for or during negotiations was inapplicable to a budget proposal which was prepared in the normal and required course of municipal business, as the proposed budget was not developed in preparation for or during labor negotiations and the exemption statute was not to take effect until a later date.

7. Stevens v. Horne, 325 So. 2d 459 (Fla. 4th DCA 1975).

The action of union members in hanging a non-union employee in effigy with an implied threat of violence toward him was a clear violation of the prohibition on coercion or intimidation of any employee in enjoyment of his legal right contained in section 447.09(11), Florida Statutes.

8. PERC v. City of Naples, 327 So. 2d 41 (Fla. 2d DCA 1976).

Under the local option statute allowing cities to adopt procedures for bargaining with public employees by ordinance, PERC's approval of such procedures is a condition precedent to a city's assumption of jurisdiction under such an ordinance. Constitutional and statutory "home rule" provisions do not give municipalities the power to enact local options without PERC approval because the state preempted to itself the subject of public employee collective bargaining.

Requiring that PERC approve city ordinances governing collective bargaining with public employees before such ordinances go into effect does not constitute infringement by an administrative body on the power of the judicial branch of government since PERC's administrative determinations are subject to judicial review.

9. PERC v. FOP, Local Lodge 38, and City of Naples, 327 So. 2d 43 (Fla. 2d DCA 1976).

Federal courts do not have concurrent jurisdiction with the National Labor Relations Board to determine matters which are arguably within the scope of the National Labor Relations Act's unfair labor practice provisions.

The city is not entitled to a circuit court determination of whether it would be an unfair labor practice to give a pay raise to the police department at a time when there is pending before PERC a petition for certification filed on behalf of certain members of that department because (1) PERC has exclusive jurisdiction to determine unfair labor practices which is reviewable by the district court of appeal, and (2) the philosophy of the Florida Legislature seems to be the same as the federal preemption policy expressed in Amalgamated Assn of St. Elec. Ry. and Motor Coach Employees v. Lockridge, 403 U.S. 274, 91 S. Ct. 1909, 29 L. Ed. 2d 473 (1971).

10. Maxwell v. School Board of Broward County, 330 So. 2d 177 (Fla. 4th DCA 1976).

Jurisdiction over labor activities is preempted in favor of PERC if those activities are arguably covered by the provisions of Chapter 447, Part II, Florida Statutes.

Not every activity or dispute between public employees and their public employer gives rise to the preemptive jurisdiction of PERC, only those activities arguably covered by the Public Employees Relations Act (PERA).

Cancellation by the school board of an incentive awards program, from which the teachers' association alleged it suffered damages, was not a labor activity arguably covered by PERA. It more closely resembled a breach of a collective bargaining agreement. Thus, the jurisdiction of the circuit court over such activities was not preempted in favor of PERC.

PERA is remedial in nature and does not fall within the general prohibition against retrospective application of statutes.

11. City of Titusville v. PERC and Brevard County PBA, Inc., 330 So. 2d 733 (Fla. 1st DCA 1976), rev'g 1 FPER 16 (1975).

The appropriate method for review of an order issued by PERC on a recognition-acknowledgment petition is by way of a petition for review under the Administrative Procedures Act (APA), rather than through a petition for writ of certiorari.

Where an RA petition has been filed, PERC has no authority to change the composition of the proposed bargaining unit and certify it as changed. If PERC finds the unit is not appropriate, it should enter an order denying certification based on an evidentiary hearing in which all parties are given notice adequate to apprise them of the issues as specifically as they can be stated so that the parties will know the specific objections they must meet. The order entered thereafter should include findings of fact and conclusions of law separately stated.

Regardless of whether the action of PERC in enlarging the proposed bargaining unit was viewed as a quasi-executive action rather than a quasi-judicial action, it was subject to judicial review under the new APA.

The chairman of PERC did not have authority to deny the city's petition for rehearing of a bargaining certification petition independently of the other two commissioners who heard and ruled on the case.

Where PERC allowed fifteen minutes for the hearing on a petition recognizing a proposed bargaining unit for employees in the city's police department and the hearing was not one at which sworn testimony and evidence was presented, but consisted merely of a discussion between members of the commission, their staff, and union representatives and the result of the meeting was that the scope of the bargaining unit was increased, neither the hearing nor the action taken thereafter complied with the statute.

12. School Board of Marion County v. PERC, 330 So. 2d 770 (Fla. 1st DCA 1976), rev'g 1 FPER 28 (1975).

When a recognition-acknowledgment petition has been filed, PERC shall review only the appropriateness of the unit and is not permitted to redefine the unit. Nonetheless, where review was not sought of PERC's order, which altered the unit and certified it as changed, such order was not affected by determination of impropriety.

PERC lacked authority to enter an order in which it determined the managerial status of certain employees where some employees determined not to be managerial were contemporaneously added to an RA unit by PERC.

When a statutory provision stated that PERC shall review only the appropriateness of the RA unit, a rule purportedly promulgated pursuant to such authority and which, inter alia, permitted a public employer to file a petition with PERC seeking designation of managerial and confidential employee classifications, exceeded the statutory authority and was invalid.

Any rule which permits exclusion of employees from the collective bargaining process, should, at some point, give affected employees or their representatives notice and an opportunity to contest their managerial/confidential designation.

13. Broward County CTA v. PERC, 331 So. 2d 342 (Fla. 1st DCA 1976).

PERC may seek to enforce or implement the statutory prohibition against strikes by public employees, even in the absence of an unfair labor practice charge having been lodged with PERC.

Failure of PERC to adopt rules of procedure governing investigation or imposition of sanctions for strikes by public employees is not fatal to proceeding because PERC may use the APA model rules.

14. City of Panama City v. PERC and Northwest Florida PBA, Inc., 333 So. 2d 470 (Fla. 1st DCA 1976).

PERC's determination of an appropriate bargaining unit and direction of an election are not final orders and, therefore, are reviewable only if the court finds that review of the final decision would not provide an adequate remedy.

In response to a petition for rehearing, the court clarified that a PERC order certifying an employee organization as the exclusive collective bargaining representative of employees in a designated unit is final for purposes of judicial review

of that order and all prior interlocutory orders. Should PERC then refuse to stay bargaining pending court review, the court has authority to grant that relief in order to make its jurisdiction effective.

The city's filing of a petition seeking review of PERC's order did not, of itself, stay enforcement of the order, and the proper method of obtaining a stay would be to first apply to PERC for supersedes. See LIUNA, Local 666, 336 So. 2d 450.

15. School Board of Sarasota County v. PERC, 333 So. 2d 95 (Fla. 2d DCA 1976).

PERC's order, directing that an election by secret ballot be held within forty-five days for a certain unit, is not final agency action subject to judicial review. Rather, a certification following the election would constitute final agency action from which a petition for review might be filed, at which time the issue of bargaining unit appropriateness might be raised.

16. City of Jacksonville v. PERC, 2 FPER 107 (Fla. 1st DCA 1976), denying motion to dismiss Jacksonville Fraternal Order of Fire Officers and Consolidated City of Jacksonville, 2 FPER 39 (1976).

The court denied PERC's motion to dismiss a petition for review of a PERC order directing a self-determination election. The court found that since a subsequent election was held and an order certifying a collective bargaining agent was issued, the latter order should more properly be reviewed by the court. The court, therefore, denied PERC's motion to dismiss, subject to the city filing a copy of the certification order with the court.

17. School Board of Marion County v. PERC, 334 So. 2d 582 (Fla. 1976).

A public employer's good faith allegation that employees' signatures on authorization cards were obtained by collusion, coercion, intimidation or misrepresentation or that signatures are otherwise invalid is sufficient to require PERC to give access to the authorization cards, and PERC is not authorized to review or test the employer's judgment or assertions at that stage of the proceedings. One or more of the enumerated grounds for pre-hearing access must be specifically alleged, however, in order for PERC to be required to give access to authorization cards.

18. LIUNA, Local 666 v. PERC and Florida State Employees Council 79, AFSCME, 336 So. 2d 450 (Fla. 1st DCA 1976), rev'g 2 FPER 64 (1976).

PERC order, which rescinded a previous order granting joint intervenor status to union locals in a representation-certification case hearing, was a reviewable final order, since it finally adjudicated the locals' rights in the proceeding.

Where the PERC chairman gave his consent to union locals' intervention in an RC case hearing and, at the time of intervention, locals had the necessary 10% showing of interest among employees in the proposed unit, but for good cause had not filed financial reports before the chairman summarily excluded locals as parties, locals should have been given a reasonable time to comply with the financial statement requirement. The chairman's subsequent summary revocation of his approval, and concurrence therein by the commission, was an abuse of discretion.

19. City of Jacksonville v. PERC, No. BB-218 (Fla. 1st DCA 1976).

In an unpublished order, the court denied PERC's motion to dismiss a petition for writ of certiorari that sought review of a PERC certification. The court rejected PERC's argument that the appropriate time for review would be after issuance of a final order pursuant to section 447.503, Florida Statutes, stating that an order of certification is a final order for purposes of judicial review of procedures leading up to certification.

20. North Brevard County Hospital District, Inc. v. PERC and LIUNA, Local 666, No. BB-431 (Fla. 1st DCA 1976).

In an unpublished order, the court granted PERC motions to dismiss a petition for writ of certiorari, in part. The court admitted that it had erred in not granting a prior PERC motion to dismiss the petition for writ of certiorari on the ground that orders entered by PERC prior to a certification order are not final agency action for purposes of judicial review. However, the court declined to dismiss the petition for writ of certiorari and, instead, stayed the proceedings pending entry by PERC of a certification order.

21. Pasco County School Board v. PERC, 336 So. 2d 483 (Fla. 1st DCA 1976).

PERC is responsible for preparing the record for review by the courts of appeal. The great bulk of material described in the school board's directions to PERC was never referred to in the evidence received or proffered at the hearing and, therefore, is not properly to be included in the record for review prescribed by section 120.68(5), Florida Statutes. For additional cases on record for review, see City of Panama City v. PERC, 338 So. 2d 1284 (Fla. 1st DCA 1976); University of South Florida College of Medicine Faculty Association v. PERC, 338 So. 2d 1286 (Fla. 1st DCA 1976); ATU, Local 1464 v. PERC and the City of Tampa, 338 So. 2d 1285 (Fla. 1st DCA 1976); ATU, Local 1267, 344 So. 2d 319 (barring PERC from filing a motion to strike portions of directions to PERC pertaining to the record unless PERC counsel certified that efforts to reach an acceptable agreement with the other parties' counsel have been unavailing); and City of Lauderhill v. Florida PERC and Florida State Lodge, FOP, 360 So. 2d 1264 (Fla. 4th DCA 1978) (ordering PERC to transmit the entire record to

the court since the city failed to include with its request to exclude certain transcripts from the record on appeal a statement of judicial acts to be reviewed as required by Fla. R. App. P. 9.200(a)(2)).

22. ATU, Local 1267 v. PERC, 344 So. 2d 319 (Fla. 1st DCA 1976), denying review of Federation of Public Employees and Broward County and Local 675, International Union of Operating Engineers, 3 FPER 23 (1976).

The court denied petitions for review of PERC orders in the following three cases which had been consolidated: Federation of Public Employees and Broward County and Local 675, IUOE, Case No. RC-752-0104, Teamsters Local Union 769, IBTCWHA and Broward County, Case No. RC-763-0008, and Local 1267 ATU and Broward County, Case No. RA-752-0178, 3 FPER 23 (1976).

Where several employee organizations, including ATU and the Federation, petitioned for certification as the bargaining representative for several overlapping proposed units of county employees, PERC determined that each proposed unit was inappropriately narrow and, instead, itself determined an appropriate broader unit and granted each of the unions leave to submit "interest statements" indicating that 30% of the PERC-proposed unit desired the particular union as its representative, only the Federation made the requisite showing of interest, and PERC ordered an election to determine whether the Federation would become the designated bargaining agent for the proposed union, PERC's concomitant dismissal of ATU's petition for certification was not final agency action as to ATU and, therefore, not subject to judicial review. This dismissal was an interlocutory step in the proceeding by which the Federation still pressed for PERC certification. At this point in the proceedings, ATU and the other unions that failed to make the requisite showing of interest with regard to the unit proposed by PERC remained parties to the proceeding and could obtain judicial review following certification of the Federation, if that occurred.

All parties before PERC other than the appellant are appellees before the DCA.

23. City of Orlando v. PERC, 338 So. 2d 259 (Fla. 4th DCA 1976).

The court held that certiorari does not lie at the present time because there is no final order until certification, based on the rationale set forth in City of Panama City, 333 So. 2d 470 and School Board of Sarasota County, 333 So. 2d 95.

24. State ex rel. City of Bartow v. PERC, 341 So. 2d 1000 (Fla. 1st DCA 1976), cert. denied, 352 So. 2d 170 (Fla. 1977).

Petitioner sought a writ of mandamus to compel PERC to disclose investigatory files. Unfair labor practice investigatory files are public records but are not subject to disclosure for a reasonable time until a determination that substantial evidence of a prima facie violation exists or the charge is dismissed.

25. Murphy v. Mack, 341 So. 2d 1008 (Fla. 1st DCA 1977), rev'd in part, 358 So. 2d 822 (Fla. 1978).

The district court held that a county sheriff is a public employer since the office of sheriff is an agency of the state within the meaning of the statutory definition of public employer as "the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer." The district court further held that although deputy sheriffs are appointed public officers, they are public employees within the meaning of statutory provisions pertaining to labor organizations.

The supreme court affirmed, holding that a county sheriff is a public employer since the office of sheriff is an agency of the state, possesses requisite control over terms and conditions of employment of its personnel, and is distinct from other county offices. However, the supreme court reversed the district court as to the public employee status of deputies. Appointed deputy sheriffs are not public employees since deputy sheriffs hold office by appointment rather than employment and are invested with the same sovereign power as the chief law enforcement officer of the county, and courts cannot assume that the legislature intended to include deputy sheriffs within the definition of public employee without express language to that effect.

26. School Board of Marion County v. PERC and District Council 66, IBPAT, 341 So. 2d 819 (Fla. 1st DCA 1977), aff'g 2 FPER 150 (1976), cert. denied, (Fla. May 30, 1979) (unpublished order).

When an employee organization can show at least 30% representation in a proposed unit, it may file a petition for certification with PERC without first requesting recognition by the public employer.

27. Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976).

Nothing in Chapter 447, Part II, Florida Statutes, suggests that public records should not be furnished to those engaged in organizing government employees. The fact that the legislature provided a specific exemption of work products under section 447.605(3), Florida Statutes, suggests that the legislature intended no other exemptions.

28. FEA/United v. PERC, 346 So. 2d 551 (Fla. 1st DCA 1977), aff'g Order No. 76E-854 (Fla. PERC Feb. 27, 1976).

Rule requiring non-union public employees to pay the union's pro rata share of bargaining costs as condition of employment would be unconstitutional.

When question of constitutional implications of a proposed rule was inseparable from question of whether to adopt a rule, PERC properly considered the constitutional implications of proposed rule and, in so doing, did not violate the separation of powers doctrine or invade judicial function.

While the court has no authority to compel agency adoption of a rule representing a policy choice in an area of an agency's statutory concern, when an agency declines on constitutional grounds to adopt a rule, the court will review the agency's final action on petition by an aggrieved party.

29. Miami-Dade Community College District Board of Trustees v. PERC and Miami-Dade FHEA, 341 So. 2d 1054 (Fla. 1st DCA 1977), rev'g No. 8H-RC-744-4003 (Fla. PERC Jan. 15, 1976).

Rejecting PERC's managerial determination made pursuant to 1975 statute prior to its 1976 amendment, the court held that under the amended statutory definition of managerial employee, chairpersons of community college departments are managerial employees. PERC order on remand can be found at 3 FPER 77A (1977).

30. City of Tampa v. PERC, 344 So. 2d 634 (Fla. 2d DCA 1977).

A petition alleging that PERC erred in making a determination of the managerial status of police department sergeants was dismissed because PERC had not made such a determination. See 3 FPER 36 (1976).

31. City of Miami v. FOP, 346 So. 2d 100 (Fla. 3d DCA 1977).

When the issue before the circuit court was whether, under the terms of a bargaining agreement, probationary police officers were entitled to a hearing before a departmental disciplinary review board before they were dismissed, the court erred in ordering the city to produce documents, including employment applications of probationary police officers, that were not pertinent to that issue.

In a second appeal arising from the circuit court's decision to award the officers money damages for termination without a hearing, the court reversed and remanded, holding that the officers had not exhausted all their administrative remedies and their failure to invoke the grievance procedure in a dispute arising out of interpretation of a labor agreement precluded the officers from seeking a judicial remedy. See City of Miami v. Fraternal Order of Police, Lodge 20, 378 So. 2d 20 (Fla. 3d DCA 1979).

32. Seitz v. Duval County School Board, 346 So. 2d 644 (Fla. 1st DCA 1977).

When a contract contained no provision for attendance by a union representative at a meeting between a principal and a teacher, the teacher had no right to the presence of a union representative at such meeting unless that right was extended by statute as a matter of policy to all public employees, an issue not decided in this case.

When teacher, who claimed she had the right to have a union representative present at her meeting with a principal, had an opportunity to meet with the principal under protest and preserve her claim that the meeting was coerced and, therefore, an unfair labor practice but, instead, refused to meet with the principal concerning her alleged absences from class and thereafter was again absent from class, teacher's dismissal was justified.

33. Duval County School Board v. Seitz, 346 So. 2d 647 (Fla. 1st DCA 1977).

A petition for review of PERC's interlocutory order denying a motion to dismiss the unfair labor practice charge was denied.

34. Duval County School Board v. PERC and Duval Teachers United, 346 So. 2d 1087 (Fla. 1st DCA 1977).

A public employer's filing of a petition for review of a PERC unfair labor practice order does not produce an automatic stay.

35. Pinellas County PBA, Inc. v. Hillsborough County Aviation Authority, 347 So. 2d 801 (Fla. 2d DCA 1977).

A civil service board is not legally required to amend rules which conflict with a collective bargaining agreement. Disapproved, Hillsborough County CEA, Inc. v. Hillsborough County Aviation Authority, 522 So. 2d 358 (Fla. 1988).

A public employee's constitutional right to collectively bargain is not co-extensive with an employee's right to so bargain in the private sector; certain limitations on the public employee's rights are necessarily involved.

36. City of Winter Park v. PERC and Winter Park Professional Fire Fighters, Local 1598, 349 So. 2d 224 (Fla. 4th DCA 1977).

Once the required factual determination of the managerial/confidential status of employees is made by PERC, an appellate court's review is limited to a determination of whether there has been a departure from the essential requirements of the law and whether there is competent substantial evidence to support the determination.

37. UFF v. Branson, 350 So. 2d 489 (Fla. 1st DCA 1977).

Authorization cards discoverable under PERC restrictions are exempt from the free access provided by the Public Records Act.

The circuit court had jurisdiction to determine the applicability of Chapter 119, Florida Statutes, but did not have jurisdiction to determine whether authorization cards should have been produced for inspection pursuant to section 447.307(2), Florida Statutes.

A request for access to authorization cards was untimely where the request was made after the close of hearings on the adequacy of the showing of interest.

Registration of an employee organization is necessary only for those which desire to request recognition by a public employer or an election for collective bargaining purposes.

Employee organizations which do not desire to request recognition or an election for collective bargaining purposes have no statutory right of participation in an employee election and are without standing to object to the election and post-election procedures of PERC. Relates to 2 FPER 50 (1976).

38. School Board of Escambia County v. PERC and Escambia Education Association, 350 So. 2d 819 (Fla. 1st DCA 1977), aff'g 2 FPER 93 (1976).

The school board engaged in "surface bargaining" and failed to bargain in good faith where it maintained that certain major issues were non-negotiable, insisted on a "total package agreement," failed to punctually attend scheduled meetings, and failed to provide the union with relevant information.

The prohibition against strikes by public employees was intended to protect the public, not to give public employers an advantage over their employees in collective bargaining.

The school board's photographic surveillance of picketing employees was coercive and, therefore, an unfair labor practice, irrespective of the subsequent use of the photos.

The school board failed to bargain in good faith on dues deduction by threatening one lump sum deduction.

Pursuant to the 1977 amendment to section 447.303, Florida Statutes, dues deduction shall commence upon written request and shall be enforced as long as the organization remains the certified bargaining agent for employees.

39. Columbia County Board of Public Instruction v. PERC and Columbia County Transportation and Maintenance Workers Association, 353 So. 2d 127 (Fla. 1st DCA 1977), aff'g 3 FPER 58 (1977), cert. denied, 357 So. 2d 185 (Fla. 1978).

A public employer commits an unfair labor practice where its motive for discharging an employee is to punish for, or discourage, union activity and where, "but for" an employee's union activities, employee would not have been discharged.

Once an employee shows a prima facie violation, the burden is on the employer to adduce evidence that it would reach the same decision without consideration of protected activity. See Pasco County School Board, 353 So. 2d 108.

Good faith reliance of the school board on the superintendent's tainted recommendation did not isolate an impermissible motive from its causative effect.

40. Pasco County School Board v. PERC and Pasco County CTA, 353 So. 2d 108 (Fla. 1st DCA 1977), aff'g in part and rev'g in part 3 FPER 9 (1976).

In the absence of either a timely challenge to the rule or an objection during the administrative proceeding, the court declined to express an opinion as to whether there was a valid delegation of authority to prosecute unfair labor practice charges to PERC's general counsel. A combination of investigative, prosecutorial, and adjudicative functions in one body does not, per se, create an unconstitutional risk of bias, and one so claiming must show prejudice.

The APA requirement that findings of fact and conclusions of law be separately stated was not violated by PERC's order which specifically adopted the findings of the hearing officer who had submitted a detailed report and recommended order separately stating findings of fact and recommendations.

Since the action of an agency following a full hearing before a hearing officer is in the nature of a procedural review, a hearing officer's findings of fact are binding on the agency in the absence of an explicit determination that the findings were not based on competent substantial evidence. Before PERC may reject or modify a hearing officer's findings of fact, it must first determine from a review of the entire record that the findings were not based on competent substantial evidence or did not comport with the essential requirements of law.

When a Florida statute is patterned after a federal law on the same subject, it will take the same construction as its prototype has been given in the federal courts, insofar as such construction is harmonious with the spirit and policy of Florida legislation on the subject.

A district court of appeal can set aside an agency's order only if it finds that the order depends on findings of fact which are not supported by competent substantial evidence.

Where a charge alleges an unfair labor practice based upon a public employer's discharge of an employee for protected union activity, the burden is on the claimant to show by a preponderance of evidence that his/her activity was a substantial or motivating factor in the employer's decision to discharge. The burden then shifts to the public employer to show by a preponderance of the evidence that, notwithstanding the existence of factors relating to protected activity, it would have made the same decision affecting the employee anyway. See Columbia County Board of Public Instruction, 353 So. 2d 127.

In considering the school board's explanation for not rehiring a teacher, the hearing examiner should attempt to strike an equitable balance between the rights of the board, whose duty it is to promote efficiency of public services, and the rights of the non-tenured public school teacher to be secure in his employment, free from discrimination due to his union activity.

In the absence of a showing of anti-union motivation, an employer may discharge or suspend an employee for good reason, bad reason, or no reason at all.

If the entire evidence presented were only hearsay, a reviewing court would be required to set aside an agency action as not supported by competent and substantial evidence. The APA allows admission of hearsay at agency hearings when used for the purpose of supplementing or explaining other evidence but precludes its admission if solely used to support a finding unless it would be admissible over objection in a civil action. If hearsay is corroborated by otherwise competent substantial evidence, it is admissible.

The statutory duty to bargain prohibits an employer from imposing unilateral changes in working conditions during the pendency of negotiations. Unilateral action by an employer affecting changes in wages or working conditions has generally been held justified only after the parties have bargained to impasse.

The school board's uncertain fiscal future did not excuse failure to bargain in good faith, as the school board was mandated by PERA to offer reasonable counter-proposals. Subjective showing of bad faith was not necessary to find a violation of the section of PERA requiring parties to bargain collectively.

An employer who in good faith negotiates with a union and makes offers to the union which the union rejects may then unilaterally initiate its proposals as terms and conditions of employment without committing an unfair labor practice.

Findings of fact by the hearing officer should be based exclusively on the evidence of record and on matters officially recognized.

41. School Board of Pinellas County v. PERC and Pinellas County Custodial Union 1221, 354 So. 2d 909 (Fla. 2d DCA 1978), aff'g 3 FPER 158 (1977).

The PERC chairman had no authority to act by himself in the issuance of an order of certification. The fact that PERC was undercapitalized and that, of its members, only the chairman was a full-time employee did not give the chairman legal authority to do something the commission as a whole was required to do.

The school board was guilty of a refusal to bargain despite its contention that the union made no request to bargain at a time when it was validly certified. The court found the union had substantial justification for believing that it represented the bargaining unit when it made its several bargaining requests and, therefore, these three previous requests, though made prior to the date of valid certification, were continuing in nature and continued beyond the date of valid certification.

Since certification following election constitutes final agency action for purposes of judicial review, the proper action for the school board to take if in doubt of the propriety of the union's certification would be to file a petition for review of PERC's order of certification in the district court of appeal, raising the issue of the appropriateness of the bargaining unit. Since no petition was filed, the court will not determine the propriety of the certification.

Where the school board doubted the propriety of the union's certification, proper action for school board to take, in addition to filing a petition for review of the order of certification, was to seek a stay of the certification order from either PERC or the court. Where PERC's certification order was not stayed, the school board was obligated to enter into collective bargaining with the union.

42. Duval County School Board v. PERC and Duval Teachers United, 353 So. 2d 1244 (Fla. 1st DCA 1978), aff'g 3 FPER 96 (1977).

Good faith bargaining requires the parties to actively participate in negotiations with an open mind and a sincere desire, as well as to make a sincere effort to resolve differences and come to an agreement.

Whether a party bargains in good or bad faith is a factual determination based on the circumstances of the particular case. The overall conduct of the parties throughout the course of negotiations must be considered. Good faith is a matter of intent which usually can be determined only by inference from a party's conduct.

Where PERC not only had evidence of the school board's state of mind in the form of its external conduct, which would be sufficient in and of itself to support PERC's finding, but also had before it a memorandum explicitly stating non-negotiable issues, PERC had competent substantial evidence to support its finding that the board failed to bargain in good faith.

Where the school board and the union had already gone through the impasse procedure provided by section 447.403, Florida Statutes, PERC nonetheless had the authority under section 447.503(4)(a), to order the board to bargain in good faith over monetary benefits for 1976-77.

The court quoted with approval from PERC's order, stating that an employer will not be permitted to engage in a course of conduct tantamount to a refusal to bargain and subsequently be allowed to cleanse its illegal activity through the statutory impasse procedures. Impasse proceeding shall not be used by an employer to circumvent its duty to bargain in good faith.

43. Geiger and Duval Teachers United v. Duval County School Board, 357 So. 2d 442 (Fla. 1st DCA 1978).

A union has no First Amendment right to use school mailbox facilities, bulletin boards, or a lunchroom. Therefore, provision granting union access to such facilities but with limitation is not subject to First Amendment attack.

School board's order restricting certain teachers' union activities which, because of its broad language, might prevent teacher-to-teacher contact and teacher-to-teacher conversation concerning the school administration that might be considered less than complimentary in its characterization of attitudes of administration personnel constituted a First Amendment infringement upon the rights of members of teachers' union.

While the school board must meet a burden of justification in order to enforce a regulation that touches upon a teacher's First Amendment rights, the mere assertion in a complaint that the teacher's First Amendment rights have been infringed upon does not put the school board to the test. It is incumbent upon a teacher or teacher group to first establish that their First Amendment rights have, as a matter of fact, been imposed upon by policies adopted by the school board.

44. St. Petersburg Junior College v. PERC and CWA, 358 So. 2d 1103 (Fla. 1st DCA 1978), rev'g 3 FPER 198 (1977), cert. denied, 366 So. 2d 884 (Fla. 1979).

Chief Judge Mills, writing for the court, dismissed an unfair labor practice complaint alleging the college refused to grant classroom use to a union that was attempting to reorganize the college employees while allowing civic and cultural organizations to rent classrooms where the union failed to demonstrate by evidence that it was of same class as groups which were permitted to rent college facilities for various purposes.

Judge Smith concurred with a separate opinion stating that a labor union was not necessarily, by its very nature, in a different class than other organizations that were permitted to rent college classrooms for meetings. Judge Ervin concurred and dissented with the opinions expressed by Mills and Smith.

45. City of Punta Gorda v. PERC and District Council 66, IBPAT, 358 So. 2d 81 (Fla. 1st DCA 1978), denying review of 3 FPER 48 (1977) and 3 FPER 111 (1977), cert. denied, 365 So. 2d 710 (Fla. 1978).

Because a PERC ruling upon a proper party's objections to a union election is one in which the substantial interests of a party are determined by an agency, the hearing provisions of the APA, section 120.57, Florida Statutes, apply.

Formal hearing provisions of the APA were waived where neither the city nor the union requested a formal hearing on objections to the PERC order validating the election. The APA does not require an agency to convene an unrequested formal hearing whenever it perceives the possibility of a disputed issue of material fact; a substantially affected person must affirmatively seek such a hearing.

Section 120.57(2) of the APA, which governs informal proceedings required when agency action is challenged, contemplates that a proceeding will be held but not necessarily a hearing.

PERC complied with section 120.57(2), pertaining to informal proceedings, where the chairman's report dismissing election objections was notice of agency action, the city had an opportunity to be heard through a request for review of the chairman's report before the full commission, and the request was duly considered by the full commission.

Where the city and the union agreed in writing before the election on the hours and eligible voters, a post-election challenge by the city was not proper.

The DCA deferred to PERC's judgment as to the lack of unfair campaign tactics on the part of the union in an election held among city employees.

46. City of Winter Haven v. PERC and Teamsters Local 444, 358 So. 2d 1374 (Fla. 1st DCA 1978), rev'g 3 FPER 56 (1977), cert. denied, 366 So. 2d 885 (Fla. 1979).

The chief executive officer (CEO) of a public employer is to consult with and attempt to represent the views of the legislative body throughout the course of a collective bargaining process; however, the authority of the CEO to represent the public employer during negotiations is not dependent upon a grant of authority from the legislative body.

Discussions and consultations of the CEO of a public employer with the legislative body relative to collective bargaining are exempt from the open meetings law.

PERC's conclusion, that the city's rejection of a special master's decision relating to the collective bargaining agreement between the city and the union was ineffective because there was nothing in the record to show that the city commission had authorized the city manager to reject the decision, was unfounded.

Provisions of the statute governing final legislative action by a public employer on a collective bargaining agreement are applicable only after a special master's decision has been rejected by one of the parties. Written notice by the city manager to the union that a previous contract offer based on a special master's decision, which was approved by the city commission, was being rejected was a valid exercise of power and, since the letter was received before the union ratified the offer, the city manager's failure to sign such an agreement after it was subsequently ratified by the union did not constitute an unfair labor practice.

47. City of Pensacola v. PERC, 358 So. 2d 589 (Fla. 1st DCA 1978), denying review of 3 FPER 209 (1977), cert. denied, 364 So. 2d 882 (Fla. 1978).

PERC had authority to order the city to amend its local option ordinance to bring its provisions and procedures into substantial compliance with the 1977 amendments to Part II of Chapter 447, Florida Statutes. The order did not perform rulemaking functions in violation of section 120.54, Florida Statutes, but was subject to the requirements of section 120.57(2), Florida Statutes, applicable to an agency determining the substantial interests of a party in proceedings not involving a disputed issue of material fact.

48. City of Jacksonville Beach v. PERC and IBEW, Local 2358, 359 So. 2d 578 (Fla. 1st DCA 1978), cert. denied, 374 So. 2d 98 (Fla. 1979).

The rule of appellate procedure providing that on appeals by public bodies or public officers the timely filing of a notice of appeal shall operate as an automatic stay pending review takes precedence over provisions of the APA and PERA which state, in effect, that the filing of a petition for judicial review of final agency action does not, in itself, operate as a stay of the agency decision or order.

49. City of Umatilla v. West Central Florida PBA, Inc., 360 So. 2d 1105 (Fla. 2d DCA 1978), rev'g 4 FPER ¶ 4037 (1978), cert. denied, 376 So. 2d 393 (Fla. 1979).

Where the city mailed election objections to PERC on the fourth working day after receiving the election results, and PERC received objections six working days after furnishing the city with the results, PERC abused its discretion in dismissing the city's objections as untimely filed pursuant to the rule requiring a party to file objections within five working days after receiving election results, in view of fact that the city mailed its objections at such time as they should have reached PERC in a timely fashion and the undisputed evidence that the city did not know until the third day of the five-day period that it had any basis for objection.

50. City of Panama City v. PERC and Northwest Florida PBA, Inc., 363 So. 2d 135 (Fla. 1st DCA 1978), cert. denied, 376 So. 2d 69 (Fla. 1979).

Authorization cards are not subject to the free access provisions of the Public Records Act, and an employer, employee or employee organization is not allowed to inspect the cards unless one of the statutory grounds for such inspection is alleged in good faith.

In representation proceedings, final agency action is the certification of an employee organization as the exclusive bargaining representative of employees in the appropriate unit.

PERC's order certifying the union as the exclusive bargaining agent was affirmed on appeal even though the court found PERC violated section 120.59(1), Florida Statutes, by certifying the unit after the ninety-day time limit. The court reasoned that the violation did not impair the fairness of the proceedings or the correctness of PERC's action. PERC did not err by failing to determine the status of employees listed in the city's application for determination of managerial or confidential employees.

51. School Board of Marion County v. District Council 66, IBPAT and PERC, No. II-405 (Fla. 1st DCA 1978) (unpublished order), denying review of Case No. RC-754-2238 (Fla. PERC Dec. 27, 1977) (Certification 374), cert. denied, 372 So. 2d 471 (Fla. 1979).

The court denied a petition for review of Certification 374.

52. Duval County School Board v. PERC and Duval Teachers United, 363 So. 2d 30 (Fla. 1st DCA 1978), aff'g in part and rev'g in part 3 FPER 170 (1977).

The 1975 statute making the act of participating in a strike an unfair labor practice was not violated by a teachers' union voting a "no contract-no work" policy and forming "strike teams" where no withholding of services by employees occurred. However, the court noted the subsequent 1977 expansion by the legislature of the definition of "strike" to include "any overt preparation, including, but not limited to, the establishment of strike funds with regard to the above-listed activities."

The teachers' union's distribution of flyers, posters, and leaflets urging the superintendent's removal and calling for a public expression of no confidence in him did not constitute an unfair labor practice where distribution of the literature in question was an activity protected by the First Amendment and the applicable statute.

Threats of violence are not an essential ingredient of the statute making it an unfair labor practice for a public employee organization to interfere with, restrain or coerce managerial employees from their performance of job duties or other activities undertaken in the interest of the public employer.

Because picketing is not pure speech expressing "arguments or opinions," picketing is not free of the restraint imposed by section 447.501(1), Florida Statutes. Other picketing for impermissible reasons, such as picketing with the purpose or effect of interfering with, restraining or coercing managerial employees from their performance of job duties is not protected.

Where the school board alleged that the teachers' union had committed an unfair labor practice by interfering with a managerial employee, the school superintendent, in the performance of his duties by picketing the superintendent's private residence, this issue was remanded to PERC to determine whether peaceful picketing of the superintendent's residence was, under the circumstances, unlawful interference, restraint or coercion.

53. School Board of Palm Beach County v. PERC, 374 So. 2d 527 (Fla. 1st DCA 1978), rev'g Palm Beach County School Board and Palm Beach Association of Educational Secretaries and Office Personnel, 3 FPER 267 (1977), cert. denied, 380 So. 2d 427 (Fla. 1980).

The court reversed a PERC order and held it unnecessary for PERC to undertake a case-by-case evaluation of the confidential status of personal secretaries for each and every school principal. The legislature intended that the enactment of section 447.203(5), Florida Statutes, would eliminate the necessity for factual determinations as to the confidential status of such employees.

The court held that the personal secretary of a managerial employee such as a school principal is, by definition, "one who aids or assists a managerial employee in confidential matters" and is, therefore, a confidential employee.

The Florida Supreme Court accepted jurisdiction, heard arguments and then decided it was without jurisdiction. The chief justice, joined by two other justices, dissented with an opinion emphasizing the conflict between Palm Beach County and Winter Park, 349 So. 2d 224.

54. Jess Parrish Memorial Hospital v. PERC and LIUNA, Local 666, 364 So. 2d 777 (Fla. 1st DCA 1978), aff'g in part and rev'g in part 3 FPER 172 (1977).

PERC's final order requiring a hospital to cease and desist from its unfair labor practices was enforceable, even though order failed to meet statutory requirement that order be issued within ninety days of the recommended order unless waived, where the hospital failed to show unfairness or a material error as a result of the delay.

The hospital's contention that PERC did not have statutory authority to prosecute unfair labor practice charges was waived since the hospital did not present its allegation before the hearing officer, but waited until the hearing before PERC.

The hospital administrator's letter to all hospital employees was not an unfair labor practice but, rather, a permissible pre-election comment where there was no threat of reprisal or promise of benefits if employees refused to comply with the administrator's proffered assistance in withdrawing their authorization cards.

Whether communications from an employer to its employees relating to union membership are unfair labor practices depends upon the particular circumstances of each case. Both the employer and the employee organization have a constitutional right to freedom of expression in making pre-election comments so long as the comments do not violate the statute which forbids promises of benefits or threats of reprisal. If the employer, however, sends letters containing anti-union statements which cumulatively create an atmosphere in which an employee's free choice is rendered impossible, the expressions become overbearing and lose the First Amendment protection.

Whether an employer commits an unfair labor practice by involving itself in employee revocation of union authorization cards depends upon the degree of employer participation in the process. The determinative factor is whether the idea of revocation is initiated by the employees or whether the idea originates with the employer.

The employer's action in sending revocation forms to its employees was not an unfair labor practice where some of its employees had inquired as to how to revoke their authorization cards and the employer's accompanying letter advised the employees that the choice of whether to revoke authorization cards was strictly their own.

Under the NLRA, an individual can be an agent of the employer without being a supervisor, and acts of the employer's agents, though not specifically ratified by the employer, are chargeable to it for purposes of finding unfair labor practices.

The fact that the hospital disclaimed any agency relationship with its supervisory employees by sending all supervisory employees a list of items to avoid during the union's authorization drive could not overcome the conclusion that supervisory employees were acting on behalf of the hospital when the hospital allowed them continuously to interview employees and make threatening statements to them.

Supervisory employees' warnings to other employees, that if the union were elected certain employee benefits would be lost and salaries decreased, were unfair labor practices since such statements were coercive.

PERC was properly allowed to amend its final order after a petition for review was filed where, upon PERC's motion, the court temporarily relinquished jurisdiction to PERC to amend its order.

While the applicable APA statute does not at present impose any requirement of bad faith or maliciousness as a condition to a fee award, the court would be reluctant to impose fees and costs against an agency if, for example, an order was reversed only because the agency had erroneously interpreted a provision of law or the agency's action depended upon a finding of fact which was not supported by competent substantial evidence in the record, since, as to those circumstances, there are

appropriate statutory sanctions, including setting aside, modifying or remanding agency action without imposing additional sanctions of fees and costs against the agency.

55. City of Panama City v. PERC, 364 So. 2d 109 (Fla. 1st DCA 1978), rev'g 3 FPER 127 (1977).

The court reversed a PERC order denying approval of a local option ordinance and remanded the matter with directions that the ordinance be approved. The court found that PERC's failure to render its order on the city's proposed local option ordinance within ninety days of hearing constituted a material error in procedure which impaired the fairness of the proceeding.

The court approved, on the merits, PERC's findings concerning eight deficiencies in the submitted local option ordinance and found that, where throughout PERC's order denying approval of the local option ordinance the statutory standard of "substantially equivalent" was used, PERC did not use an improper standard of review despite use of the phrase "substantial departure" in relation to two of the nine deficiencies found.

The local option ordinance submitted for approval to PERC was deficient in various respects, including its registration procedure, impasse procedure, strike penalty clause, and certification clause, but was not deficient for creating a local commission consisting of only three members.

PERC's order denying approval of the city's local option ordinance sufficiently explained PERC's rationale and the factors which compelled modification of its prior holdings.

An oral decision of PERC conditionally approving a local option ordinance, which was not an unequivocal, unambiguous decision embodied in an official record that would substitute for a written order for purposes of the statutory sections governing finality of agency decisions, was not a final order and PERC was not estopped from later denying res judicata effect to that order.

The statute providing that municipalities may adopt local option ordinances requires approval of such an ordinance by PERC before it becomes law.

PERC's determination concerning the substantial equivalency of a local option ordinance is subject to judicial review.

Award of attorney's fees to the city found to be justified but was denied because of the court's discretionary anticipation that PERC would proceed promptly and correctly.

56. Bay County Board of County Commissioners v. PERC and Teamsters Local 991, 365 So. 2d 767 (Fla. 1st DCA 1978), reh'g denied, 5 FPER ¶ 10033, rev'g 4 FPER ¶ 4058 (1978), rev. dismissed, 386 So. 2d 633 (Fla. 1980).

The statute requiring registration of public employee organizations does not require such registration only as a condition precedent to requesting recognition by a public employer or submitting a petition requesting a representation election but, rather, legislature intended information required of employee organizations under the statute to be available to interested parties during and preceding an election.

The court disagreed with PERC's holding that the county's motion to dismiss based on the union's failure to file an annual financial statement was not a sufficient pleading to invoke the remedy of postponement of the election. The court held that the motion brought to PERC's attention the union's dereliction, and it was then incumbent upon PERC to take some action to remedy the situation before an election was conducted. PERC should have postponed the election until the union filed a financial statement. The court, therefore, deemed it necessary under the circumstances of this case to set aside the election.

PERC has an obligation to be fair, not only to employees and employee organizations, but also to public employers.

When the county had originally stipulated to the appropriateness of the bargaining unit, and the county's attorney stated in oral argument before the court that objections to appropriateness of the unit would be waived if the election were set aside, the county would not be heard on petition for rehearing to complain that the unit was inappropriate. See also 6 FPER ¶ 11065 (1980).

57. Seitz v. Duval County School Board and PERC, 366 So. 2d 119 (Fla. 1st DCA 1979), aff'g in part and rev'g in part 4 FPER ¶ 4154 (1978), cert. denied, 375 So. 2d 911 (Fla. 1979).

PERC did not err in failing to order reinstatement and back pay to a dismissed teacher, when the court's prior ruling precluded that remedy and established the law of the case.

When, in 1976, the applicable statute authorized unfair labor practice proceedings "whenever it is charged by an employer or an employee organization…," the Florida Administrative Code rule that provided that an employee might also bring an unfair labor practice charge was invalid because a rule cannot be contrary to nor enlarge provisions of Florida Statutes. Therefore, a dismissed teacher did not have standing to bring an unfair labor practice charge against a school board in 1976. But see The Florida Bar, 380 So. 2d 412.

A statute is presumed to be prospective in nature unless the legislature manifests a contrary intention in the statute itself.

The teacher's right to union representation at a conference with the principal in which she reasonably anticipated disciplinary action did not exist in 1976, where the applicable statute guaranteeing employee rights did not contain language "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection," which language is necessary in order for the right to exist. See related decision in Seitz, 346 So. 2d 644.

58. City of Jacksonville v. Jacksonville Association of Fire Fighters, Local 1834, 365 So. 2d 1098 (Fla. 1st DCA 1979), aff'g 4 FPER ¶ 4158 (1978).

The evidence was sufficient to support PERC's determination that captains and lieutenants employed by the city fire department were not "managerial employees" within the meaning of the statutory definition of that term where the officers performed limited supervisory duties which did not constitute a significant role in personnel administration or employee relations.

PERC's order properly allowed a self-determination election to be held by secret ballot among fire department lieutenants and captains, the results of which decided whether the officers would be included in a unit with privates, comprise a separate unit, or reject representation in any unit.

59. City of Jacksonville Beach v. PERC and IBEW, Local 2358, 371 So. 2d 1045 (Fla. 1st DCA 1979), aff'g 4 FPER ¶ 4053 (1978).

The court affirmed PERC's finding that a letter mailed to eligible voters by the union, setting forth wage rates for employees in six other cities under contracts with the same union, did not unlawfully affect the results of the election. Applying City of Punta Gorda, 358 So. 2d 81, an election should be set aside only when there is misrepresentation which involves a substantial departure from the truth, which is made at a time which prevents the other party from making an effective response, and which is likely to have a significant impact on the election. The court agreed with PERC that neither the letter nor the subsequent investigation revealed misrepresentations of fact.

60. School Board of Orange County v. Palowitch, Orange County CTA and PERC, 367 So. 2d 730 (Fla. 4th DCA 1979), aff'g 3 FPER 280 (1977).

Unilateral action taken by an employer to change the length of the work year is a per se violation of the duty to bargain collectively.

The absence of a contractual provision did not give the school board the right to unilaterally change existing terms and conditions of employment not covered by the existing contract. The obligation to bargain is bilateral.

It is irrelevant whether such unilateral changes are beneficial or detrimental.

The school board's right of ultimate decision-making does not instill it with the right to take unilateral action without bargaining over the effects of implementing that decision on the wages, hours, and terms and conditions of employment of the employees.

The bargaining table is the statutorily mandated forum for accomplishing all changes in the status quo, the sole exception being legislative action pursuant to section 447.403(4)(d), Florida Statutes.

61. Sherry v. United Teachers of Dade, 368 So. 2d 445 (Fla. 3d DCA 1979), cert. denied, 374 So. 2d 100 (Fla. 1979).

A public employee, who was not a member of the union and who declined to pay a fee to the union to process a grievance on her behalf, lacked the requisite interest to bring an action challenging the constitutionality of the statute that provides for the negotiation of grievance procedures between a public employer and a bargaining agent.

62. Board of Regents v. PERC, State of Florida and UFF, 368 So. 2d 641 (Fla. 1st DCA 1979), aff'g 3 FPER 304 (1977), cert. denied, 379 So. 2d 202 (Fla. 1979).

The Board of Regents' petition for writ of prohibition was dismissed. "Public employee," as defined under the statute governing public employee labor organizations, includes graduate assistants.

PERC had discretion to interpret the statute proscribing unfair labor practices committed by public employee labor organizations as prohibiting exploitation of students by their teachers but not prohibiting public employee organizations from soliciting employees who also happen to be students to support the union's activities on behalf of those same employees whose support was solicited.

PERC has a responsibility to define and implement public employees' substantive rights under the statute governing public employee labor relations, and a reviewing court is forbidden by the statute governing judicial review of agency action from substituting its judgment for that of PERC on issues of discretion.

63. Blanchette v. School Board of Leon County, 378 So. 2d 68 (Fla. 1st DCA 1979), aff'g 5 FPER ¶ 10339 (1979).

The court held that the school board was correct in denying an APA hearing to a teacher whose request for a leave of absence was denied. The grievance procedure in the collective bargaining agreement was the proper channel to be utilized.

64. Pinellas County Data Processing Control Board v. PERC, 371 So. 2d 603 (Fla. 2d DCA 1979).

The court denied a petition for review filed by the control board. Citing City of Panama City, 364 So. 2d 109, the court stated its denial was without prejudice to the board seeking review of an order of PERC denying the board's local option application. Relates to In re Local Option Application Pinellas County, 5 FPER ¶ 10075 (1979); see also Pinellas County, 371 So. 2d 602.

65. Pinellas County v. PERC, 371 So. 2d 602, (Fla. 2d DCA 1979).

The court denied a petition for review filed by the county. Citing City of Panama City, case no. 56, the court stated that its denial was without prejudice to the county seeking review of an order of PERC denying the county's local option application. Relates to In re Local Option Application of Pinellas County, 5 FPER ¶ 10075 (1979); see also Pinellas County, 371 So. 2d 603.

66. City of St. Petersburg v. PERC, 371 So. 2d 600 (Fla. 2d DCA 1979).

The court granted PERC's motion to dismiss the appeal of an order directing election stating that its dismissal was without prejudice to the city seeking review of a certification order. Relates to Teamsters Local 444 v. City of St. Petersburg, 5 FPER ¶ 10060 (1979). See City of St. Petersburg, 373 So. 2d 465.

67. City of St. Petersburg v. PERC and Teamsters Local 444 v. Pinellas County PBA, Inc., 373 So. 2d 465 (Fla. 2d DCA 1979).

The court denied certiorari review of a PERC order determining an appropriate unit. See School Board of Sarasota County, 372 So. 2d 477.

68. School Board of Sarasota County v. PERC, 372 So. 2d 477 (Fla. 2d DCA 1979).

The court granted PERC's motion to dismiss a petition for review of an order directing an election.

69. Okaloosa-Walton Junior College Board of Trustees v. PERC and Okaloosa-Walton Higher Education Association, 372 So. 2d 1378 (Fla. 1st DCA 1979), aff'g in part and rev'g in part 3 FPER 153 (1977), cert. denied, 383 So. 2d 1200 (Fla. 1980).

No restriction may lawfully be placed on the right of one employee to discuss organizational interests with another on the job site during the non-working time of both, unless by reason of some extraordinary circumstances, the restriction is necessary for order and discipline in pursuit of an employer's institutional purposes.

The distribution of organization literature, however, is subject to both the working hours restriction applicable to solicitation and to the further restriction that it not take place where the actual work of public employees is performed.

When the promulgation by the college president and faculty council of a policy limiting solicitation on campus to a particular time and location occurred more than six months prior to the filing of an unfair labor practice charge by the union, promulgation of the policy could not serve as a basis for the charge.

The court further found no substantial evidence that the college administration maintained and enforced the policy, and the court further found that about six months after promulgating the policy, the college president amended the policy to significantly ease its restrictions on solicitation and fully conform it to section 447.509(1), Florida Statutes, the court disapproved PERC's finding that the administration unlawfully restricted solicitation.

Under the NLRA, in determining the permissibility of an employer regulation which restricts access to a job site by non-employee union organizers, an employer's property interests, as distinguished from its employer management interests, are generally held to prevail over employee interests in access by non-employee organizers when effective alternative means of off-site access are available to union organizers and the employer has not capriciously excluded non-employee union organizers while admitting non-employee solicitors for other purposes.

The court found that the union president requested from the college an administration-called meeting of the entire faculty in a room on campus for a two-hour period during working hours to hear non-employee labor spokesmen speak about positive aspects of collective bargaining. Because the requested meeting would be a non-voluntary, administration-sponsored meeting of all faculty members during working

hours for employee organizational purposes, the court vacated the portion of the PERC order which determined that the college administration wrongfully denied access to employees of the union and which required posting of notice.

The court held that where union advocates were denied postage-free use of the college mail distribution system while the mail system was open to other organizational messages of interest to the academic community, PERC correctly determined that the college was guilty of an unfair labor practice and properly could correct discrimination against pro-union access to the college administration's facilities since the college had opened those facilities for non-disruptive use on behalf of other causes and organizations not indigenous to the campus.

The college's "institutional membership" in certain non-indigenous organizations did not qualify such organizations for favored treatment as against union causes.

When access is denied to pro-union messages only because the college administration disapproves of the message, interference with PERA-secured organization rights is established.

Except when it may be demonstrated that a PERC-authored policy of expanding the use of college facilities is necessary to remedy discriminatory deprivations having a present effect on employees' bargaining rights, PERC is not empowered to preempt an employer's power to make facilities uniformly inaccessible to all non-indigenous causes and organizations, and PERC may not require an access remedy for "all organizations and/or individuals desiring to solicit and/or distribute literature."

The court affirmed PERC's refusal to order another election based on the alleged unfair labor practices. It approved only the unfair labor practice findings in respect to the discriminatory denial of postage-free access to mailroom facilities and found no other procedural error by PERC requiring appellate remedies.

PERC action on remand, 6 FPER ¶ 11079 (1980).

70. PERC, Wood, FEA/United, and DeSoto County Teachers Association v. District School Board of DeSoto County, 374 So. 2d 1005 (Fla. 2d DCA 1979), rev'g unpublished declaratory judgment issued by Fla. 12th Cir. Ct., April 21, 1978, and altered June 27, 1978.

The denial of a writ of prohibition without an opinion is not res judicata unless the sole possible grounds of the denial was that the court acted on the merits of the jurisdictional question, or unless it affirmatively appears that such denial was intended to be on the merits.

The court's prior denials of PERC's suggestions for writ of prohibition did not foreclose the court from considering the jurisdictional issue in the instant appeal.

Circuit courts have jurisdiction to render declaratory judgments determining whether a matter in dispute comes within the scope of an arbitration agreement.

Under the PERA, the breach of a collective bargaining agreement is not a per se unfair labor practice.

When the breach of a collective bargaining agreement may also be an unfair labor practice under PERA, circuit courts nevertheless have jurisdiction to provide a remedy for that breach, including jurisdiction to enter a declaratory judgment that a particular activity does not constitute a breach.

Whether the breach of a collective bargaining agreement is an unfair labor practice is properly a question for PERC to decide; whether the breach of a collective bargaining agreement exists is an appropriate question for a court to decide.

A collective bargaining agreement must provide a procedure for binding arbitration to settle disputes concerning the discharge of a public employee.

A collective bargaining agreement provision for arbitration of grievances pertaining to discharge of a teacher on continuing contract status did not conflict with the statutory appeal procedure provided by section 231.36(6), Florida Statutes. The arbitration provision and the statutory provision co-exist as alternative remedies available to a discharged teacher.

An agreement that alternative non-judicial review may be pursued in lieu of administrative review was not prohibited by the rule that judicial review of administrative action generally may not be sought without first pursuing an available avenue of administrative review.

The collective bargaining agreement, which provided that the school board need not afford a hearing to a teacher on a grievance pertaining to a teacher's discharge nor render any decision on the matter at all as a full board, conflicted with the statutory provision which gave the school board alone the power and duty to discharge teachers.

A public employer cannot negotiate a collective bargaining agreement in which it relinquishes a statutory duty or in which its employees relinquish statutory rights. An agreement may add to statutory rights and duties, but may not diminish them.

The discharged teacher had a right to elect between the statutory appeal procedure and the binding arbitration procedure provided in the collective bargaining agreement. See DeSoto County Teachers Association v. Desoto County School Board, 5 FPER ¶ 10307 (1979), issued subsequent to district court of appeal opinion.

71. Leon County CTA v. School Board of Leon County, 363 So. 2d 353 (Fla. 1st DCA 1978).

The district court reversed two circuit court restraining orders and remanded with directions to dismiss the complaint. The court said that, when there is an agreement to arbitrate, an order to arbitrate should not be denied unless there is a positive assurance that the arbitration clause is not susceptible to interpretations covering the dispute or unless no lawful remedy can conceivably be awarded by the arbitrator.

72. Local Union 2135, IAFF v. City of Ocala, 371 So. 2d 583 (Fla. 1st DCA 1979).

The district court affirmed a circuit court order dismissing a union application for arbitration.

Disputes existing between the city and the union, in the course of which the city charged that the union had failed to bargain in good faith by refusing to discuss the city's proposals and in the course of which the union president declared to PERC that the parties were at impasse and requested that PERC appoint a special master, were arguably covered by the statute, and jurisdiction over the dispute was accordingly preempted in favor of the commission and the union's petition for an order to compel arbitration under the arbitration statute was properly dismissed.

73. Brevard Federation of Teachers, Local 2098 v. School Board of Brevard County, 372 So. 2d 169 (Fla. 4th DCA 1979), cert. denied, 383 So. 2d 1201 (Fla. 1980).

The district court reversed a circuit court order setting aside an arbitrator's decision. Arbitration of construction of a provision of the agreement between the school board and the teachers' union defining a teacher's normal work week was not beyond the scope of the collective bargaining agreement and the arbitrator's authority.

The school board contended that it could not be held responsible for compensation where there was no provision in their budget. The answer to such problems rests with the legislature, rather than the courts.

74. School Board of Indian River County v. Indian River County Education Association, Local 3617, 373 So. 2d 412 (Fla. 4th DCA 1979), aff'g 4 FPER ¶ 4262 (1978).

Citing Palowitch, the court found the school board unilaterally altered the number of periods into which the school day was divided. The employer was required to bargain in good faith on changes in wages, hours, terms and conditions of employment, and the unilateral changes fell within those categories.

75. LIUNA, Local 1240 v. PERC, 375 So. 2d 915 (Fla. 2d DCA 1979), denying review of 5 FPER ¶ 10287 (1979).

The court denied a motion for emergency relief and a petition for review of a non-final administrative order.

76. UFF, Local 1880 v. Board of Regents, 365 So. 2d 1073 (Fla. 1st DCA 1979).

The court held that the Board of Regents did not depart from the essential requirement of the law when the legislature provided insufficient funds to implement the salary portions of a collective bargaining agreement and the Board of Regents refused to transfer funds from other accounts.

77. City of Bartow v. PERC and Teamsters Local 444, 382 So. 2d 311 (Fla. 2d DCA 1979), vacating 4 FPER ¶ 4367 (1978).

The court reversed the finding that an employee's termination was connected to union activities. Administrative findings must be based on competent substantial evidence and it is inappropriate for the court to resolve conflicts in testimony. The court must examine the proceedings in the light most favorable to the administrative findings. In this case, the court found there was not competent substantial evidence to sustain the findings.

Where good cause for a discharge is shown, the mere fact that anti-union animus existed on the part of the employer does not, without more, make the discharge unlawful. Syncro Corp. v. NLRB, 597 F. 2d 922 at n.7 (5th Cir. 1979).

The civil service board action was based on whether the employee was insubordinate. The issue before PERC was an unfair labor practice. Estoppel by judgment only bars matters actually litigated and determined in an initial action. Therefore, PERC had jurisdiction over the unfair labor practice question.

78. Brevard Community College Board of Trustees v. PERC and Brevard Community College Federation of Teachers, Local 1847, 376 So. 2d 16 (Fla. 5th DCA 1979), cert. denied, 388 So. 2d 1110 (Fla. 1980).

The court consolidated petitions for review of PERC orders in: College Federation of Teachers and Brevard Community College, 2 FPER 87 (1976); Brevard Community College Federation of Teachers, Local 1847 and Brevard Community College, 2 FPER 142 (1976); Brevard Community College Board of Trustees, 3 FPER 229 (1977), stayed, (Fla. 4th DCA Dec. 29, 1977) (unpublished order); Brevard Community College Federation of Teachers, Local 1847, 3 FPER 252 (1977); and Brevard Community College Federation of Teachers v. Brevard Community College Board of Trustees, 3 FPER 253 (1977).

The college stipulated to a unit in a consent election agreement and failed to raise the issue of appropriateness in its objections to the election. The court adopted Bay County Board of County Commissioners, 365 So. 2d 767, and dismissed the college's argument that the bargaining unit was not appropriate because of its earlier agreement on that issue.

The college failed to identify disputed issues of material fact. Therefore, the court found that the college was not entitled to formal proceedings under section 120.57(1), Florida Statutes, and adopted City of Punta Gorda, 358 So. 2d 81.

The college failed to demonstrate that PERC abused its discretion in dismissing election objections and certifying the union as the bargaining agent. The court recognized the discretion that was incumbent in an expert tribunal in particular areas of special competence and expertise.

The PERC chairman's misconstruction of a union letter was declared harmless error in view of the election turnout in which 223 of 225 qualified voters voted. Additionally, the record failed to demonstrate any coercion of employees.

In the absence of a timely challenge by the college to Rule 8H-4.02 before the commission, the court declined to express an opinion and affirmed PERC, citing Pasco County School Board, 353 So. 2d 108.

The court, having determined the validity of the certification, disagreed with the college's contention that it had no obligation to bargain. Moreover, the proper procedure was to seek review of PERC's certification and simultaneously seek stays from PERC or the court, School Board of Pinellas County, 354 So. 2d 909.

The court held that PERC's order granting the union access for use of the intercom and bulletin boards was too broad, citing Okaloosa-Walton Jr. College, 371 So. 2d 1378. PERC should have granted the union the same limited access as the college allowed other organizations, in the same manner and to the same extent.

79. Escambia County Sheriff's Department v. Florida PBA, Inc., 376 So. 2d 435 (Fla. 1st DCA 1979), aff'g in part and rev'g in part, 5 FPER ¶ 10007 (1978), reconsideration denied, 5 FPER ¶ 10039 (1979), cert. denied, 389 So. 2d 1109 (Fla. 1980).

The special act for Escambia County did not violate Article III, Section 11(a)(1), of the Florida Constitution. The legislature transformed deputy sheriffs into employees for purposes of the act and gave them the right to engage in collective bargaining.

Administrative process can not resolve a constitutional attack. Therefore, even though it was not raised below, the constitutional attack was not barred.

The court affirmed PERC's finding that the county committed an unfair labor practice refusing to bargain in good faith. Since the unfair labor practice was a mere technical one, the court stated that the county should proceed to negotiate in good faith but need not post the notices PERC required.

The court reversed an assessment of penalties as the County was justified in its position of relying upon Murphy v. Mack, 341 So. 2d 1008.

80. Metropolitan Dade County v. Dade County Employees Local 1363, AFSCME and PERC, 376 So. 2d 1206 (Fla. 1st DCA 1979), rev'g 4 FPER ¶ 4121 (1978).

The court reversed PERC's declaratory statement holding that a full-time employee of the union may represent a union member in a civil service appeal of disciplinary action under section 2-47, Code of Metropolitan Dade County.

The contract requiring an ordinance amendment to provide employee appeals to a hearing examiner, as part of the civil service disciplinary scheme, did not transform the civil service proceeding into "a grievance procedure" to be used for the settlement of disputes between an employer and an employee or group of employees involving the interpretation or application of a collective bargaining agreement.

The statutory right of a union to represent an employee is limited by section 447.609, Florida Statutes, to "any proceeding authorized in this part," meaning Part II of Chapter 447. Section 447.401 explicitly recognizes that civil service appeals are significantly different from grievance procedures and that the remedies are mutually exclusive.

Chapter 447 does not afford to public employees any procedural rights in respect to appeals before hearing examiners under civil service Ordinance 2-47. Any employee right to union assistance in a civil service appeal is not derived from Chapter 447. PERC, therefore, had no authority to render a declaratory statement except "as to the applicability of" Chapter 447.

The court found it prudent to avoid the unlawful practice of law issue as it was not raised as such and it deferred to the supreme court's exclusive jurisdiction.

81. City of Panama City v. PERC, 378 So. 2d 66 (Fla. 1st DCA 1979), aff'g in part and rev'g in part, 5 FPER ¶ 10107 (1979).

PERC's order directing the city to amend its local option ordinance was reversed by the court to the extent that it conflicted with the court's prior decision in City of Panama City, 364 So. 2d 109, and affirmed to the extent that it required the city to amend its ordinance to provide provisions and procedures substantially equivalent to those set forth in Chapter 77-343, Florida Statutes.

82. Pinellas County v. PERC, 379 So. 2d 985 (Fla. 2d DCA 1980), rev'g 5 FPER ¶ 10075 (1979).

The court reversed PERC's order denying approval of the county's local option ordinance, holding that PERC's failure to comply with the "90-day rule" set forth in section 120.59, Florida Statutes, impaired the fairness of the PERC proceedings. Pinellas County Employees Association Local 2721, AFSCME v. Pinellas County Commission, Pinellas County, Case No. RC-79-010, which was stayed pending the above appeal was dismissed as moot, 386 So. 2d 648 (Fla. 2d DCA 1980). See In re Adoption of Rules by Pinellas County Local Commission, 6 FPER ¶ 11182 at n.2 (1980).

83. Martin County Education Association v. School Board of Martin County, 380 So. 2d 582 (Fla. 1st DCA 1980), aff'g 5 FPER ¶ 10199 (1979).

The court affirmed, without opinion, a PERC order dismissing an unfair labor practice charge filed by the union alleging that the school board committed an unfair labor practice within meaning of section 447.501(1)(a) and (c), Florida Statutes, by refusing to bargain salary supplements for those members of a union-represented instructional unit who performed coaching duties. PERC receded from this decision in School Board of Levy County v. Levy County Education Association, 492 So. 2d 1140.

84. City of Jacksonville Beach v. PERC and Jacksonville Beach Fire Fighters Association, Local 2622, 381 So. 2d 283 (Fla. 1st DCA 1980), aff'g 5 FPER ¶ 10059 (1979).

The court affirmed a PERC order that included fire lieutenants in a bargaining unit, contrary to an agreement between the employer and union, where evidence supported inclusion. The court held that an issue not made a point on appeal is waived and will not be considered by the court for the first time on appeal. Judge Booth concurred in part and dissented in part with opinion.

85. City of St Petersburg v. PERC, 382 So. 2d 899 (Fla. 2d DCA 1980), aff'g 5 FPER ¶ 10161 (1979).

The court affirmed a PERC order directing an employer to pay election costs where the employer's refusal to provide an election list required PERC to cancel a mail ballot election and run an on-site election.

86. Bay County School Board v. PERC and Association of Bay County Educators, FTP-NEA, 382 So. 2d 747 (Fla. 1st DCA 1980), aff'g 5 FPER ¶ 10314 (1979).

The court affirmed a PERC order finding the employer guilty of an unfair labor practice for refusing to provide budget work sheets to the union upon its request. In so holding, the court agreed with PERC that, inasmuch as these work sheets were prepared to assist the employer in developing its budget, they were not exempted from public disclosure under Chapter 119, Florida Statutes, by operation of section 447.605(3), Florida Statutes (1977).

87. Juno Fire Control District #3 v. Dolan, No. 78-653 (Fla. 4th DCA 1980) (unpublished order), aff'g 4 FPER ¶ 4109 (1978).

The court affirmed a PERC order finding that firing Dolan following the filing of grievance constituted an unfair labor practice within the meaning of section 447.501(1)(a), (b) and (d), Florida Statutes.

The unfair labor practice, as in Seitz, 366 So. 2d 119, was filed by an individual but the court did not reverse as it had done in Duval County School Board.

The decision to fire Dolan was motivated by non-permissible reasons. The fire district did not prove by a preponderance of the evidence that notwithstanding Dolan's protected activity, it would have made the same decision to terminate him.

88. City of Ft. Lauderdale v. PERC, Broward County Local Union 532, AFSCME and Fort Lauderdale City Employees Benevolent Association, 381 So. 2d 257 (Fla. 4th DCA 1980), aff'g 4 FPER ¶ 4027 (1977), 4 FPER ¶ 4220 (1978) and 4 FPER ¶ 4266 (1978).

The court affirmed, without opinion, PERC orders on election objections where PERC abandoned the Hollywood Ceramics doctrine on campaign statements, holding that sections 447.501(1) and (2), Florida Statutes, and the proviso in section 447.501(3), provide the touchstone for evaluating campaign statements. PERC was not required to conduct an evidentiary hearing on election objections when neither party requested it even though disputed facts were later discovered. PERC is not responsible for policing the truth or falsity of financial statements in the registration procedure. PERC's statutory mandate is to conduct a secret ballot election, but decisions as to whether to conduct a mail or on-site election is a matter for PERC's decision.

89. The Florida Bar v. Moses, 380 So. 2d 412 (Fla. 1980).

The supreme court held that representation of a party in a contested PERC unfair labor practice proceeding constituted the practice of law. The APA authorizes representation before PERC by non-lawyers, but PERC exercised its delegated authority improperly by permitting lay representation without setting standards which assure that such representatives are "qualified." Therefore, Moses' appearance in School Board of Escambia County, 350 So. 2d 819, was the unauthorized practice of law.

90. City of Winter Park v. PERC and LIUNA, Local 517, 383 So. 2d 653 (Fla. 5th DCA 1980), rev'g 4 FPER ¶ 4278 (1978), appeal dismissed, 386 So. 2d 638 (Fla. 1980).

The court reversed a PERC order finding an unfair labor practice and held that the city's legislative action resolving impasse applied to all items at impasse, including a two-year duration clause. Thus, the city was not required to re-enter negotiations after the union failed to ratify the tentative agreement including the legislative action.

The court rejected PERC's distinction between substantive terms and conditions of employment and others, such as preambles and duration clauses, where PERC considered the latter type to be unaffected by legislative action. Subsequent to this case, the legislature enacted Chapter 80-567, Laws of Florida, amending section 447.403, Florida Statutes.

91. School Board of Lee County v. PERC and IBPAT, District Council 66 and South Florida AFSCME, 382 So. 2d 1260 (Fla. 1st DCA 1980), rev'g 4 FPER ¶ 4151 (1978).

The court reversed a PERC order regarding confidential employees to the extent that it failed to designate personal secretaries to school principals as confidential since these employees were per se confidential under School Board of Palm Beach County, 374 So. 2d 527, but declined to extend this rule to include all secretaries to school managers. As to these, PERC is responsible to make factual determinations. The court remanded the case for clarification of the term "blue collar," noting that PERC can alter the terminology in the unit description since this is not a case in which the employer voluntarily granted recognition.

92. Butterworth v. PERC, 382 So. 2d 859 (Fla. 4th DCA 1980), denying review of Federation of Public Employees v. Sheriff of Broward County, 5 FPER ¶ 10385 (1979).

The court declined to review a non-final PERC order striking five affirmative defenses in an unfair labor practice case since the petitioner had not demonstrated that a review of the final order would not afford an adequate remedy.

93. School Board of Sarasota County v. PERC, 382 So. 2d 1361 (Fla. 2d DCA 1980), aff'g in part and rev'g in part 5 FPER ¶ 10149 (1979).

The court refused to overturn an election where the school board contended that the delay in issuance of the PERC order required an election in the last hectic week of the school year. The court cautioned PERC on delay in orders and reversed PERC's determination that the coordinator of evaluation services was not a managerial employee.

94. North Brevard County Hospital District v. PERC, 392 So. 2d 556 (Fla. 1st DCA 1980), rev'g LIUNA, Local 666 v. Jess Parrish Memorial Hospital, 4 FPER ¶ 4044 (1978).

The court set aside an election which the union won and reversed PERC's certification order (Certification 381). The union was not in compliance with the registration requirements of the statute and PERC's rule, citing Bay County, 365 So. 2d 767. The public interest requires unions to comply with registration requirements at the time petitions are filed and to maintain a current registration throughout proceedings for recognition. The court distinguished LIUNA, Local 666, 336 So. 2d 450, where a non-registered union was the intervenor. The court disagreed with PERC's rejection of the hospital's election objection against the union for filing a $3.5 million lawsuit against the hospital seven days before the election and telling employees that proceeds of the

suit would be divided among them. The court discussed the NLRB rules in Hollywood Ceramics, Shopping Kart, Santee River Wool, Westlock, and General Knit, and distinguished City of Punta Gorda, 358 So. 2d 81, holding that PERC must consider the nature of the misrepresentation, not just the timing thereof.

In a special concurrence to an order denying rehearing, Judge R. Smith pointed out the inconsistency in the majority holding in this case and LIUNA, Local 666, case no. 19, as to whether PERC should dismiss a petition when registration has lapsed or allow the union time to comply with registration requirements. The same union and same problem were involved in both cases. See also Jess Parrish, 397 So. 2d 989.

95. City of Orlando v. IAFF, Local 1365, 384 So. 2d 941 (Fla. 5th DCA 1980), aff'g 4 FPER ¶ 4214 (1978).

The court affirmed a PERC order finding an unfair labor practice where the city failed to resolve an impasse by legislative action with finality but instead first attempted further negotiations and then conditioned its legislative action upon union acceptance on a "take it or leave it" basis. The union, by participating in post-special master bargaining initially, waived performance by the city of its statutory duty to resolve an impasse, but the waiver ended when the union withdrew from negotiations and demanded legislative action. The city's failure to resolve the impasse with finality was not excused by the union's subsequent ratification of the contract. Judge Moore, dissenting, concluded that the union waived its right to complain by agreeing to a contract and accepting its benefits.

96. City of St. Petersburg v. PERC and St. Petersburg Association of Fire Fighters, Local 747, 388 So. 2d 1124 (Fla. 2d DCA 1980), aff'g 5 FPER ¶ 10381 (1979).

The court affirmed, without opinion, a PERC order concluding that vacation leave was within the meaning of wages, hours, terms and conditions of employment, and that the city committed a per se violation when it unilaterally changed its policy so that such leave could no longer be taken in one-hour increments.

97. IBPAT, Local 1010 v. Florida Fifth District Court of Appeal, 389 So. 2d 1111 (Fla. 1980), petition for writ of prohibition denied.

PERC had ordered a new ratification vote where the union had not provided adequate notice to bargaining unit members who were not union members. The union sought to overturn the Fifth DCA's denial of a stay pending appeal. See IBPAT, Local 1010, 401 So. 2d 824.

98. Manatee County v. PERC and Manatee County Municipal Employees, Local 1584, AFSCME, AFL-CIO, 387 So. 2d 446 (Fla. 1st DCA 1980), rev'g 4 FPER ¶ 4227 (1978).

A PERC order certifying Local 1584 was reversed and remanded. Contrary to the parties' stipulation to exclude CETA employees, PERC adopted the hearing officer's recommendation for their inclusion, denying the county's request for an evidentiary hearing on that issue.

The court found PERC's view that stipulations by the parties are no more than "statements of coincidence of opinion" was not consistent with previous pronouncements or was misapplied in this case. It is a fundamental rule of administrative law that agencies are required to make a determination after a hearing as a quasi-judicial function and cannot act solely on their own information.

Section 120.57(3), Florida Statutes, covers stipulations. Administrative agencies must consider due process when dealing with stipulations or agreements of adversarial parties. Evidence was insufficient to justify PERC's overriding of the parties' stipulation. The court disapproves of any rule of procedure which would permit the agency to pick and choose which stipulations it desires to honor in an after-the-fact fashion. The agency should consider stating in advance of hearing its position on stipulations or perhaps adopting a rule.

99. City of Ocoee v. Central Florida Professional Fire Fighters Association, Local 2057 and PERC, 389 So. 2d 296 (Fla. 5th DCA 1980), aff'g 4 FPER ¶ 4339 (1978) and rev'g 5 FPER ¶ 10048 (1979).

The court upheld PERC's finding that reserve fire fighters should be excluded from an appropriate unit of full-time fire fighters. The court reversed PERC's denial of the city's election objections. The union had not complied with the registration requirements in section 447.305, Florida Statutes (1977), at the time it submitted its petition. Amendments to the statute in 1979 were prospective in application. The Court denied the city's motion for attorney's fees and court costs, holding PERC's error was due to an erroneous interpretation of a statute which was understandable because of a lack of court precedent.

100. FOP, Miami Lodge 20 v. City of Miami, 384 So. 2d 726 (Fla. 3d DCA 1980).

The unions requested that the circuit court declare sections 447.301(2) and 447.309(5), Florida Statutes (1977) (the retirement exclusions) unconstitutional. The lower court decided it lacked jurisdiction and that unions were only entitled to relief by appeal of a declaratory statement on the issue which was pending before PERC. The

court reversed the circuit court's dismissal of the case as improper, holding that the lower court should have required the city to file an answer, and raise the pending PERC case as an affirmative defense of res judicata.

101. LIUNA, Local 517 v. Greater Orlando Aviation Authority, 385 So. 2d 716 (Fla. 5th DCA 1980).

The court reversed and remanded the circuit court's dismissal of the union's suit for a declaration of the Authority's authority to bargain collectively with the certified bargaining agent, in view of the provision creating the Authority, which limited compensation of Authority employees to the amount paid by the city to similar employees. The court held that declaration of the authority to bargain was a matter that was properly before the circuit court, particularly because the lawsuit questioned the constitutionality of the statute that created the Authority.

102. LIUNA, Local 1240 v. PERC, Case No. SS-427, 6 FPER ¶ 11266 (Fla. 1st DCA Sept. 12, 1980), aff'g 5 FPER ¶ 10287 (1979).

The court dismissed an interlocutory appeal of a PERC order which cancelled and rescheduled an evidentiary hearing because LIUNA failed to file a prehearing statement. The court's dismissal of the interlocutory appeal was without prejudice to raising the issue on appeal of PERC's final order.

103. Duval Teachers United v. Duval County School Board, 390 So. 2d 431 (Fla. 1st DCA 1980).

The court affirmed a circuit court's dismissal of a suit where the union sought a declaration that a collective bargaining agreement provided a certain hourly rate of pay for teachers who taught in an after-hours education program although the agreement was silent on the subject. The circuit court premised its dismissal upon a finding that no contractual provision expressly dealt with overtime or after school pay.

104. Town of Orange Park v. PERC and Orange Park Association of Fire Fighters, Local 2668, 391 So. 2d 693 (Fla. 1st DCA 1980), aff'g 6 FPER ¶ 11008 (1980).

The court affirmed a PERC order which dismissed election objections. Judge Booth, dissenting, thought the PERC decision, that two fire captains and a fire captain/assistant chief were not managerial employees, nullified the town's plan to decentralize management to avoid problems that arose under the former fire chief.

105. City of Ocala v. Marion County PBA, Inc., 392 So. 2d 26 (Fla. 1st DCA 1980), aff'g 5 FPER ¶ 10088 (1979).

The court affirmed a PERC order finding an unfair labor practice where the City failed to maintain the status quo by withholding merit wage increases during negotiations and declined to negotiate during the pendency of a decertification petition. While the merit pay increase system had not been incorporated in collective bargaining agreements, it had become an established term and condition of employment which the employees could reasonably expect to continue. The unilateral change by the city was a per se violation. The court recognized PERC's expertise and special competence in the area of labor problems and statutory interpretation of Chapter 447, Part II, Florida Statutes. The city was not prejudiced because two PERC commissioners acted as hearing officers in separate police and fire hearings, when the cases were consolidated at the commission level.

106. City of Miami v. PERC, 392 So. 2d 979 (Fla. 1st DCA 1981), rev'g 6 FPER ¶ 11026 (1980).

A PERC order denying a confidential designation for the city's sanitation inspector was reversed and remanded because it did not sufficiently explicate the basis or significance of Public Records Act exceptions in section 447.605(3), Florida Statutes, to meet APA standards.

107. City of Tallahassee v. PERC, 393 So. 2d 1147 (Fla. 1st DCA 1981), rev'g 5 FPER ¶ 10244 (1979), aff'd, 410 So. 2d 487 (Fla. 1981).

The district court held that portions of sections 447.301(2) and 447.309(5), Florida Statutes, were unconstitutional under Article I, Section 6, of the Florida Constitution. The court reasoned that these provisions abridged the constitutional right of public employees to bargain collectively because retirement is a mandatory subject of bargaining in the private sector and because there was no demonstrated compelling state interest to support the exclusion of retirement as a mandatory subject of bargaining.

The Florida Supreme Court affirmed the district court and rejected the argument that Article X, Section 14, of the Florida Constitution, requiring public retirement benefits to be funded on a sound actuarial basis, prohibits collective bargaining concerning retirement. The court noted that public employers are not required to agree to any retirement proposal that would render the funding of retirement benefits actuarially unsound.

108. Duval County School Board v. Duval Teachers United Local 3326, 393 So. 2d 1151 (Fla. 1st DCA 1981), aff'g 5 FPER ¶ 10353 (1979).

The court affirmed PERC's declaratory statement that section 447.401, Florida Statutes, permits the certified bargaining agent to file and process grievances in its own name. The court expressly did not rule on whether a union is the exclusive bargaining agent for all employees involved in grievance procedures.

109. Jess Parrish Memorial Hospital v. LIUNA, Local 666, 397 So. 2d 989, 7 FPER ¶ 12224 (Fla. 1st DCA 1981), aff'g 6 FPER ¶ 11007 (1979), cert. denied, 411 So. 2d 383 (Fla. 1981).

The court affirmed PERC's order holding that the hospital had unlawfully refused to bargain, upon request, during appeal of the certification order. However, since the court had earlier set aside the election because the union was not in compliance with registration requirements the case was remanded to PERC to modify sanctions against the hospital for its unfair labor practice violation. See North Brevard County Hospital District, 392 So. 2d 556 for earlier decision. Judge Booth, dissenting, thought union certification, under these circumstances, was void ab initio and that the better rule in such situations is an "at your peril" rule used by federal courts in NLRB cases.

110. City of St. Petersburg v. PERC and IBF&O, Local 1220, 398 So. 2d 980 (Fla. 2d DCA 1981), aff'g 6 FPER ¶ 11219 (1980).

The court affirmed a PERC order which required the city to cease and desist from failing to take a ratification vote on a contract that was agreed to by the negotiating parties. The court construed the order as not precluding the city's chief executive officer from making recommendations to the city as to the advisability of ratifying a contract which contained an apparent error. PERC's order implementing the court's decision is at IBF&O, Local 1220 v. City of St. Petersburg, 7 FPER ¶ 12269 (1981). See also IBF&O, Local 1220 v. City of St. Petersburg, 7 FPER ¶ 12318 (1981).

111. City of Crestview v. North Okaloosa County Fire Fighters Association, 399 So. 2d 378 (Fla. 1st DCA 1981), aff'g 6 FPER ¶ 11069 (1980).

The court affirmed a decision in which PERC concluded that the city had discriminatorily discharged a fire fighter who was actively involved in organizational efforts on behalf of the union. The court remanded the case for consideration of the employer's contention that the union waived any right to an attorney's fee award by its failure to file a timely proposal under Rule 38D-14.004(3).

112. Pensacola Junior College v. PERC and UFF, Local 1847, 400 So. 2d 59 (Fla. 1st DCA 1981), rev'g 6 FPER ¶ 11159 (1980).

The court reversed a PERC determination that the college registrar was not a managerial employee and certain college secretaries were not confidential employees. The court held that record evidence and the parties' stipulations supported such designations. The court rejected PERC's statutory interpretation that confidential duties must be current rather than prospective. The court held that School Board of Lee County, 382 So. 2d 1260, did not restore the three prong test but that the two prong test of School Board of Palm Beach County, 374 So. 2d 527, remained undisturbed.

113. School Board of Polk County v. PERC, 399 So. 2d 520 (Fla. 2d DCA 1981), rev'g 6 FPER ¶ 11189 (1980).

Applying NLRB precedent, the court reversed a PERC ruling that school bus garage employees could be added to an existing non-instructional bargaining unit through unit clarification procedures without an election. The case was remanded with directions to conduct a self-determination election. The PERC order on remand can be found in Polk County Non-Instructional Employees Union, Local 1227 v. School Board of Polk County, 7 FPER ¶ 12348 (1981).

114. IBPAT, Local 1010 v. Anderson, 401 So. 2d 824 (Fla. 5th DCA 1981), aff'g 6 FPER ¶ 11114 (1980), rev. denied, 411 So. 2d 382 (Fla. 1980).

The court affirmed a decision in which PERC concluded that the union unlawfully interfered with the statutory rights of bargaining unit members and breached its duty of fair representation by inadequately notifying employees of a contract ratification vote. In a lengthy opinion, the court noted the remedial nature of PERA and further noted that where a Florida statute is patterned after a federal law on the same subject, it will take the same construction in Florida courts as its prototype has been given in the federal courts. The court affirmed PERC's standard for awarding attorney's fees when a respondent "knew or should have known" that its conduct constituted a violation of law.

115. City of Lake Wales v. PERC, 402 So. 2d 1224 (Fla. 2d DCA 1981), aff'g 6 FPER ¶ 11187 (1980).

The court affirmed PERC's decision not to designate the city's shift command sergeants and detective sergeants as managerial or confidential employees. Citing sections 120.68(7) and (10), Florida Statutes, the court stated that PERC's decision was supported by competent substantial evidence and that PERC correctly applied relevant statutory criteria to the facts.

116. Pinellas Career Services Association v. PERC, 403 So. 2d 528 (Fla. 1st DCA 1981), aff'g In re School Board of Pinellas County, 7 FPER ¶ 12005 (1980).

The court affirmed PERC's designation of secretaries to school principals as confidential employees, citing, without discussion, the court's prior decisions in School Board of Palm Beach County and School Board of Lee County.

117. St. Petersburg Junior College Faculty Association v. St. Petersburg Junior College Board of Trustees, 405 So. 2d 1009 (Fla. 1st DCA 1981), aff'g 7 FPER ¶ 12096 (1981).

The court upheld PERC's reliance on NLRB precedent that holds that an employer is not required to subsidize its opponent by paying the salary of a union's witnesses in a representation case. The union unsuccessfully asserted that employees testifying on its behalf were unlawfully charged a day of annual leave while employees testifying on the employer's behalf were not similarly charged.

118. City of Clearwater v. Lewis, 404 So. 2d 1156 (Fla. 2d DCA 1981), aff'g 6 FPER ¶ 11222 (1980).

The court deferred to PERC's policy decision that a public employee is entitled to union representation at a meeting in which the employee is given the option to be fired or to resign. PERC applied NLRB v. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), holding that since the option given the employee was a choice reasonably leading to significant adverse impact upon his job interests and employment record, such as his right to file a grievance, refusal to allow consultation with a union representative after the employee had made a request for such representation was unlawful. The court affirmed PERC's overruling of the hearing officer's finding of fact on the issue of waiver, noting that the waiver question constitutes the type of "ultimate fact" for which PERC has special responsibility and greater discretion to overrule a hearing officer.

119. City of Fort Lauderdale v. PERC, Case No. 81-342, 8 FPER ¶ 13006 (1981), dismissing appeal from 7 FPER ¶ 12062 (1981).

The court granted a motion to dismiss the appeal as untimely. The court held that the appeal time ran from the date of the PERC order denying reconsideration of In re City of Fort Lauderdale, 6 FPER ¶ 11278 (1980). Citing St. Moritz Hotel v. Daughtry, 249 So. 2d 27 (Fla. 1971), the court held that the erratum amendment to the order denying reconsideration was immaterial to any rights of the appellant and, therefore, did not extend the time within which an appeal must be taken.

120. City of Fort Lauderdale v. Broward County Local 532, AFSCME, Case No. 81-397, 8 FPER ¶ 13008 (Fla. 4th DCA 1981), dismissing appeal from 7 FPER ¶ 12125 (1981).

The court granted PERC's suggestion of mootness and dismissed the appeal. The city contended that PERC was obligated to conduct a formal hearing to determine whether to suspend or revoke the union's certification due to registration defects. The union's registration lapsed during the pendency of the appeal, thus rendering moot the effect of any registration defects upon the union's right to represent bargaining unit employees.

121. Town of Pembroke Park v. Florida State Lodge, FOP, Case No. AC-313, 8 FPER ¶ 13007 (Fla. 1st DCA 1981), dismissing appeal from 7 FPER ¶ 12160 (1981).

The court granted PERC's motion to dismiss the appeal for lack of prosecution because the town failed to file its initial brief in a timely fashion. The court had previously granted enforcement of a part of the order under review and had stayed the effect of another portion of the order under review. The court denied the union's motion for contempt without prejudice to the right to seek relief in circuit court for the town's continued violation of the court's prior enforcement order. See Florida State Lodge, FOP v. Town of Pembroke Park, 7 FPER ¶ 12252 (1981) (vacating stay).

122. City of Winter Park v. LIUNA, Local 517, 409 So. 2d 45 (Fla. 5th DCA 1981), aff'g 7 FPER ¶ 12140 (1981), rev. denied, 417 So. 2d 328 (Fla. 1982).

The court affirmed a decision in which PERC concluded that the city unlawfully refused to bargain. The court rejected the city's contention that the unfair labor practice charge was time-barred because, although a prior refusal to bargain occurred outside the six-month statute of limitations, a subsequent refusal occurred within the statutory time period. Citing City of Ocala, 392 So. 2d 26, the court held that an employer may not refuse to bargain with a certified bargaining agent because of its good faith doubt as to the agent's continuing majority status.

123. Paschal v. PERC, 666 F. 2d 1381 (11th Cir. 1982), cert. denied, 457 U.S. 1109, 102 S. Ct. 2911 (1982).

The federal appellate court affirmed a jury verdict against the plaintiff's claims that he was discharged in violation of the United States Constitution. Paschal contended that his forced resignation violated the First Amendment because his protected opposition to certain employment policies was the actual reason for his termination. The jury found that conduct protected by the First Amendment was not a substantial or motivating factor in Paschal's termination. Claims against PERC were dismissed before trial.

124. Military Park Fire Control Tax District No. 4 v. DeMarois, 407 So. 2d 1020 (Fla. 4th DCA 1981).

During the pendency of an appeal, DeMarois filed a motion to expedite the appeal pursuant to section 447.504(5), Florida Statutes, which provides that appeals from PERC decisions "shall take precedence over all other civil matters except prior matters of the same character." The court declared this provision unconstitutional, reasoning that a rule of priority in the court's processing of its cases is a matter of procedure, and matters of practice and procedure are solely within the province of the Florida Supreme Court.

125. Military Park Fire Control Tax District No. 4 v. DeMarois, 411 So. 2d 944 (Fla. 4th DCA 1982), aff'g 7 FPER ¶ 12065 (1981).

The court affirmed a decision in which PERC concluded that the district had unlawfully terminated two fire fighters because of their organizational activities on behalf of the union. PERC further determined that the district unlawfully interrogated employees regarding their union sentiments and threatened employees who were engaged in protected concerted activity on behalf of the union. The court affirmed PERC's award of attorney's fees, awarded appellate attorney's fees and costs, and remanded the case to PERC for determination of the amount of fees and costs.

126. Rawlins v. School Board of Palm Beach County, Case No. 81-8440, 8 FPER ¶ 13244 (S.D. Fla. 1982).

In the United States District Court for the Southern District of Florida, a class action suit was filed against PERC, the school board, and the school superintendent on behalf of all personal secretaries to school principals. The court granted PERC's motion to dismiss because suing PERC under 42 U.S.C. § 1983 was tantamount to suing the State of Florida, and thus immunity from such suits attached to PERC under the Eleventh Amendment to the United States Constitution.

127. Metropolitan Dade County v. Government Supervisors Association, 413 So. 2d 893 (Fla. 3d DCA 1982), denying review of 7 FPER ¶ 12460 (1981).

The county sought pre-election review of the method by which PERC determined that the statutory thirty percent showing of interest requirement had been met. PERC was granted status as a party respondent in the appellate proceeding. The court initially issued a stay of the representation election, based upon the county's argument that it would be irreparably harmed by proceeding to an election under the circumstances. Following PERC's argument that a delay in the election would diminish employee rights and that the county was adequately protected by its right to appeal the final certification order, the court vacated the stay of the election and dismissed the appeal from non-final administrative action.

128. City of Orlando v. Orlando Professional Fire Fighters Local 1365, 412 So. 2d 406 (Fla. 5th DCA 1982), denying review of 7 FPER ¶ 12372 (1981).

This appeal was initially filed prior to a representation election. In the election, employees voted in favor of "no organization," and PERC subsequently dismissed the representation petition. PERC then filed a motion to dismiss this appeal. In a lengthy order, the court concluded that an order designating certain employees as managerial or confidential employees is not "final agency action" for which an appeal will lie and granted the motion to dismiss. The court reasoned that because employees defeated the representation bid by the union, the city was not aggrieved by PERC's non-final order on managerial and confidential designations. The court stated that if PERC relies on its managerial or confidential determinations in any future representation proceedings, the city may seek review at that time.

129. City of Lake Worth v. Palm Beach County PBA, Inc., 413 So. 2d 465 (Fla. 4th DCA 1982), aff'g 7 FPER ¶ 12069 (1981).

The court affirmed a decision in which PERC determined that the city violated its duty to bargain in good faith by refusing, at the conclusion of statutory impasse resolution proceedings, to reduce the complete agreement to writing, to execute it, and to provide an opportunity for union ratification. PERC further determined that the city's insistence upon maintaining the terms of the existing agreement from the inception of negotiations through impasse resolution, coupled with additional evidence of unwillingness to enter into a successor agreement, constituted a totality of circumstances demonstrating lack of good faith in bargaining and interference with the protected rights of employees. The court also affirmed PERC's determination that the union's refusal to commence negotiations for the next year until the complete agreement was finalized was not an unfair labor practice. The court affirmed PERC's award of attorney's fees, citing IBPAT, Local 1010, 401 So. 2d 824.

130. Brevard County PBA, Inc. v. Brevard County Sheriff's Department, 416 So. 2d 20 (Fla. 1st DCA 1982), aff'g 7 FPER ¶ 12343 (1981).

The court affirmed a decision in which PERC applied the settled legal conclusion that, absent special legislation, deputy sheriffs are not "employees" within the meaning of Chapter 447, Part II, Florida Statutes. The union contended that the decision violated the Florida Constitution and the equal protection clause of the United States Constitution. The court rejected the argument, stating that it could not overrule the Florida Supreme Court's determination in Murphy v. Mack, 341 So. 2d 1008, that deputies are "officers," not public employees.

131. Heinrich v. Powers, No. 82-1294 (Fla. 2d DCA July 19, 1982) (unpublished order), dismissing appeal from Hillsborough County PBA, Inc. v. Hillsborough County Board of Criminal Justice, 8 FPER ¶ 13051 (1981).

The court dismissed an appeal from a decision in which PERC defined a bargaining unit of correctional officers employed by the Hillsborough County Board of Criminal Justice. PERC had dismissed the representation petition after employees voted in favor of "no organization." In this appeal, the county sheriff sought review of the bargaining unit determination despite the fact that the underlying representation case had already been dismissed by PERC.

132. UFF, Local 1847 v. Board of Regents, 417 So. 2d 1055 (Fla. 1st DCA 1982), rev'g 7 FPER ¶ 12409 (1981).

This appeal was taken from a PERC order vacating two certifications for bargaining units which included graduate assistants. The Commission order was entered pursuant to section 447.203(3)(i), Florida Statutes, a recent legislative amendment exempting graduate assistants from the statutory definition of "public employee." The court determined that the statutory amendment was unconstitutional, reversed PERC's order under review, and ordered PERC to reinstate the certifications at issue.

In a lengthy opinion, the court discussed the prior history of attempts to organize graduate assistants for purposes of collective bargaining and also discussed in detail the legislative history of the statutory amendment at issue. The court stated that the right to bargain collectively provided for in Article I, Section 6, of the Florida Constitution can be abridged only "where there is a strong showing of a rational basis for abridgment which is justified by a compelling state interest," citing City of Tallahassee, 393 So. 2d 1147.

The court discussed the situation of graduate assistants as both students and employees and concluded: "The primary beneficiaries of the services performed by the graduate assistants are the faculty members whom they assist, and the university itself, while the graduate assistants are beneficiaries of a paycheck. This looks like employment." The Board of Regents argued that collective bargaining for graduate assistants was unwise because it would interfere with quality education, costs would be increased, and the employment of graduate assistants is of brief duration. The court rejected these asserted state interests as not sufficiently compelling to justify denying collective bargaining rights to graduate assistants.

The court expressly declined to reach the question of whether other groups listed in section 447.203(3)(i), Florida Statutes, may be constitutionally excluded from the right to bargain collectively.

133. City of Umatilla v. PERC, 422 So. 2d 905 (Fla. 5th DCA 1982), rev'g Volusia County PBA, Inc. v. City of Umatilla, 7 FPER ¶ 12346 (1981), cert. denied, 430 So. 2d 452 (Fla. 1983).

The court reversed a decision in which PERC concluded that the city had committed an unfair labor practice by discriminatorily terminating one of the city's police officers. In its order, PERC rejected the hearing officer's ultimate findings of fact regarding the motivation for the discharge after determining that the findings were not supported by competent substantial evidence. The court characterized the principal dispute as whether the officer was terminated because he was insubordinate or because of his union activities. Reasoning that the question of motive and intent is not unusual, and that the findings of the trier of fact cannot be overturned if there is competent substantial evidence to support them, the court concluded that PERC committed reversible error when it rejected the hearing officer's findings.

134. School Board of Dade County v. Dade Teachers Association, 421 So. 2d 645 (Fla. 3d DCA 1982), aff'g 7 FPER ¶ 12398 (1981).

The court affirmed a decision in which PERC found that the United Teachers of Dade (UTD), the incumbent union, and the School Board committed unfair labor practices against the Dade Teachers Association (DTA). The dispute arose when the DTA, seeking to oust the incumbent union as the certified bargaining agent, began soliciting support in school parking lots and posting literature on school bulletin boards. UTD representatives removed DTA literature from the school bulletin boards, and the school board prohibited DTA teachers from soliciting support in parking lots other than at their assigned schools.

The court noted that PERC is entitled to considerable deference because of its expertise in dealing with labor problems. The court approved PERC's policy that no-access and no-solicitation rules which discriminate against one union in favor of another are presumptively invalid. The burden was thus shifted to the school board to demonstrate that the restrictions imposed upon employee organization activities in this case were justified.

The school board contended that a restrictive access policy was justified by the "extraordinary circumstance" of the possibility of increased criminal activity on school campuses from outsiders entering school property. The court found that there was nothing in the record to support this bare allegation or to link this allegation to the activities at issue. Regarding the bulletin board question, the court stated that such a restriction "constitutes censorship in its most direct form." The court affirmed PERC in all respects, with Judge Barkdull concurring on the bulletin board issue but dissenting on the parking lot issue.

135. Galbreath v. School Board of Broward County, 424 So. 2d 837 (Fla. 4th DCA 1983), aff'g 7 FPER ¶¶ 12287 and 12288 (1981), aff'd, 446 So. 2d 1045 (Fla. 1984), cert. denied, 469 So. 2d 801 (1984).

The court affirmed two summary dismissals of unfair labor practice charges filed against the school board and the certified bargaining agent by Galbreath, a public school teacher. Galbreath filed a grievance which the certified bargaining agent determined was without merit. The union, therefore, refused to process it through arbitration in accordance with a contractual provision which gave the union control over the arbitration step of the grievance procedure. The court stated the question presented in the case as follows:

> Where the certified bargaining agent retains contractual control over the arbitral step of the grievance procedure and it declines to process a grievance to arbitration because it believes the grievance to be without merit, is the public employer still obligated to arbitrate the dispute if the grievant submits it to arbitration because the certified bargaining agent has declined to "represent" the grievant?

The court answered this question in the negative. The court adopted the reasoning of PERC in Heath v. School Board of Orange County, 5 FPER ¶ 10074 (1979) , and In re Leon County School Board, 7 FPER ¶ 12286 (1981), reproducing the latter opinion as an appendix to its published appellate decision. The court deemed the question presented by this case to be one of great public importance, and certified the question to the Florida Supreme Court, which affirmed.

136. Palm Beach County v. CWA, 422 So. 2d 857 (Fla. 4th DCA 1982), aff'g 7 FPER ¶ 12239 (1981).

The court affirmed a decision in which PERC certified the union as the exclusive collective bargaining representative. The county sought an order from the court vacating the certification, directing PERC to hold an evidentiary hearing, and allowing the county discovery rights concerning the conduct of the representation election. The county also sought an award of attorney's fees. The court temporarily relinquished jurisdiction in order to allow PERC the opportunity to resolve an alleged discrepancy of seventy-five votes between the number of ballots counted and the number of persons voting in the election. After PERC satisfactorily resolved the alleged discrepancy, the court struck the county's motion for attorney's fees and affirmed the order on appeal.

137. Leapley v. Board of Regents, 423 So. 2d 431 (Fla. 1st DCA 1982), rev'g 8 FPER ¶ 13034 (1981), motion for reconsideration denied, 8 FPER ¶ 13096 (1982).

The court reversed a decision in which PERC dismissed an unfair labor practice charge filed by a university employee. The case arose when Leapley filed a grievance which the board refused to process because of its position that the employee was not included within the bargaining unit at the university.

The court viewed the question of whether the employee was a member of the bargaining unit as essentially a factual determination. Reasoning that this question could be resolved by ordinary methods of proof, the court concluded that PERC incorrectly rejected the findings of the hearing officer on the issue. The court determined that PERC acted incorrectly when it viewed this essentially factual matter as a conclusion of law and, accordingly, reversed PERC's order and remanded with directions to adopt the hearing officer's recommended order.

138. Hillsborough CTA v. School Board of Hillsborough County, 423 So. 2d 969 (Fla. 1st DCA 1982), aff'g 8 FPER ¶ 13074 (1982).

The court affirmed a decision in which PERC summarily dismissed an unfair labor practice charge which alleged that the school board had refused to bargain concerning class size and minimum staffing level proposals. The court expressly agreed with PERC's view that the setting of class size and minimum staffing levels are "policy decisions" which are not mandatory subjects of bargaining and further stated that the court's decision did not preclude mandatory bargaining as to the demonstrated impact of such policy decisions on the wages, hours, and terms and conditions of employment of bargaining unit members.

139. State ex rel. Healy v. Town of Pembroke Park, Case No. 81-237782CZ (Fla. 17th Cir. Ct. Nov. 12, 1982), enforcing 7 FPER ¶ 12160 (1981), aff'd, 446 So. 2d 198 (Fla. 4th DCA 1984).

The circuit court enforced a PERC order finding that the town committed an unfair labor practice by subcontracting the town's police service to the county sheriff in order to avoid bargaining with the police officers' certified representative and to retaliate against the police officers for filing grievances.

The court ordered the town to unconditionally offer reinstatement to its police officers within 120 days of the date of the order, to make them whole for any loss of earnings, to bargain with the certified agent, and to pay costs and attorney's fees.

When town failed to comply with circuit court order enforcing PERC's final order of reinstatement, PERC filed a motion to hold the town in contempt. The circuit court denied the motion and PERC appealed. The Fourth DCA reversed the circuit court regarding contempt and remanded to the circuit court to conduct an evidentiary hearing on town's compliance with PERC's order of reinstatement.

140. Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, 425 So. 2d 133 (Fla. 1st DCA 1982), aff'g 7 FPER ¶ 12300 (1981), aff'd in part and rev'd in part, 475 So. 2d 1221 (Fla. 1985).

A majority of the district court's panel agreed with PERC's determination that it is improper for a public employer to insist to the point of impasse upon a management rights clause which would deprive the union of the right to impact bargaining upon any changes in wages, hours, or terms and conditions of employment not covered by the agreement.

The court distinguished private sector cases by noting that section 447.403, Florida Statutes, allows a public employer to impose a mandatory subject of bargaining by legislative body action, that Florida public employees do not have the right to strike, and that section 447.301, Florida Statutes, requires a relatively broad scope of negotiations to counterbalance the absence of the right to strike.

The Florida Supreme Court agreed with the district court and PERC that the board of trustees had failed to bargain in good faith by insisting to impasse upon, and ultimately imposing through legislative body impasse resolution action, a contractual provision eliminating the union's right to impact bargaining. The court, though, disapproved of a portion of the remedy ordered by PERC. PERC had directed the board to sign a collective bargaining agreement that contained all items tentatively agreed to by the parties and all impasse items resolved by legislative body action except for the offensive contractual provision. The court rejected this remedy because section 447.203(14), Florida Statutes, bars PERC from imposing an agreement on the parties.

141. Hotel, Motel, Restaurant Employees and Bartenders Union, Local 737 v. Escambia County School Board, 426 So. 2d 1017 (Fla. 1st DCA 1983), aff'g 7 FPER ¶ 12395 (1981), criticized in 522 So. 2d 358 (Fla. 1988).

The court affirmed PERC's conclusion that when provisions in a local civil service act conflict with those in Chapter 447, Part II, Florida Statutes, the latter provisions prevail. Therefore, a local civil service act could not impede a public employer from

implementing a collective bargaining agreement. The court held that section 447.309(3), Florida Statutes, when read in pari materia with section 447.601, Florida Statutes, contemplates conflicts between collective bargaining agreements and laws or regulations other than laws or regulations concerning civil service. A contrary construction would raise serious constitutional doubts.

The court also affirmed PERC's determination that no unfair labor practice had occurred as a result of the employer's refusal to implement the ratified agreement because of an outstanding circuit court injunction.

142. Collier County Board of County Commissioners v. PERC, 427 So. 2d 739 (Fla. 1st DCA 1983), aff'g 8 FPER ¶ 13145 (1982).

The court affirmed PERC's definition of a bargaining unit comprised of manual, semi-skilled, and skilled county employees.

143. Southeast Volusia Hospital District v. National Union of Hospital and Health Care Employees, 429 So. 2d 1232 (Fla. 5th DCA 1983), rev'g 8 FPER ¶ 13161 (1982), rev. denied, 452 So. 2d 568 (Fla. 1984).

The court reversed a PERC order which interpreted section 447.307, Florida Statutes, as permitting simultaneous voting on the issues of whether professionals and nonprofessionals desired to be included in one bargaining unit and whether the employees wanted to be represented by the union. Stating that "common sense" supported the hospital's position, the court held that section 447.307 mandates an election on union representation only after the unit is established by the self-determination election. Consequently, the court ordered PERC to conduct a new representation election in each bargaining unit as a result of the employees' earlier selection of separate bargaining units.

The court rejected PERC's assertion that the hospital waived any objection to the form of the ballot by not objecting prior to the election, because PERC had not dismissed the post-election objection on the grounds of waiver.

144. AFSCME, Local 1363 v. PERC, 430 So. 2d 481 (Fla. 1st DCA 1983), aff'g 8 FPER ¶ 13278 (1982).

The court affirmed PERC's declaratory statement which held that the parties to a collective bargaining agreement may agree on a provision which excludes disputes concerning discipline and discharge from the contractual grievance procedure, particularly when the excluded disputes may be resolved through a civil service system.

145. School Board of Clay County v. PERC, 431 So. 2d 992 (Fla. 1st DCA 1983), aff'g 8 FPER ¶ 13365 (1982).

The court affirmed PERC's decision finding that the public employer committed an unfair labor practice by prohibiting teachers from wearing certain tee shirts. The tee shirts bore the inscription "TEACHERS ARE PEOPLE TOO! CCEA/FTP-NEA," surrounding a cartoon representation of seven adults, one child and a dot. Rejecting the argument that sections 447.509(1)(c) and 447.501(2)(f), Florida Statutes, authorized such a ban, PERC reaffirmed earlier decisions which held that these provisions were intended to prohibit teachers from affirmatively instigating or advocating support among students or organizational activity.

The court granted the union's motion for appellate attorney's fees.

146. Kennedy v. Orange County Board of County Commissioners, 431 So. 2d 1006 (Fla. 5th DCA 1983), aff'g 8 FPER ¶ 13313 (1982).

The court affirmed the dismissal of an unfair labor practice charge which alleged that the employer had denied an employee a promotion because he had reported safety violations, and that the employer had refused to discuss the employee's grievance in good faith.

147. City of Hollywood v. PERC, 432 So. 2d 79 (Fla. 4th DCA 1983), dismissing appeal from 8 FPER ¶ 13324 (1982).

The court dismissed an appeal of a PERC order as untimely because the motion for reconsideration, filed pursuant to a PERC order extending the time for filing the motion, did not toll rendition of the final PERC order. The court ruled that, like circuit courts, PERC had no authority to suspend rendition of its order beyond the time allowed for filing a motion for reconsideration in Florida Administrative Code Rule 38D-15.05, as it existed at that time. Subsequently, PERC amended the rule.

The court held that sections 120.53(1)(b) and (c), and 447.207(1), Florida Statutes, granted PERC the requisite authority to promulgate a rule allowing for motions for reconsideration which, when timely filed, suspend rendition of a final order for purposes of filing a notice of appeal.

148. AFSCME, Local 1907 v. City of Miami and FOP, Miami Lodge 20 v. City of Miami, 9 FPER ¶ 14170 (Fla. 1st DCA 1983), denying review of 8 FPER ¶¶ 13371 and 13397 (1982).

The court treated a notice of appeal seeking review of a PERC order deferring an unfair labor practice charge to arbitration as a petition for common law writ of certiorari.

The court denied the unions' consolidated petitions after finding that PERC did not depart from the essential requirements of law or that review of final agency action would not provide an adequate remedy.

149. Kennedy v. Orange County Board of County Commissioners, 452 So. 2d 519 (Fla. 1984).

The district court denied PERC's request to be designated a party appellee because the Commission was the forum in the underlying case from which the appeal was taken.

The Florida Supreme Court quashed the district court's order, holding that PERC "is a proper party to review proceedings from its own orders." It reasoned that, in light of PERC's statutory authority to seek enforcement of its orders, and the statutory requirement that an appellate court must consolidate any enforcement action and appellate proceeding involving the same PERC order, "it is more reasonable to grant PERC party status in review proceedings directly than to require PERC to acquire such status indirectly by bringing an enforcement action every time PERC believes the public interest requires its participation." The court, however, went on to state that PERC should "restrain its active participation in review proceedings to those cases where it has a direct interest or where the order under review has resolved a public labor law issue that has an impact upon other public employees, public employers and tax-payers."

150. City of Orlando v. PERC, 435 So. 2d 275 (Fla. 5th DCA 1983), rev'g 8 FPER ¶ 13045 (1981), rev. denied, 443 So. 2d 980 (Fla. 1983).

The court reversed PERC's determination that the employer unlawfully refused to bargain over promotion criteria and procedures for the position of lieutenant, which was not in the bargaining unit represented by the certified bargaining agent. The court held that promotion procedures and criteria for a position outside of the bargaining unit do not constitute the wages, hours or terms and conditions of employment of the employees within the bargaining unit because "promotion itself is speculative and uncertain."

151. School Board of Escambia County v. Taylor, No. 78-3006 (Fla. 1st Cir. Ct. May 9, 1983).

The court granted the union's motion to intervene and motion to dissolve a previously granted injunction. The injunction had prevented the implementation of a collective bargaining agreement in which certain provisions conflicted with a local civil service statute. The court relied upon the First District Court of Appeal's decision in Escambia County School Board, 426 So. 2d 1017.

152. National Union of Hospital and Health Care Employees v. Southeast Volusia Hospital District, 436 So. 2d 294 (Fla. 1st DCA 1983), aff'g 8 FPER ¶ 13419 (1982).

The court affirmed PERC's award of attorney's fees and litigation costs against the charging party. It expressly approved the standard employed by PERC that such an award may be made when the charge is frivolous, groundless or unreasonable, which is the same standard used to determine whether an attorney's fee award should be made to a prevailing defendant in a federal Title VII civil rights case.

153. Ocean City-Wright Fire Control District v. Ocean City-Wright Fire Fighters Association, 440 So. 2d 413 (Fla. 1st DCA 1983), aff'g 9 FPER ¶ 14033 (1982).

The court upheld a PERC determination to include fire captains and fire inspectors in a rank-and-file bargaining unit where the facts established a community of interest supporting such inclusions. In affirming PERC, the court indicated that it would "defer to PERC's expertise where, as here, competent and substantial evidence for the decision exists in the record."

The court also upheld PERC's refusal to consider the employer's post-election petition. Since the petition "did nothing more than protest the inclusion of captains in the bargaining unit" and did not relate to the conduct of the election or conduct affecting the election results, "substantive consideration of the post-election petition [by PERC] would serve no purpose."

154. City of St. Augustine v. Professional Fire Fighters of St. Augustine, Local 2282, 440 So. 2d 416 (Fla. 5th DCA 1983), rev'g 8 FPER ¶ 13349 (1982), cert. denied, 450 So. 2d 488 (Fla. 1984).

The court reversed a PERC determination that the city's fire captains, who were second in command in the fire department, were not managerial employees. The court held that even though these captains were fire suppression shift commanders, their duties as the first step in grievance processing, their ability to suspend subordinates for disciplinary reasons and to make hiring recommendations, and the fact that they had historically been considered by the employer as managerial, warranted a managerial designation.

155. FUSA, FTP-NEA v. Hillsborough Community College, 440 So. 2d 593 (Fla. 1st DCA 1983), rev'g 9 FPER ¶ 14092 (1983), appeal dismissed, 447 So. 2d 886 (Fla. 1984).

The court reversed a PERC order dismissing an unfair labor practice charge against the employer. The hearing officer had found that the employer had discriminated against two of its employees for pursuing grievances. PERC rejected this finding as not supported by competent substantial evidence and impermissibly substituted its own findings of fact for those of the hearing officer. The court also concluded that PERC's "contention that the entire burden remains upon employees to show that, but for the protected activity, they would not have been fired (including negation of other asserted grounds) is simply untenable."

156. City of Orlando v. Orlando Professional Fire Fighters, Local 1365, 442 So. 2d 238 (Fla. 5th DCA 1983), rev'g 9 FPER ¶ 14076 (1983), rev. denied, 450 So. 2d 487 (Fla. 1984).

The court reversed a PERC determination that the city had committed an unfair labor practice by failing to bargain with the certified bargaining agent over standards for promotion of unit members to fire captain, a position outside the bargaining unit. The court held that promotional procedures and criteria for a position outside the bargaining unit are not required subjects of bargaining.

157. State Department of Administration v. PERC and Florida Public Employees Council 79, AFSCME, 443 So. 2d 258 (Fla. 1st DCA 1983), aff'g 9 FPER ¶ 14099 (1983).

The court affirmed a PERC order which denied a request that Division of Administrative Hearings hearing officers and their secretaries be designated, respectively, as managerial employees and confidential employees and that certain other secretarial positions be included in the defined unit notwithstanding the employer's contention that they should be excluded on the basis of an alleged conflict of interest with other unit members. Noting that a managerial designation effectively results in the deprivation of the right to collectively bargain guaranteed by Article I, Section 6, Florida Constitution, the court held that the provisions of section 447.203, Florida Statutes, establishing criteria for such designations, must be narrowly construed. The court stated that in view of this required narrow construction, the deference due PERC determinations, and the competent substantial evidence supporting the order under review, the order should not be disturbed.

158. DaCosta v. PERC, 443 So. 2d 1036 (Fla. 1st DCA 1983), rev'g 8 FPER ¶ 13048 (1981), dismissed, 450 So. 2d 487 (Fla. 1984).

The court reversed a PERC order dismissing an unfair labor practice charge filed against an employee organization alleged to have harassed a nonunion bargaining unit member by posting, within six months of the filing of the charge, lists of the names of all non-union bargaining unit members, including the charging party. After the non-membership lists were posted, the charging party received late-night anonymous phone calls and verbal abuse from his fellow employees. PERC, adopting the hearing officer's findings of fact in toto, had agreed with the hearing officer's conclusion that the evidence failed to establish any threat or intimidation against the charging party within the six-month limitations period for which the organization could be held responsible. Accordingly, it dismissed the charge. The court, in reversing PERC, held that PERC had erred in not fully considering events outside the six-month limitations period as evidence to determine whether the posting and subsequent events, which occurred within the six-month period, constituted unfair labor practices for which the organization could be held liable.

With respect to the organization's liability for the abuse the charging party suffered at the hands of his co-workers, the court further ruled that the organization should be held responsible for the "reasonably foreseeable consequence" of its conduct. The cause was remanded to PERC for further proceedings.

159. Dade County PBA, Inc. v. City of Homestead, 444 So. 2d 465 (Fla. 3d DCA 1984), rev'g 7 FPER ¶ 12347 (1981), rev'd, 467 So. 2d 987 (Fla. 1985).

The district court reversed a PERC order ruling that the Dade County PBA, through the actions of its Homestead membership representative, had violated the strike prohibition provisions of Chapter 447, Part II, Florida Statutes, notwithstanding the efforts of other PBA representatives to forestall any strike activity. In so ruling, PERC had rejected the determination made by the hearing officer that, for purposes of ascertaining the PBA's liability for the unlawful strike activities of its Homestead membership representative, such representative was not an "agent" of the PBA within the meaning of the strike prohibition provisions of Chapter 447, Part II. The court concluded that this action on the part of PERC constituted an impermissible rejection of the hearing officer's findings of fact and, accordingly, reversed and remanded with directions that PERC adopt the hearing officer's recommendations. However, by separate order, the court certified the following question to the Florida Supreme Court as one of great public importance: Whether PERC may overturn a hearing officer's ultimate determination of agency in light of what it perceives to be the applicable law and relevant policy considerations?

The Florida Supreme Court reversed, holding that PERC lawfully rejected a hearing officer's finding on the issue of agency, where the rejection was based on PERC's view that the hearing officer "applied the wrong standard of proof of agency to the facts." The court reasoned that "how the law of agency should be applied is an interpretation of law and policy and not a determination of fact." It therefore reinstated PERC's order which had found the Dade County PBA liable for the strike activities of one of its stewards, had imposed a monetary penalty against the PBA, and had assessed reasonable attorney's fees and litigation costs.

160. City of Tallahassee v. Leon County PBA, Inc., 445 So. 2d 604 (Fla. 1st DCA 1984), aff'g 8 FPER ¶ 13400 (1982).

The court affirmed a PERC order finding that the city had committed an unfair labor practice by unilaterally discontinuing its past practice of paying 100% of union-represented city employees' health insurance premiums without negotiating with the union and by sending notice of the change directly to these affected employees, and awarding attorney's fees and costs to the union. In finding that an unfair labor practice had been committed, PERC had rejected the city's argument that the union had waived its right to bargain over the charge.

In a consolidated case involving the same parties the court affirmed a Commission order ruling that the union had not committed an unfair labor practice as a result of its delay in responding to the city's request that the union submit bargaining proposals so that negotiations could commence on those subjects covered by such proposals.

161. Hillsborough County Board of County Commissioners v. PERC, 447 So. 2d 1371 (Fla. 1st DCA 1983).

The court reversed a PERC certification order because of the employee organization's failure to fulfill the registration requirements of section 447.305, Florida Statutes. Prior to the issuance of PERC order under review, the employer had filed a motion seeking the dismissal of the employee organization's representation-certification petition on the ground that the organization was improperly registered due to its alleged failure, in its registration materials, to disclose its purported affiliation with another employee organization. PERC, in Hillsborough County Government Employees Association, Inc. v. Hillsborough County Board of County Commissioners, 7 FPER ¶ 12399 (1981), had denied the motion, declaring that questions regarding the validity of a current registration license were not appropriately raised in a representation-certification proceeding. The court, though, held that a public employer may challenge the validity of a petitioning employee organization's registration in a representation-certification proceeding and that therefore PERC had erred in refusing to consider the employer's motion to dismiss. The cause was remanded to PERC, with directions that the petition be dismissed.

162. PERC v. Kennedy, 452 So. 2d 519 (Fla. 1984).

On the authority of City of Orlando, 452 So. 2d 519, the court reversed an unpublished order of the Fifth District Court of Appeal denying PERC's request to be designated a party appellee in a proceeding to review a PERC order.

163. Town of Pembroke Park v. PERC, 10 FPER ¶ 15190 (Fla. 4th DCA Apr. 10, 1984).

The court denied the town's petition which sought to prohibit discovery in connection with a PERC proceeding to determine the amount of reasonable attorney's fees and costs to be paid by the town to the successful charging party. PERC had authorized the disputed discovery in Florida State Lodge FOP v. Town of Pembroke Park, 10 FPER ¶ 15087 (1984).

164. Orange County PBA, Inc. v. City of Casselberry and PERC, 457 So. 2d 1125 (Fla. 1st DCA 1984), rev'g 9 FPER ¶ 14120 (1983), aff'd in part and rev'd in part, 482 So. 2d 336 (Fla. 1986).

The district court reversed a PERC order dismissing an unfair labor practice charge against an employer. The court held that the employer had violated section 447.501(1)(a) and (c), Florida Statutes, by insisting to impasse upon the exclusion of contractual disputes regarding discharge and demotion from the grievance procedure to be set forth in its collective bargaining agreement with the PBA. The court's decision was based upon its determination that the exclusion of such disputes from the grievance-to-arbitration provisions of a collective bargaining agreement is a non-mandatory (permissive) subject of bargaining, even where the public employer has a civil service ordinance covering demotion and discharge.

The supreme court affirmed in part and reversed in part, holding that section 447.401, Florida Statutes, does not infringe upon a municipality's right to establish a civil service appeal procedure by ordinance. To the extent the ordinance conflicts with a state statute, such as section 447.401, the statute prevails pursuant to Article VIII, Section 2(b), of the Florida Constitution and section 447.601, Florida Statutes. The city could not require the exclusion of demotion and discharge issues from the grievance procedure as a condition to entering into an agreement on other subjects. However, the court found that the facts did not support the district court's conclusion that the city committed an unfair labor practice. The evidence did not demonstrate that the city's position on grievance arbitration prevented the parties from reaching agreement on other subjects.

165. AFSCME, Local 3032 v. Delaney, 458 So. 2d 372 (Fla. 1st DCA 1984), aff'g 9 FPER ¶ 14339 (1984).

The court affirmed PERC's order which found that a union time pool, contained in a collective bargaining agreement and applicable to all bargaining unit members, was violative of sections 447.501(1) (a) and 447.301(1), Florida Statutes. The time pool agreement required all employees of the bargaining unit, including those who did not belong to the union, to contribute a portion of their leave time to a pool to be used for union business. The court adopted PERC's reasoning that such an agreement "constitutes a form of union security in which all bargaining unit members contribute to the support of the union as a condition of their employment." The city was ordered to restore previously deducted sick leave or compensatory leave credit to any employee who was not a union member and who requested such a refund.

166. Board of County Commissioners of Orange County v. Central Florida Professional Fire Fighters Association, Local 2057, 467 So. 2d 1023 (Fla. 5th DCA 1985), aff'g in part and rev'g in part, 9 FPER ¶ 14372 (1983).

The court affirmed a PERC determination that the county had committed an unfair labor practice by unilaterally discontinuing its practice of allowing bargaining unit fire fighters to leave their duty station to purchase food and supplies. The court held that this "'store visitation" policy was either a condition impacting upon employment or a term or condition of employment that the county could not, under the circumstances of the case, alter without bargaining with the certified union. The court reversed the posting remedy fashioned by PERC and PERC's award of attorney's fees and costs.

167. City of Hollywood v. Hollywood Municipal Employees Local 2432, AFSCME, 468 So. 2d 1036 (Fla. 1st DCA 1985), rev'g 9 FPER ¶ 14277 (1983).

The court reversed a PERC order dismissing a charge alleging that the union had violated section 447.403(4)(e), Florida Statutes, by refusing to execute and submit to unit employees for ratification an agreement including tentatively agreed-upon and legislatively imposed items. In dismissing the charge, PERC had rejected a literal interpretation of section 447.403(4)(e), because, in its view, such an interpretation "would produce the absurd result of forcing the union to… agree to a proposal or make a concession." The court held PERC's interpretation of the statute was "not supported by the wording of the statute or the legislative intent in enacting the statute." The court remanded the case with directions that the hearing officer's recommended order, finding the union guilty of an unfair labor practice, be adopted.

168. Palm Beach Junior College Board of Trustees v. United Faculty of Palm Beach Junior College, 468 So. 2d 1089, 12 FPER ¶ 17016 (Fla. 4th DCA 1985), aff'g 10 FPER ¶ 15225 (1984).

The court affirmed a declaratory statement issued by PERC which held that a contract proposal presented by an employer which would exclude from the contract's grievance arbitration procedure all contractual disputes arising after the expiration date of the contract is not a mandatory subject of bargaining. In refusing to overturn PERC's holding, the court stated that it is "a well-established maxim of administrative law that a reviewing court shall not disturb an agency's interpretation of a statute which that agency is responsible for enforcing absent a clear showing of error."

169. School Board of Lee County v. PERC, 472 So. 2d 1193 (Fla. 2d DCA 1985), relating to 11 FPER ¶ 16231 (1985).

The court denied a petition for writ of prohibition filed by the school district. The school district had sought to prevent PERC from proceeding to resolve an unfair labor practice charge filed by a union. The charge alleged that the school district violated section 447.501(1)(a), Florida Statutes, by refusing to allow employee supporters of the union to distribute the union's newsletter to employees during non-work time and in non-work areas and by denying the supporters access to a general purpose employee bulletin board. The school district argued that exclusive jurisdiction over this controversy resided with the circuit court pursuant to the provisions of section 447.509, Florida Statutes (1983).

170. City of Hollywood v. PERC and Hollywood Fire Fighters, Local 1375, 476 So. 2d 1340 (Fla. 1st DCA 1985), aff'g in part and rev'g in part, 11 FPER ¶ 16001 (1984).

The court reversed in part and affirmed in part a PERC order dealing with conduct which occurred during a legislative body impasse hearing. PERC found that certain brief off-the-record discussions between the city attorney and city manager created an "appearance of impropriety," constituting an unfair labor practice. The court disagreed, although it left undisturbed the "appearance of impropriety" standard PERC had applied in evaluating the city's conduct. Noting that there was no evidence the challenged activity prejudiced the unit members and that the union failed to establish the content of the conversations, the court found there was no appearance of impropriety.

The court, however, agreed with PERC that the city committed an unfair labor practice by taking legislative body action to eliminate the unit members' statutory right to appeal arbitration awards pursuant to Chapter 682, Florida Statutes. In upholding PERC, the court observed that a subject not brought before the special master may not be considered by the legislative body, and that unless the parties mutually and expressly agree to waive a statutory right, it cannot be lawfully imposed.

171. Federation of Public Employees v. PERC and Clerk of the Circuit and County Courts of the Seventeenth Judicial Circuit of Broward County, 478 So. 2d 117 (Fla. 4th DCA 1985), aff'g 10 FPER ¶ 15287 (1984).

The court affirmed PERC's dismissal of a recognition-acknowledgment petition. The union had sought to represent a unit of deputy circuit court clerks. Relying on the Florida Supreme Court's holding in Murphy v. Mack, 358 So. 2d 822, PERC concluded that the deputy clerks are not public employees within the meaning of Chapter 447, Part II, Florida Statutes, and dismissed the petition. The court, in a brief opinion, specifically approved PERC's application of Murphy v. Mack.

172. School Board of Polk County v. Polk Education Association, Inc. and PERC, 480 So. 2d 1360 (Fla. 1st DCA 1985), aff'g 10 FPER ¶¶ 15054 and 15156 (1984).

The court affirmed PERC's refusal to designate as confidential employees the personal secretaries of four area superintendents. The school board relied upon the holdings in Pensacola Jr. College, 400 So. 2d 59 and School Board of Palm Beach County, 374 So. 2d 527, for the proposition that the court has established a per se confidential exclusion of all personal secretaries to managerial employees.

The court found these cases inapplicable, and expressly adopted PERC's narrow interpretation of the confidential employee exclusion set forth in section 447.203(5), Florida Statutes. This interpretation, known as the "labor nexus test," restricts the confidential exclusion to employees who assist, in a confidential capacity, managerial employees who formulate, determine, and effectuate policies in the field of labor relations, or who regularly have access to confidential information concerning anticipated changes resulting from collective bargaining negotiations.

173. Hillsborough County Aviation Authority v. Hillsborough County Governmental Employees Association, Inc., 482 So. 2d 505 (Fla. 2d DCA 1986), rev'g 11 FPER ¶ 16102 (1985), rev'd, 522 So. 2d 358 (Fla. 1988).

The district court, reversing the commission, held that the Aviation Authority did not commit an unfair labor practice when it refused to implement certain provisions in two collective bargaining agreements it had entered into with the Hillsborough County PBA and Hillsborough County Governmental Employees Association. The provisions in

question conflicted with certain rules of the county civil service board, which was created by special act. When the Aviation Authority requested the civil service board to amend its rules to conform to the agreement, the board refused.

The court reasoned that the county did not violate its duty to bargain in good faith, since it followed the court's earlier decision in Hillsborough County Aviation Authority, 347 So. 2d 801. In that case, the court construed section 447.309(3), Florida Statutes, to require a public employer to only seek an amendment of applicable civil service rules to conform to any conflicting provisions in a collective bargaining agreement. If the civil service board chose not to amend its rules, the employer would not be required to implement the conflicting contractual provisions.

The supreme court reversed, in a five to two decision, holding that a public employer must implement a ratified collective bargaining agreement despite the fact that such implementation may conflict with applicable civil service board rules. In reversing the district court's decision the court affirmed that portion of the lower decision that held that the Aviation Authority should not be held to have committed an unfair labor practice because the existing law in the district validated the position taken by the Aviation Authority. Therefore, the supreme court held PERC's order prospective. In reaching its conclusion, the court determined that section 447.309(3), Florida Statutes (1987), is unconstitutional as it applies to civil service boards in that the section effectively gives civil service boards veto authority over collective bargaining agreements, thereby abridging constitutional rights.

The two dissenters labeled the majority decision as "a death knell for civil service systems," and criticized the majority for failing to give adequate consideration to Article III, Section 14, of the Florida Constitution, which authorizes the creation of local civil service systems.

174. Florida School for the Deaf and the Blind v. Florida School for the Deaf and the Blind, Teachers United, 483 So. 2d 58 (Fla. 1st DCA 1986), aff'g 11 FPER ¶ 16080 (1985).

The court upheld PERC's determination that the Florida Legislature, not the school board of trustees, was the legislative body authorized to resolve an impasse between the board and the union representing the board's teachers. Consequently, the board committed an unfair labor practice by unilaterally altering the workday and planning time of its academic personnel while purporting to legislatively resolve an impasse pursuant to section 447.403(4)(d), Florida Statutes. The court also agreed that the board had not adduced sufficient evidence to support the defense of exigent circumstances and affirmed an award of costs and attorney's fees for the union.

175. Leon County PBA, Inc. v. City of Tallahassee and PERC, 491 So. 2d 589 (Fla. 1st DCA 1986), aff'g 11 FPER ¶ 16235 (1985).

The court affirmed PERC's determination that nonsworn police department communications officers and their supervisors were not properly included in a bargaining unit of sworn employees based on a full analysis of all of the governing statutory factors. In making its determination, PERC receded from recent precedent placing excessive emphasis on the "interdependence of jobs" component of the "community of interest" test without giving adequate consideration to the other statutory criteria for defining bargaining units. The court, in upholding PERC, noted that the "community of interest" determination made by PERC was a "mixed question of fact and law infused by policy considerations and agency expertise in the application of statutory standards" and that, therefore, PERC was not bound by the hearing officer's recommendation on the issue.

176. School Board of Levy County v. Levy County Education Association and PERC, 492 So. 2d 1140 (Fla. 1st DCA 1986), aff'g 11 FPER ¶ 16096 (1985).

The court affirmed PERC's decision that supplemental pay for coaching duties performed by teachers was a "wage" and therefore a mandatory subject of collective bargaining. The court also held that PERC did not err in receding from its prior decision in School Board of Martin County, 380 So. 2d 582.

177. FOP, Miami Lodge 20 v. City of Miami and PERC, 492 So. 2d 1122 (Fla. 3d DCA 1986), rev'g 11 FPER ¶ 16128 (1985), rev'd, 511 So. 2d 549 (Fla. 1987).

The district court reversed PERC's deferral of an unfair labor practice charge to an arbitrator and the subsequent approval of the arbitrator's decision. The court reasoned that Chapter 447, Part II, Florida Statutes, does not authorize deferral to arbitration "notwithstanding [PERC's] alleged adoption of and reliance of the pronouncements of the National Labor Relations Board." In an unpublished corrected order, the district court certified the issue to the Florida Supreme Court.

The supreme court quashed the district court decision and held that PERC does have authority, under Chapter 447, Part II, Florida Statutes, to defer unfair labor practice charges to arbitration, and to give final and binding effect to the arbitrator's contract interpretation. In a unanimous decision the court held that the "policy of deferral represents a reasonable method for PERC to give effect to its statutory duties," particularly section 447.401 which requires a grievance procedure that culminates in final and binding arbitration. The court further found that in this case PERC's decision to defer was appropriate and that PERC's final order was supported by competent, substantial evidence. The court noted that the Commission had adopted a rule on deferral.

178. City of Gainesville v. Alachua County PBA, Inc., 493 So. 2d 46 (Fla. 1st DCA 1986), aff'g in part, vacating in part, and remanding, 11 FPER ¶ 16029 (1985).

The court affirmed PERC's determination that the city's police lieutenants were neither managerial nor confidential employees and that they were properly included in a supervisory bargaining unit of police personnel. The court, however, reversed PERC's decision to include two police sergeants in this unit, finding that this decision by PERC was not supported by competent substantial evidence. The case was remanded for the taking of additional evidence on the issue of the appropriateness of the two police sergeants' inclusion in the unit.

179. ATU, Local 1593 v. IBF&O, Local 1220, 497 So. 2d 665 (Fla. 1st DCA 1986), aff'g 11 FPER ¶ 16236 (1985).

The court affirmed a PERC order directing a representation election among two groups of merged transit authority employees. The dispute concerned the merger of the transit operations of the City of St. Petersburg, whose employees were represented by IBF&O, and the Pinellas Suncoast Transit Authority (PSTA), whose employees were represented by ATU. PERC determined that two separate bargaining units, one consisting of former city employees and the other, composed of PSTA employees who had been with the PSTA prior to the merger of operations, were inappropriate. Rather, it found that the appropriate unit, for purposes of collective bargaining, was a new county-wide unit consisting of all of PSTA's blue-collar employees, including those who had been employed by the city. PERC also concluded that the "contract bar rule" of section 447.307(3)(d), Florida Statutes, was not applicable because the unit of PSTA employees represented by the ATU was no longer appropriate. The court agreed with PERC that the ATU-represented unit was no longer appropriate and that, therefore, the ATU could not rely on contract bar principles. In so doing, the court stated PERC should be given "substantial deference in its application of the unit appropriateness criteria set forth in section 447.307(4)." The court also found that ATU had been validly joined as a party to these proceedings and that PERC's resolution of this case did not constitute the improper promulgation of a rule.

180. United Teachers of Dade, FEA/United AFT, Local 1974 v. Dade County School Board, 500 So. 2d 508 (Fla. 1986), aff'g 472 So. 2d 1269 (Fla. 1st DCA 1985).

The Florida Supreme Court, by a 5-2 margin, upheld the constitutionality of the "Master Teacher Program," concluding that the program did not establish a wage that had to be negotiated. Therefore the legislative imposition of the program without providing for negotiations between local school boards and unions certified to represent teachers did not abridge the constitutional right of public employees to engage in collective bargaining.

The court disagreed with the trial court's conclusion that the program is constitutional because the Florida Legislature is not a party to the collective bargaining process. Such an analysis would incorrectly ignore the impact of legislative enactments on constitutional collective bargaining rights. Chapter 447, Part II, does not necessarily define the parameters of Article I, Section 6, of the Florida Constitution.

181. Town of Pembroke Park v. Florida State Lodge, FOP, 501 So. 2d 1294 (Fla. 4th DCA 1987), aff'g and remanding, 10 FPER ¶ 15072 (1984).

The court affirmed a PERC order awarding back pay to police officers and determining that the officers had a duty to mitigate their damages. The court affirmed PERC's determination that the officers had sufficiently attempted to mitigate. The court also affirmed the prospective application of a new mitigation standard, where PERC had not previously advised the public of its intent to use the more stringent standard. In addition, the court approved PERC's calculation of interest at twelve percent beginning at the midpoint of the back pay period and the award of attorney's fees to the union as the prevailing party. The court remanded the case to PERC for correction of errors contained in the calculation of the amount of back pay due the officers.

182. City of Miramar v. Broward County PBA, 505 So. 2d 8 (Fla. 5th DCA 1987), aff'g 12 FPER ¶ 17147 (1986).

The court affirmed PERC's determination that the city's two police captains were not managerial employees. PERC found that captains did not participate in formulation of departmental policy but merely implemented that policy. However, PERC designated a lieutenant who was a member of the city's collective bargaining negotiating team as managerial. The court compared this case with City of Jacksonville, 365 So. 2d 1098.

183. Florida State Lodge, FOP v. City of Hialeah, 815 F. 2d 631 (11th Cir. 1987).

The United States Court of Appeals, Eleventh Circuit, affirmed the district court's determination that the impasse resolution provisions contained in section 447.403(4), Florida Statutes, were constitutional. The union had alleged, in a suit filed under section 42 USC § 1983, that it was not afforded due process because the city's role as an interested party in the collective bargaining negotiations prevented a meaningful hearing before the city council during the impasse proceeding. The court concluded that the statutory procedure for resolving an impasse was not unconstitutional, either on its face or as applied, because the union was afforded a meaningful opportunity to be heard and the city council had the benefit of a special master's recommendations.

The union had also alleged that the city's reduction of the payout rate for sick leave and the accrual rate for annual leave benefits for new employees as recommended by the special master was a substantive due process violation as well as an unconstitutional impairment of the obligation of contract. Reasoning that future

payments for benefits are not protected property interests, and that as-yet-unhired employees were without a property interest in as-yet-unearned annual leave, the court denied this claim as well. The court affirmed the granting of the city's motion for summary judgment and the dismissal of the union's case with prejudice.

184. Teamsters Local Union 444 v. Pasco County Board of County Commissioners and PERC, 505 So. 2d 541 (Fla. 1st DCA 1987), aff'g 12 FPER ¶ 17041 (1985).

The court affirmed PERC's dismissal of an unfair labor charge. The union had alleged that the county failed to bargain in good faith by failing to meet at reasonable times and places with union representatives, placed unreasonable restrictions on the union and its bargaining team as a prerequisite to meeting, failed to discuss bargainable issues, negotiated directly with employees rather than with the union, and engaged in a pattern and practice of surface bargaining without an intent to reach a common accord or a sincere desire to resolve differences. After a detailed evaluation of the record, PERC reversed the hearing officer's decision and concluded that competent substantial evidence did not exist to support a finding that the withholding of wage and merit pay increases was intended to discourage union membership. PERC then concluded that the county did not fail to bargain in good faith and dismissed the petition. The court, in accord with Palm Beach Junior College, 425 So. 2d 133, aff'd in part and rev'd in part, 475 So. 2d 1221, held that this conclusion was a policy decision which PERC was well-suited to make.

185. City of New Port Richey v. Hillsborough County PBA, Inc., 505 So. 2d 1096 (Fla. 2d DCA 1987), rev'g 12 FPER ¶ 17040 (1985).

The court reversed PERC's determination that a unilateral reduction in the city's percentage of contribution to the police pension fund was an unfair labor practice. The court reasoned that the city was not required to bargain with the union before it implemented the reduction, because the reduction had no impact on the employees' pension benefits or required contributions. The court distinguished this case from the decision in School Board of Indian River County, 373 So. 2d 412, on the grounds that here no change occurred which affected bargaining unit employees.

186. School Board of Lee County v. Lee County School Board Employees, Local 780, AFSCME, 512 So. 2d 238 (Fla. 1st DCA 1987), rev'g 12 FPER ¶ 17331 (1986).

The court reversed PERC's determination that a school principal had violated section 447.501(1)(a), Florida Statutes, by directing a cafeteria worker to stop discussing work problems with co-workers. The court found that PERC applied an incorrect evidentiary standard in finding a violation of section 447.501(1)(a). The applied standard of "reasonable tendency to interfere" was too broad, as this would allow an unfair labor practice based on the employee's subjective reaction to an employer's action and, therefore, restrict an employer's otherwise legitimate conduct

and rights. The court stated that the correct standard requires the employee to show that the otherwise protected activity was a substantial or motivating factor in the employer's decision or action which constituted the alleged violation. The court reversed the order and remanded the matter for further consideration. On remand, PERC found a violation after applying the test mandated by the court. See 14 FPER ¶ 19071 (1988).

187. School District of Lee County v. PERC and Support Personnel Association of Lee County, 513 So. 2d 1286 (Fla. 1st DCA 1987), aff'g and rev'g 11 FPER ¶ 16231 (1985).

The court reversed PERC's determination that the school board had violated section 447.501(1)(a), Florida Statutes, by prohibiting distribution of organizational literature during non-work time and in non-work areas, and by removing literature of a rival union from the general purpose employee bulletin board. The court held that section 447.509 prohibits distribution of literature in working areas at all times and distribution in non-work areas during working hours.

Further, the limitation upon the use of the bulletin board was reasonable. Despite this, the court ruled that access to some bulletin board was appropriate. Under section 447.509, however, some of the board's restrictions were proper as this section prohibits distribution of literature in working areas at all times and distribution in non-work areas during working hours. The court therefore reversed PERC'S order and remanded the case for further consideration and entry of a modified order by PERC.

188. Florida Public Employees Council 79, AFSCME v. Martin County Property Appraiser and PERC, 521 So. 2d 243 (Fla. 1st DCA 1988), aff'g 13 FPER ¶ 18126 (1987).

The court affirmed PERC's determination that employees of the county property appraiser are appointed deputies of an elected constitutional officer and therefore, are not "public employees" within the meaning of the act. Under the supreme court decision in Murphy v. Mack, 341 So. 2d 1008, deputies are appointed and vested with the same sovereign power. "By virtue of Section 193.024, Florida Statutes, the property appraiser is empowered to appoint deputies to act on his behalf … his employees are for that purpose, his alter ego."

189. Sanitation Employees Association, Inc. v. Metropolitan Dade County and Miami-Dade Water and Sewer Authority, 526 So. 2d 128 (Fla. 3d DCA 1988), rev'g 13 FPER ¶ 18099 (1987), rev. dismissed, 538 So. 2d 1255 (Fla. 1988).

The court reversed PERC's determination that, where a union discloses and cures a defective registration with adequate notice to employees prior to an election, dismissal of the representation petition is not appropriate. Although other district courts

have held to the contrary, the court determined that the legislative purpose underlying the registration requirements is fully satisfied when a deficiency is cured with adequate notice to employees before a representation election. Accordingly, the court reversed PERC's order and remanded the case with directions to accept the union's corrected registration certificate.

190. City of Winter Park v. Winter Park Professional Fire Fighters, Local 1598, 529 So. 2d 1215 (Fla. 5th DCA 1988), rev'g 13 FPER ¶ 18222 (1987), rev. denied, 541 So. 2d 1173 (Fla. 1989).

The court reversed PERC's order defining a supervisory unit of firefighting employees and held that battalion chiefs were managerial employees. The court based its decision on the battalion chief's role in policy formation, employee relations, personnel administration and contract administration.

191. City of Miami v. AFSCME, Council 79, 537 So. 2d 1134 (Fla. 3d DCA 1989), aff'g 14 FPER ¶ 19074 (1988).

The court affirmed the portion of a PERC order assessing attorney fees and costs against the city for certain acts of discrimination based upon union activities committed by agents of the city.

192. City of Boynton Beach v. PERC, 543 So. 2d 403 (Fla. 4th DCA 1989), aff'g 14 FPER ¶ 19268 (1988).

The court affirmed the Commission's decision that it has no authority to decertify a union based upon an employer's miscellaneous petition asserting union had abandoned representation of its bargaining unit by twelve years of inactivity.

193. City of Monticello v. Monticello Professional Firefighters Association, Local 3095, IAFF and PERC, 565 So. 2d 364 (Fla. 1st DCA 1990), aff'g 15 FPER ¶ 20281 (1989).

The court affirmed PERC's decision which upheld the hearing officer's determination that the city committed an unfair labor practice by abolishing the city's paid full-time fire department in retaliation for positions taken by the union during collective bargaining negotiations. The court stated that the city could not abolish its paid fire department out of anti-union animus even if the city's decision to abolish the fire department or replace it with a volunteer department would ordinarily have been a management prerogative.

194. American Federation of Teachers - Hillsborough v. School Board of Hillsborough County and PERC, 584 So. 2d 62 (Fla. 1st DCA 1991), aff'g 16 FPER ¶ 21225 (1990).

The court affirmed PERC's decision which found that the school board committed an unfair labor practice by restricting the posting of materials on school bulletin boards, but also found that the school board did not commit an unfair labor practice by restricting the distribution of the minority union material in the faculty lounge. The Court stated that the finding by the hearing officer that "some if not all" of school employees in the faculty lounge were not working at the time the union distributed its materials was consistent with the Commission's finding that some teachers worked in the lounge so that the distribution of minority union material could be prohibited. The presence of a single union newspaper did not prove that the school board had permitted distribution of the union paper while barring the minority union materials; however, the court noted that because the school board provided bulletin board space to an incumbent union, it was an unfair labor practice not to provide similar space to the minority union.

195. UFF v. Florida Board of Regents and Commissioners of PERC, 585 So. 2d 991 (Fla. 1st DCA 1991), rev'g and remanding, 14 FPER ¶ 19294 (1988).

The court reversed PERC's decision which found that the faculty organization engaged in an unfair labor practice when it solicited student support contrary to a specific statutory prohibition. The court held that the statute was an overly broad restriction on First Amendment free speech rights.

196. Pensacola Junior College Faculty Association v. Board of Trustees of Pensacola Junior College and PERC, 593 So. 2d 254 (Fla. 1st DCA 1992), aff'g 16 FPER ¶ 21268 (1990).

Holding that the Board of Trustees had the authority to make unilateral changes in employment positions, the court affirmed PERC's order which dismissed the unfair labor practice charge. The faculty association had the right to bargain only the impact of that action on the positions' terms and conditions of employment and had no right to demand bargaining on the change of a particular position from one job title to another. The court also noted that the faculty association waived its rights to demand bargaining over the impact of the changes when it demanded only that no changes be made in the positions until they could be negotiated.

197. City of Orlando v. Central Florida PBA, 595 So. 2d 1087 (Fla. 5th DCA 1992), rev'g, 17 FPER ¶ 22041 (1991).

The court reversed PERC's decision permitting a unit clarification petition to be reconsidered as a representation-certification petition. The court held that PERC had no authority to convert a unit clarification petition into a representation-certification petition thus enabling the petition to avoid dismissal pursuant to the strict (contract bar) time requirements of section 447.307(3)(d), Florida Statutes.

198. FOP, Miami Lodge 20 v. City of Miami, 609 So. 2d 31 (Fla. 1992), approving, 571 So. 2d 1309 (Fla. 3d DCA 1989), rev'g en banc, 12 FPER ¶ 17029 (1989).

The Florida Supreme Court applied a balancing test to determine whether drug testing of police officers, as a condition of continued employment, was a managerial prerogative or a term or condition of employment requiring collective bargaining. The court held that, in the face of evidence of drug involvement by specific officers, drug testing is a managerial prerogative; however, the court suggested that random drug testing of public safety personnel would require collective bargaining, absent express legislation.

199. Sarasota County School District v. Sarasota Classified/Teachers Association and PERC, 614 So. 2d 1143 (Fla. 2d DCA 1993), rev'g and remanding, 18 FPER ¶ 23119 (1992), rev. denied, 630 So. 2d 1095 (Fla. 1994).

The court reversed PERC's order which determined that the school board committed an unfair labor practice by unilaterally discontinuing payment of step pay increases to employees during the pendency of negotiations with their certified bargaining agent. The court held that section 447.309(2), Florida Statutes, which provides that the failure of a legislative body to appropriate funds sufficient to fund a collective bargaining agreement shall not constitute or be evidence of an unfair labor practice, applies whenever a legislative body is requested to appropriate public funds to satisfy an obligation which arises out of collective bargaining. The statute's applicability is not limited to cases when the collective bargaining agreements are in effect. Thus, the school board had the right to underfund the agreement and the superintendent properly offered to negotiate the impact of that underfunding.

200. Board of County Commissioners of Jackson County v. International Union of Operating Engineers, Local 653, 620 So. 2d 1062 (Fla. 1st DCA 1993), rev'g, 18 FPER ¶ 23138 (1992).

The court reversed PERC's decision that the county committed an unfair labor practice by changing contractually based terms and conditions of employment. The court found that the union had waived its right to bargain over layoff decisions because it failed to request that the county negotiate with it over decisions to lay off employees

after it had received notice of the proposed changes. The county had the right to rely on the Commission's past rulings that permit unions to passively waive objections to alterations of contractual provisions. The county had no reason to know that its conduct was violative of the Commission's newly announced policy for determining the validity of waivers. This policy requires that a request to deviate from a contractual provision must be provided in a request to negotiate, and not merely by advancing notice of an intended change.

Fees in favor of the prevailing respondent were not awarded because there was substantial conflicting evidence which the hearing officer had to resolve by assessing the credibility of witnesses.

201. State Board of Administration v. Yambor and PERC, 623 So. 2d 615 (Fla. 1st DCA 1993).

The court denied the state board's petition which asked the court to review PERC's nonfinal order concluding it had jurisdiction and that the state board was subject to the veterans' preference statute, Chapter 295, Florida Statutes. The state board failed to demonstrate that the nonfinal order met the requirements for review under section 120.68(1), Florida Statutes.

202. National Association of Government Employees v. State, 1994 WL 1726683 (N.D. Fla.) not reported in F. Supp. but printed at 28 FPER ¶ 33069.

Contrary to the Florida Supreme Court's decision in School Board of Marion County v. PERC, 334 So. 2d 582 (Fla. 1976) the federal court held that, in its present form, permitting disclosure of [showing of interest] lists of employees engaged in the constitutionally protected activity of unionization upon mere allegation of union coercion by the public employer, section 447.307(2), Florida Statutes, operates in violation of the First and Fourteenth Amendments of the United States Constitution by breaching the public employee's fundamental right to privacy of association.

203. State of Florida and Lawton Chiles v. PERC, 630 So. 2d 1093 (Fla. 1994).

The Florida Supreme Court denied the State's petition which sought a writ prohibiting PERC from proceeding further with the certification of a bargaining unit for state employed attorneys. The court held it did not have jurisdiction to issue the writ to a state agency like PERC because the "all writs" provision of the State Constitution specifically limited issuance of writs of prohibition to courts. In addition, the court held that collective bargaining by state employed attorneys does not encroach upon the court's jurisdiction over the admission of attorneys to the practice of law or the discipline of attorneys.

204. International Association of Fire Fighters, Local No. 2288 and Anderson v. Union County Board of County Commissioners, 667 So. 2d 232 (Fla. 1st DCA 1995), aff'g 21 FPER ¶ 26031 (1994) and 20 FPER ¶ 25097 (1993).

The court affirmed PERC's order. In doing so, the Court held that the Fair Labor Standards Act does not preempt the State from granting public employees the "right to engage in concerted activities not prohibited by law." In addition, the Act does not preempt the State from authorizing PERC to order reinstatement of any employee, with or without back pay, attorney's fees, witness fees, and other out-of-pocket expenses incurred, when it finds that public employers interfered with, restrained, or coerced public employees in the exercise of any rights granted them under the state statute, or discharged or discriminated against a public employee for filing charges or giving testimony under section 447.501, Florida Statutes.

205. Mitchell v. Department of Corrections, 675 So. 2d 162 (Fla. 4th DCA 1996), Case No. DF-94-002 (PERC Dec. 23, 1994) (unpublished opinion).

The court affirmed PERC's order which affirmed Mitchell's termination from employment. The court found that the Ionscan test, which obtains samples of dust particles by vacuuming a person's shoulder down to his palm and then analyzes those particles for narcotics, is not a "drug test" within the meaning of the statute. Although literally the Ionscan test may seem to fit within the broad meaning of the term "drug test," the purpose of the statutory scheme is to protect state employees from unwarranted intrusive drug testing that requires samples of bodily fluids and tissues. Moreover, the Ionscan test results were not admitted as substantive evidence of drug use but rather for the purpose of establishing reasonable suspicion to conduct later searching and testing.

206. Florida Association of State Troopers v. State of Florida and Department of Management Services, 681 So. 2d 920 (Fla. 1st DCA 1996), aff'g 22 FPER ¶ 27013 (1995).

The court affirmed PERC's order which dismissed the Florida Association of State Troopers' petition. The petition sought to represent captains and lieutenants in the Florida Highway Patrol. The court stated that these positions were not disenfranchised from bargaining because petitioner could file a petition seeking an appropriate unit of all lieutenants and captains statewide. Moreover, the Court stated that the Commission's finding of overfragmentation was not an abuse of discretion.

207. Keller v. PERC and Volusia County Sheriff's Office, 691 So. 2d 36 (Fla. 5th DCA 1997), aff'g 22 FPER ¶ 27502 (1996).

The court affirmed PERC's order which dismissed a veteran's preference complaint because Keller was not entitled to a preference when he applied for the position of lieutenant. The preference expired when he was promoted to sergeant a year earlier even though he did not claim a preference when applying for the promotion. The court stated that the plain meaning of the statute provides that the preference applies only to a veteran's first promotion after reinstatement or reemployment. A preference cannot be saved for future use.

208. CWA, Local 3170 v. City of Gainesville, 697 So. 2d 167 (Fla. 1st DCA 1997), rev'g and remanding, 22 FPER ¶ 27124 (1996).

The court reversed PERC's order dismissing the unfair labor practice charges. PERC eschewed jurisdiction of the charges because it would have to decide whether the city had violated rights conferred by workers' compensation law, and whether the city violated certain state and federal constitutional rights. The court stated that PERC's jurisdiction to hear unfair labor practice charges is not defeated because the practices complained of are alleged violations of statutory and constitutional provisions. To consider the unfair labor practice charges, PERC did not need to adjudicate the constitutionality of any administrative rule, municipal ordinance, or statute. The unfair labor practice charges did not request PERC to declare any statutory provision unconstitutional. PERC cannot shut its eyes to constitutional issues that arise in the course of administrative proceedings it conducts. In this case, PERC must take the workers' compensation law into account. Accordingly, the case was remanded to PERC to decide the merits of the unfair labor practice charges.

209. St. Lucie-Ft. Pierce Fire Control District v. Ft. Pierce-St. Lucie County Firefighters Association, Local 1377, IAFF, 701 So. 2d 411 (Fla. 1st DCA 1997), aff'g in part, 23 FPER ¶ 28003 (1996).

The court affirmed PERC's order which dismissed the employer's unit clarification petition. However, the court reversed the portion of PERC's order that dismissed the employer's miscellaneous action petition and the court remanded the case for an evidentiary hearing. The court also determined that the appellee was a prevailing party and entitled to appellate attorney's fees.

210. Gibbons v. PERC and Department of Juvenile Justice, 702 So. 2d 536 (Fla. 2d DCA 1997), rev'g Case No. CA-96-033 (PERC Aug. 26, 1996) (unpublished opinion).

The court reversed PERC's order which affirmed the General Counsel's summary dismissal of Gibbons' unfair labor practice charge. PERC found that Gibbons failed to allege a prima facie violation because he failed to provide affidavits from witnesses. The court disagreed with PERC and concluded that Gibbons' sworn statement established a prima facie charge and that affidavits proving the employer's motive were not necessary. Gibbons alleged a causal link between his protected activity and the adverse employment action by claiming that his employer was aware of his protected expression when his employer took the adverse employment action and, therefore, Gibbons alleged a prima facie case.

211. Healy v. Town of Pembroke Pines, 831 F. 2d 989 (11th Cir. 1987), affirming in part, 643 F. Supp. 1208 (S.D. Fla. 1986).

The court stated that PERC lacked jurisdiction and power to award either compensatory damages for mental anguish or punitive damages. However, these damages are available to a prevailing section 1983 plaintiff. The court held that the limited state administrative remedies which were made available to the plaintiffs as a result of the unfair labor practice charge does not preclude their attempt to become whole by seeking additional damages in the federal forum.

212. City of Delray Beach v. Professional Firefighters of Delray Beach, Local 1842, IAFF, 636 So. 2d 157 (Fla. 4th DCA 1994).

The court affirmed the mini-PERC's order which found that the city committed an unfair labor practice by failing to continue performance pay increases during a contractual hiatus. During this status quo period, the employer is prohibited from unilaterally altering terms in the expired agreement.

An exception to this rule applies when a union has waived the right to maintain the status quo by language in the collective bargaining agreement. However, the waiver must be "clear and unmistakable." Without express waiver language, the language in the agreement cannot simply be interpreted to "imply" waiver of a union's right to maintain the status quo.

Furthermore, the court stated that it was reasonable for the mini-PERC to consider the parties' bargaining history in determining whether employees had a reasonable expectation that they would continue to receive individual performance increases during the period between agreements. Finally, the court affirmed the mini-PERC's award of attorney's fees and cost because the employer knew or should have

known that it violated well-established law based on the undisputed facts and the over-whelming body of PERC decisions in support of the union's position.

213. UFF and Hogner v. Florida Board of Regents and Sloan, Mattimore, and Poole as PERC Commissioners, Case No. 88-40070 (N.D. Fla. July 12, 1991) (unpublished opinion).

The court held that section 447.501(2)(f), Florida Statutes, is unconstitutional because it restricts speech on the basis of content, viewpoint, and speaker identity. Accordingly, PERC is enjoined from enforcing section 447.501(2)(f), Florida Statutes.

214. Jacksonville Employees Together v. City of Jacksonville, 709 So. 2d 540 (Fla. 1st DCA 1998).

Petition for review of non-final administrative order (remand order) denied.

215. Florida Public Employees Council 79, AFSCME v. Jacksonville Employees Together and City of Jacksonville, 810 So. 2d 923 (Fla. 1st DCA 1998).

Petition for review of non-final administrative order dismissed.

216. Lawton Chiles v. State Employees Attorneys Guild and Greene, 714 So. 2d 502 (Fla. 1st DCA 1998), aff'd, 734 So. 2d 1030 (Fla. 1999).

The court affirmed the circuit court's decision that state employees working as attorneys have a fundamental right to collectively bargain, as provided by the Florida Constitution. Therefore, section 447.203(3)(j), Florida Statutes, which excluded attorneys from collective bargaining, was unconstitutional. The legislature enacted section 447.203(3)(j) in the wake of the Florida Supreme Court's decision that state attorneys bargaining collectively did not encroach upon the Florida Supreme Court's jurisdiction over attorneys. The court concluded that the state did not demonstrate that a blanket ban on collective bargaining by public employees working as attorneys is the least onerous means for protecting the attorney-client relationship between the lawyers and the public entities which employ them.

217. City of Safety Harbor v. CWA and PERC, 715 So. 2d 265 (Fla. 1st DCA 1998), rev'g, 22 FPER ¶ 27125 (1996).

The court reversed PERC's order which verified the results of a representation election and certified the union as the exclusive collective bargaining representative for a bargaining unit PERC determined to consist solely of non-professional employees. The court found that for defining "professional employees," PERC erroneously treated the educational element as a threshold requirement. The court disagreed with PERC's

construction of section 447.203(13)(e), Florida Statutes. The statute must be given its plain and ordinary meaning. As a result, recreation leaders II fell within the definition of "professional employee" pursuant to section 447.203(13)(a), Florida Statutes.

218. SEIU, Local 16 v. Clerk of the Circuit and County Courts of the Ninth Judicial Circuit of Orange County and PERC, 720 So. 2d 290 (Fla. 5th DCA 1998), aff'g 24 FPER ¶ 29028 (1997), rev. granted, 732 So. 2d 328 (Fla. 1999), rev'd, 752 So. 2d 569 (Fla. 2000).

The district court affirmed PERC's affirmation of a general counsel summary dismissal of a deputy clerk's unfair labor practice charge. However, the court certified the issue of whether a deputy court clerk is in fact a "public employee" within the contemplation of Article 1, Section 6, of the Florida Constitution, and section 447.203(3), Florida Statutes. The district court concluded that the clerk of court is authorized by statute to appoint, as opposed to employ, deputy clerks. The district court stated it was concerned that the Florida Supreme Court in Murphy v. Mack, 358 So. 2d 822 (Fla. 1978), emphasized the law enforcement aspect of sheriff deputies' powers and duties and the common law treatment of the position of sheriff and deputy, and such cannot be simply said of subordinates of the clerk of court. In Federation of Public Employees, 478 So. 2d 117, the district court held that deputy court clerks are not public employees when it interpreted the Murphy decision. The district court recognized the logical extension of Murphy made by the Federation court and, therefore, affirmed PERC's order. Finally, the court stated that if the deputy clerk qualifies as a public employee, she should be permitted to file an amended claim.

The Florida Supreme Court quashed the district court's opinion, finding that deputy court clerks, unlike deputy sheriffs, are public employees within the contemplation of section 447.203(3), Florida Statutes. The court noted that section 447.203 defines the term "public employee" broadly and has an exhaustive list of exceptions which does not include the term "deputy." "Deputies" of old were generally managerial level employees but today public officials who once required one or two deputies to assist them now might have a host of assistants. Deputies of today look surprisingly like other public employees. The fact that deputy sheriffs are said to be appointed rather than employed is of little importance under Chapter 447, Florida Statutes. The court remanded the case to PERC to determine whether the deputy court clerk worked as an employee in the ordinary sense of the word under section 447.203(3) or as a managerial employee. The court declined to extend Murphy v. Mack to deputy court clerks or other public employees.

219. Hillsborough Area Regional Transit Authority v. ATU, Local 1593, 720 So. 2d 1160 (Fla. 1st DCA 1998), aff'g 24 FPER ¶ 29063 (1997).

The court affirmed PERC's order because the court must accept PERC's conclusion that the union did not bargain in bad faith. Whether a party bargains in good or bad faith is a factual determination based on the circumstances of the particular case and the court cannot set aside or remand an agency's order which depends on factual findings that are supported by competent substantial evidence.

220. Dade County PBA, Inc. v. Town of Surfside, 721 So. 2d 746 (Fla. 3d DCA 1998), aff'g 24 FPER ¶ 29084 (1998).

The court affirmed PERC's order which adopted the hearing officer's recommended order finding that the officers' terminations were not motivated by conduct that was protected. The court found that the hearing officer's findings were supported by competent substantial evidence and that the hearing officer properly relied on investigation documents. The court concluded that the investigation documents were not hearsay because they were not offered as proof that the officers committed the actions. Rather, the documents were considered in determining that the chief terminated the officers based on the investigation reporting unprotected conduct by the officers rather than the officers' participation in protected activity.

221. Board of County Commissioners of Sarasota County v. Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union 173 and PERC, 738 So. 2d 953 (Fla. 2d DCA 1998), rev'g, 24 FPER ¶ 29023 (1997).

Reversing PERC's order, the court determined that the county did not commit an unfair labor practice when it elected to exclude employee disciplinary matters from the collective bargaining agreement. The court stated that, in accordance with longstanding judicial and administrative law, the county possesses the right to seek an agreement excluding discipline issues from the collective bargaining agreement and, when such negotiations fail, Chapter 447, Florida Statutes, allows the county to impose such a provision. Correspondingly, the union did not possess the right under Chapter 447, Florida Statutes, to compel the inclusion of discipline in a collective bargaining agreement.

222. Progressive Officers Club v. Dade County PBA, Inc., 738 So. 2d 484 (Fla. 3d DCA 1999), rev'g, 24 FPER ¶ 29342 (1998).

The court reversed PERC's denial of a motion for relief from a final order. PERC issued a final order affirming the hearing officer's conclusion that the deduction of dues from salaries of members of certain organizations was an unfair labor practice. POC's copy of PERC's final order was sent to the wrong address and POC did not receive it

until after the time for appeal of the final order had expired. Eight months later, POC filed a motion for relief from the final order but PERC denied the motion because POC did not act promptly in seeking relief after it had actual notice of the final order. The court held that, because POC had no notice of the issuance of the final order, the final order was void as to POC.

223. Lawton Chiles v. State Employees Attorneys Guild and Greene, 734 So. 2d 1030 (Fla. 1999), aff'g 714 So. 2d 502 (Fla. 1st DCA 1998).

The Florida Supreme Court held that section 447.203(3)(j), Florida Statutes (1997), is unconstitutional under Article I, Section 6, of the Florida Constitution because the State failed to prove the requisite necessity for a wholesale ban on collective bargaining by government lawyers.

224. Florida Public Employees Council 79, AFSCME v. Jacksonville Employees Together, City of Jacksonville and PERC, 738 So. 2d 489 (Fla. 1st DCA 1999), aff'g PERC Case No. RC-97-034.

The court affirmed PERC's non-final order wherein the hearing officer accepted a notice of appearance by a non-lawyer who represented JET. AFSCME unsuccessfully argued that the lay representative should have been qualified under Florida Administrative Code Rule 28-106.106. The court held that section 447.609, Florida Statutes (1997), obviates the need for such qualification because the lay representative was an officer of an employee organization. Section 447.609 presumes that an officer of an employee organization is qualified as a lay representative.

225. ATU, Local 1593 v. Hillsborough Area Regional Transit Authority, 742 So. 2d 380 (Fla. 1st DCA 1999), aff'g 24 FPER ¶ 29247 (1998), rev. denied, 760 So. 2d 945 (Fla. 2000).

The court affirmed a PERC order holding that the right to subcontract is a management prerogative which is not a subject of mandatory collective bargaining. The court noted that private sector employers are different from public sector employers.

226. Grier v. Zahner, Case No. 99-6110 (Fla. 2d Cir. Ct. Jan. 31, 2000) (unpublished opinion).

Grier sued Zahner, a PERC hearing officer, for tortious interference with a business contract and intentional infliction of emotional distress. The circuit court granted Zahner's motion to dismiss with prejudice. The court stated that an administrative law judge is absolutely immune from a suit that is based upon the entry of an order in a quasi-judicial proceeding.

227. Stafford v. Meek, 762 So. 2d 925 (Fla. 3d DCA 2000).

A union attorney decided not to file exceptions to a hearing officer's recommended order, which concluded that a teacher should be terminated. The teacher then filed an unfair labor practice charge alleging that the union attorney violated a duty of fair representation. PERC dismissed the unfair labor practice charge. The teacher then filed this malpractice lawsuit. The court determined that attorneys for public employee unions enjoy immunity from legal malpractice lawsuits brought by union members who are unhappy that the union chose not to pursue their cases. Thus, the union attorney is entitled to union-agent immunity for representation pursuant to the union's duty of fair representation in a grievance proceeding.

228. Williams v. Coastal Florida PBA, Inc., 765 So. 2d 908 (Fla. 5th DCA 2000), aff'd, 838 So. 2d 543 (Fla. 2003).

The district court denied a sheriff's petition for a writ of prohibition seeking to bar the union from seeking certification from PERC as the exclusive bargaining agent for deputy sheriffs, but stayed PERC's proceedings. PERC had stated that SEIU, Local 16, 752 So. 2d 569 (Fla. 2000), raised doubt as to the vitality of Murphy v. Mack, 358 So. 2d 822 (Fla. 1978), and ordered a hearing to determine representation. Based on Murphy v. Mack, courts have denied deputy sheriffs rights and privileges accorded public employees. Because the court believed SEIU, Local 16 substantially eroded the rationale of Murphy v. Mack, the court certified the following question to the Florida Supreme Court: Are deputy sheriffs categorically excluded from having collective bargaining rights under Chapter 447? The Florida Supreme Court held that the name "deputy" and the fact of "appointment" were meaningless distinctions to determine rights under Chapter 447, Florida Statutes. It responded to the question by holding that deputy sheriffs are entitled to collective bargaining rights under the express provisions of the Florida Constitution.

229. Palm Beach County PBA, Inc. v. City of Riviera Beach, 774 So. 2d 942 (Fla. 1st DCA 2001), rev'g 25 FPER ¶ 30190 (1999).

The court reversed a PERC order which determined that the city did not engage in an unfair labor practice when it dismissed three officers. The police chief hired an investigator to investigate the officers' city election activities and then subsequently relied on the report to terminate the officers. The hearing officer found that the report provided the police chief with a convenient pretext to punish the union for its protected political activities and found that the city violated the law by dismissing the officers. PERC remanded the case to the hearing officer to revisit his analysis. On remand the hearing officer did not alter any findings or conclusions made in the original recommended order, but he reversed his previous conclusion and found that the union did not establish by a preponderance of the evidence that the terminations were unlawfully motivated. The court stated that PERC erred in remanding the case to the hearing

officer because the hearing officer's findings of fact were supported by competent substantial evidence and the hearing officer applied the correct law. The court stated that the hearing officer's supplemental recommended order was clearly erroneous and reinstated the original recommended order.

230. Plummer v. Department of Transportation, 774 So. 2d 945 (Fla. 1st DCA 2001), reversing Case No. DF-2000-001 (Fla. PERC Mar. 15, 2000) (unpublished non-final order).

The court quashed a PERC order which compelled the department to provide confidential information regarding employees tested under Florida's Drug-Free Workplace Act. The court stated that, in keeping with the statute's clear and sweeping confidentiality provision, the hearing officer is permitted to order discovery of information concerning drug test results only as to the testing of the particular employee challenging an employment action.

231. Jacksonville Supervisor's Association v. City of Jacksonville, 791 So. 2d 508 (Fla. 1st DCA 2001), rev'g in part 26 FPER ¶ 31140 (2000).

The court reversed part of a PERC order which found the city committed an unfair labor practice when, as a part of departmental reorganization, it deleted three positions in a bargaining unit and created positions outside of the bargaining unit. The court held that under section 447.209, Florida Statutes, an employer has no duty to impact bargain over good faith changes in its organization and operations absent evidence that the changes impact upon wages, hours, and terms and conditions of employment of bargaining unit employees.

232. Browning v. Brody, 796 So. 2d 1191 (Fla. 5th DCA 2001).

The court held that private lawsuits are not available for fair representation cases involving unions and employers subject to PERC's jurisdiction, and that the exclusive remedy for employees is to file an unfair labor practice with the Commission.

233. State Employees Attorneys Guild v. Jeb Bush, 821 So. 2d 457 (Fla. 1st DCA 2002), rev'g 27 FPER ¶ 32183 (2001).

The court reversed a PERC order which found that the previously-defined separate bargaining unit for attorneys was no longer appropriate because it would result in excessive fragmentation due to the adoption of "Service First" legislation after the hearing officer issued his recommended order. The court stated that factual issues exist regarding the effect of the "Service First" legislation on the continued viability of the proposed bargaining unit.

234. Dade County School Administrators Association, Local 77 v. School Board of Miami-Dade County and PERC v. Dade Association of School Administrators, 840 So. 2d 1103 (Fla. 1st DCA 2003), aff'g 28 FPER ¶ 33041 (2002).

The court affirmed a PERC order dismissing the representation petition because vice and assistant principals are managerial employees pursuant to sections 228.041(10) and 447.203(4)(a)6., Florida Statutes. The court noted that the union has the right to seek a declaratory judgment in circuit court concerning the constitutionality of those statutory provisions.

235. IUPA v. State of Florida, Department of Management Services, 855 So. 2d 76 (Fla. 1st DCA 2003), rev'g in part 28 FPER ¶ 33137 (2002).

The court reversed PERC's failure to order a return to the status quo ante as part of the remedy for the state's unlawful unilateral change in employee work schedules. The court ordered the parties to negotiate a settlement within sixty days or return to the status quo ante. The court noted that this unusual remedy was intended to strike a balance between the competing interests of the parties.

236. CWA v. Indian River County School Board, 888 So. 2d 96 (Fla. 4th DCA 2004), rev. denied, 901 So. 2d 873 (Fla. 2005).

The court held that a complaint alleging that an employer unilaterally changed employees' health insurance in reliance upon section 447.4095, Florida Statutes, was, absent deferral by PERC, a matter for PERC and not an arbitrator to decide.

237. LIUNA v. Greater Orlando Aviation Authority, 869 So. 2d 608 (Fla. 5th DCA 2004), aff'g 28 FPER ¶ 33256 (2002).

The court held that an overriding need to protect the public served as exigent circumstances allowing the airport authority to make a unilateral change in its employee access policy. The court agreed with PERC that the management rights section of the authority's bargaining agreement with the union allowed the airport to impose stricter access requirements and that the union failed to request impact bargaining and to identify a bargainable impact.

Note: In Coastal Florida PBA, Inc. v. Sheriff of Brevard County, 30 FPER ¶ 297 at 693 (2004), PERC receded from language in its order in this case that imposes a duty upon a union to make an effective demand to bargain after learning an employer has implemented a unilateral change in working conditions.

238. City of Winter Springs v. Winter Springs Professional Firefighters, Local 3296, 885 So. 2d 494 (Fla. 1st DCA 2004), rev'g 29 FPER ¶ 167 (2003), rev. denied, 911 So. 2d 793 (Fla. 2005).

The court held that by imposing language limiting anniversary pay raises to the term of the collective bargaining agreement, in effect "freezing" wages during a contractual hiatus, the employer's legislative body did not impose a waiver of union rights. The court concluded that the employees had no entitlement to continued receipt of wage increases when a contract expired because the pay freeze language was part of several previous contracts and, thus, the status quo, if any, was that the employees had no expectation of continued receipt of wage increases once an agreement expired.

On a separate issue, the court held that parties are allowed to change their positions during impasse, whether before a special master or before a legislative body, provided that the amended proposals do not touch on a topic that has not been previously negotiated at the bargaining table. This reversed PERC's decision that the employer had acted unlawfully by materially changing its last proposal presented before declaration of impasse and presenting the amended proposal to the legislative body prior to the impasse resolution hearing.

239. Taylor v. PERC and Department of Health, 878 So. 2d 421 (Fla. 4th DCA 2004), aff'g 29 FPER ¶ 169 (2003), rev. denied, 902 So. 2d 792 (Fla. 2005).

The court held that a state employee was precluded from pursuing a whistle-blower action after she elected to pursue a remedy under the collective bargaining agreement's grievance procedure.

240. UFF and Florida Public Employees Council 79, AFSCME v. PERC, Florida State University Board of Trustees, and University of West Florida Board of Trustees, 898 So. 2d 96 (Fla. 1st DCA 2005), rev'g 29 FPER ¶ 281 (2003), rev. denied, 909 So. 2d 863 (Fla. 2005).

The court held that the two university boards of trustees were successor employers to the Florida Board of Education and that they were bound by the collective bargaining agreements they had inherited from their predecessor, pending amendment of AFSCME's and UFF's certifications or the outcome of new representation elections. The court concluded that state government can not abridge the right of public employees to bargain collectively by unilaterally terminating its obligations under a collective bargaining agreement simply by reorganizing the executive branch, where employees affected perform the same work, in the same jobs, under the same supervisors, by operating the same facilities, carrying on the same enterprise, and providing the same service.

241. Miami-Dade County v. Government Supervisors Association of Florida, Local 100, 907 So. 2d 591 (Fla. 3d DCA 2005), rev'g 29 FPER ¶ 265 (2003), rev. denied, 926 So. 2d 1269 (Fla. 2006).

The court held that PERC's order was erroneous because neither PERC nor the hearing officer had jurisdiction to rule upon a claim – a unilateral schedule change – not presented or argued by the parties. The court also declined to defer to PERC's interpretation of a collective bargaining agreement regarding waiver, holding that the issue is one of simple contract interpretation requiring no agency expertise.

242. Florida Employees Council 79, AFSCME v. PERC, 871 So. 2d 270 (Fla. 1st DCA 2004), aff'g 29 FPER ¶ 93 (2003), rev. denied, 884 So. 2d 22 (Fla. 2004).

The court held that the constitutional amendment making the Board of Governors responsible for the management of the entire university system trumped legislation making the university boards of trustees public employers, and that the Board of Governors had authority to delegate its authority as public employer to the university boards of trustees.

243. Florida Public Employees Council 79, AFSCME v. State of Florida, John Ellis Bush as Governor, 921 So. 2d 676 (Fla. 1st DCA 2006), rev'g 30 FPER ¶ 290 (2004).

The court reversed PERC's order dismissing AFSCME's unfair labor practice charge alleging that the state unlawfully refused to arbitrate a grievance regarding the procedure to be followed in a layoff. Rule 60K-17, which provided "bumping" rights to laid-off employees, was repealed by Service First legislation effective January 1, 2002. However, since the employees were laid-off in 2001, 60K-17 controlled the procedure the state was required to follow. (Contrast these facts with those in case 246 which again raises this issue in a subsequent lay-off.)

244. Florida Public Employees Council 79, AFSCME v. State of Florida, John Ellis Bush as Governor, 860 So. 2d 992 (Fla. 1st DCA 2003).

The court held that AFSCME's allegations alleging unlawful conduct on the part of the governor in impasse resolution process were allegations over which PERC had exclusive jurisdiction.

The 2001 Service First legislation which amended impasse resolution statute, section 447.401, by providing that, if the governor is the public employer, no mediator or special master shall be appointed but that, instead, a joint select committee shall be appointed by the legislature to review parties' positions and provide a recommended resolution of impasse issues, did not render legislative scheme arbitrary and unreasonable and deny public employees their right to due process.

245. State of Florida v. International Union of Police Associations, 927 So. 2d 946 (Fla. 1st DCA 2006).

The court reversed a decision by the circuit court confirming the decision of an arbitrator. The court determined that the dispute involved the issue of whether a unilateral change in a term or condition of employment occurred and not the interpretation or application of the specific provisions of the parties' collective bargaining agreement. Therefore, the court held that the dispute fell within the exclusive jurisdiction of PERC.

The court noted that while PERC has the power to defer to arbitration, only it may make that determination. A party may not bypass PERC's jurisdiction and proceed directly to arbitration.

246. Florida Public Employees Council 79, AFSCME v. State of Florida, Governor John Ellis Bush, 939 So. 2d 121 (Fla. 1st DCA 2006), aff'g 31 FPER ¶ 139 (2005).

The court affirmed PERC's order dismissing AFSCME's unfair labor practice charge alleging that the state unlawfully refused to arbitrate a grievance regarding the procedure to be followed in a layoff. Unlike the facts in 921 So. 2d 676 (Fla. 1st DCA 2006) wherein Florida Administrative Code Rule 60K-17, which contained "bumping" rights, remained operative during the applicable time the layoffs occurred, here, Florida Administrative Code Rule 60L-33.004 had already become effective and controlled the layoff procedure eliminating bumping rights. The court noted that the parties' contract contemplated such a contingency by stating that if a contractual provision contravenes any laws of the state by reason of "existing or subsequently enacted legislation," such provision would no longer be enforced.

247. Florida Senate v. Florida Public Employees Council 79, 784 So. 2d 404 (Fla. 2001).

The court held that doctrine of separation of powers deprived the circuit court of authority to enjoin the legislature from conducting a public hearing to resolve impasse issues before receiving the special master's report.

248. Cagle v. St. John's County School District, 939 So. 2d 1085 (Fla. 5th DCA 2006), aff'g 31 FPER ¶ 70 (2005).

The court affirmed PERC's order summarily dismissing Cagle's unfair labor practice charge, holding that she was not entitled to an evidentiary hearing because she failed to establish a prima facie case that the school district failed to renew her teaching contract in retaliation for her protected activity in filing a veteran's preference complaint against the school district and testifying in that case.

249. City of Miami Beach v. PERC, 937 So. 2d 226 (Fla. 3d DCA 2006), rev'g 31 FPER ¶ 213 (2005).

The court reversed PERC's decision affirming its hearing officer's conclusion that the city violated section 447.501(1)(a) and (c), Florida Statutes, by charging more than actual cost for copies of documents relevant to collective bargaining. PERC's decision relied upon its long-standing precedent in Hollywood Fire Fighters, Local 3175 v. City of Hollywood, 8 FPER ¶ 13324 (1982). The court disapproved of the Hollywood decision and held that copying charges for all documents are controlled by Chapter 119, Florida Statutes, Florida's Public Records Act, which preempts PERC's regulation of copying costs.

250. Ft. Lauderdale v. FOP v. AFSCME, 639 So. 2d 181 (Fla. 4th DCA 1994), aff'g 19 FPER ¶ 24108 (1993).

The court affirmed PERC's decision declining to sever nonsworn police department employees from existing civilian unit and place positions in police unit despite community of interest between contested positions and members of police unit where contested positions were in existence when civilian unit was sanctioned, positions have lengthy bargaining history with civilian unit, and proposed severance is opposed by union representing civilian unit. Palm Beach County PBA v. City of West Palm Beach, 17 FPER ¶ 22271 (1991), distinguished.

251. Fuller v. Department of Education, 927 So. 2d 28 (Fla. 1st DCA 2006).

In a former DOE employee's appeal of DOE's dismissal of her petition challenging the reclassification of her position from career service to selected exempt service, the court held that PERC does not have exclusive jurisdiction to classify positions as managerial.

DOE was authorized to reclassify positions pursuant to restructuring of state personnel system. Nonetheless, the court reversed DOE for improperly rejecting finding of DOAH administrative law judge that employee's position was not managerial.

252. City of Marathon v. Professional Firefighters of Marathon, Inc., Local 4396, IAFF, 946 So. 2d 1187 (Fla. 3d DCA 2006), aff'g 31 FPER ¶ 196 (2005).

The court affirmed PERC's decision on showing of interest cards, unit placement, and election objections in all respects. The court determined that PERC's policy of allowing showing of interest statements in the name of the parent organization to serve as the showing of interest for a petition filed by a subsidiary of that parent organization was not a clearly erroneous interpretation of Chapter 447, Part II, Florida Statutes. Similarly, the court rejected the city's challenge to PERC's decision that part-time volunteers are excluded from the unit by noting that the record confirmed the existence of competent substantial evidence that the part-time volunteers did not meet the definition of public employee in section 447.203(3). Finally, the court upheld PERC's decision that the city improperly failed to provide affidavits to support the allegations in its post-election petition and agreed that there was competent substantial evidence to support PERC's determination that the notice of election was not deficient and did not significantly affect the fairness of the election.

253. Menegat v. City of Apopka, 954 So. 2d 681 (Fla. 5th DCA 2007).

The court affirmed a circuit court partial judgment finding section 447.509(1)(a), Florida Statutes, which prohibits unions and persons acting on their behalf from soliciting public employees during working hours, to not be facially unconstitutional.

254. City of Coral Gables v. Coral Gables Walter F. Stathers Memorial Lodge 7, FOP, 976 So. 2d 57 (Fla. 3d DCA 2008), rev'g 32 FPER ¶ 173 (2006), rev. den. SC08-669 (Fla. Sept. 25, 2008).

Reversing a PERC decision finding that the city had committed an unfair labor practice in dealings with the police union, the court held that a successful unfair labor practice claim does not hinge on a public employee's reasonable belief, but requires proof that an exercise of statutorily protected conduct motivated the employer to make a threatening or coercive decision or a decision against the employee's interest. The court further held that evidence supported the hearing officer's finding that the city manager was motivated by concerns other than protected conduct when he made statements to the union president about the effects of the union's acceptance of reimbursement for pension contributions in settlement of a grievance.

255. Wimberly v. Miami-Dade County, Florida Employees Local Number 199 of AFSCME, AFL-CIO and PERC, 8 So. 3d 1160 (Fla. 3d DCA 2009), aff'g 34 FPER ¶ 190 (2008).

The court affirmed PERC's decision that the union did not violate its duty of fair representation by withdrawing its representation of an employee in her grievance against the county concerning the employee's dismissal where the union's decision was based on the employee's admission to filing the false report and claim for which she was dismissed.

256. School District of Martin County, Florida v. PERC and Martin County Education Association, 15 So. 3d 42 (Fla. 4th DCA 2009), rev'g 34 FPER ¶ 85 (2008).

The court reversed PERC's decision that the school district committed an unfair labor practice by unilaterally changing the method by which it distributed Florida Teachers Lead Program stipends from checks to debit cards without notice or negotiating with the union. The court noted that subsequent to the filing of the appeal the controlling statute was amended to specifically include debit cards as a means of distributing the stipends and to provide that stipends do not affect the employees' wages, hours, or terms and conditions of employment.

257. Miami-Dade County v. Transport Workers' Union of America, Local 291, 22 So. 3d 785 (Fla. 3d DCA 2009), vacating 35 FPER ¶ 340 (2009).

The court vacated a stay of a collective bargaining impasse process that was imposed by the Commission majority pending resolution of an unfair labor practice charge alleging that the county had prematurely declared impasse. The court held that prompt resolution of the bargaining dispute "was in everyone's best interest" and the need to resolve the impasse was critical.

258. Cortes v. PERC, 36 So. 3d 758 (Fla. 3d DCA 2010), rev'g 35 FPER ¶ 20 (2009).

In the absence of authority requiring the appellants to file grievances with the union when their grievances are with the union itself, the court concluded that PERC erred in determining that the filing of grievances was a prerequisite to the filing of the appellants' amended unfair labor practice charges. The court further concluded that PERC erred in affirming the General Counsel's summary dismissal because the amended unfair labor practice charges stated prima facie cases that the union breached its duty of fair representation by arbitrarily, discriminatorily, and in bad faith refusing to establish seniority as required by the contract. The court remanded the case for an evidentiary hearing to determine whether appellants were owed their seniority.

259. Federation of Public Employees v. Broward County Sheriff's Office, 45 So. 3d 547 (Fla. 1st DCA 2010).

The court dismissed an appeal of a Commission final order on the ground "this case is moot."

260. Sheriff of Broward County v. Stanley, 50 So. 3d 640 (Fla. 1st DCA 2010), rev'g 36 FPER ¶ 11 (2010).

The court reversed a PERC order which determined that the sheriff committed an unfair labor practice by declining to rehire a former detention deputy in retaliation for his protected concerted activities. The court held that Stanley, as a job applicant, did not qualify as a public employee within the plain meaning of section 447.501(1)(a), Florida Statutes. The court also held that the record lacked competent substantial evidence supporting a finding that Stanley was not rehired because of his union involvement, in violation of section 447.501(1)(b), Florida Statutes. The court declined to follow the holding in Southwest Florida Police Benevolent Association v. City of Bradenton, 9 FPER ¶ 14100 (1983), aff'd per curiam, 440 So. 2d 358 (Fla. 2d DCA 1983) (holding consistent with private sector law that managerial employees, although not "employees," could receive protection in certain circumstances). The court explained that a separate statute, section 447.17, Florida Statutes, provides a remedy to individuals who are not public employees for discrimination arising from their union activities. The court also stated that the policy rationale in Southwest Florida was not present in the Stanley case because Stanley was not an employee and there was no evidence that any public employees experienced interference, restraint, or coercion as a result of the sheriff's decision not to rehire Stanley. Finally, the court held that there was no competent substantial evidence showing that the sheriff declined to rehire Stanley because of an intent to discourage involvement with the union. Rather, the evidence tended to show that the sheriff failed to rehire Stanley because of his support for a rival during an election.

261. Pensacola Junior College Faculty Association, United Faculty of Florida, Florida Teaching Profession, National Education Association v. Pensacola Junior College Board of Trustees, 50 So. 3d 700 (Fla. 1st DCA 2010), rev'g 36 FPER ¶ 18 (2010).

The court reversed PERC's determination that the employer did not unlawfully refuse to process the union's grievance because the grievance was not arguably arbitrable. The court agreed with the union that PERC erred by focusing on the merits of the grievance in determining that the arbitration clause was not susceptible of an interpretation covering the dispute. Thus, "[h]owever dubious" the union's argument was on the merits of the grievance, the court could not say with positive assurance that the arbitration clause did not cover the dispute. The court remanded the case to PERC for further proceedings.

262. Sheriff of Pasco County v. Florida State Lodge, Fraternal Order of Police, Inc., 53 So. 3d 1073 (Fla. 1st DCA 2010), aff'g 35 FPER ¶ 322 (2009).

The court affirmed PERC's order determining that the board of county commissioners, rather than the sheriff, was the appropriate legislative body to resolve impasse issues between the sheriff and the union. Accord, Sheriff of Clay County v. Florida State Lodge, Fraternal Order of Police, Inc., 58 So. 3d 295 (Fla. 1st DCA 2011), per curiam aff'g 36 FPER ¶ 199 (2010).

263. Manatee Education Association, FEA, AFT (Local 3821), AFL-CIO v. School Board of Manatee County, 62 So. 3d 1176 (Fla. 1st DCA 2011), aff'g in part and rev'g in part 35 FPER ¶ 46 (2009).

In interpreting section 447.4035, Florida Statutes, Financial Urgency, the court affirmed PERC and held that a public employer is not required to prove the existence of a genuine financial urgency before proceeding under this provision.

The court reversed the Commission's determination that a union must participate in a "reasonable period of negotiation" in order to subsequently file an unfair labor practice charge alleging that the employer improperly invoked the provision in the absence of a real financial urgency. The court declined to decide what constitutes a "financial urgency" under section 447.4035 or decide whether the employer was faced with a financial urgency under this provision.

264. School District of Indian River County v. Florida Public Employees Relations Commission and Indian River County Education Association, Local 3617, AFT, FEA, AFL-CIO, 64 So. 3d 723 (Fla. 4th DCA 2011), aff'g in part and rev'g in part 35 FPER ¶ 207 (2009).

The court held that the charge alleging a refusal to bargain the impact of a new requirement that teachers submit their lesson plans via the internet was sufficient because it included the names of the individuals involved and the time and place of occurrence of the particular acts giving rise to the dispute. In addition, the charge satisfied the requirement that it identify specific impacts on wages, hours, or terms and conditions of employment. The court also held that the letters which were included with the charge provided additional detail on which PERC's general counsel was permitted to rely in his determination of the sufficiency of the charge. Further, the court held that the charge was not premature. The court rejected the argument that the union was not permitted to seek impact bargaining until after the electronic lesson plan requirement was implemented and held that the appropriate time to impact bargain is prior to implementation of a change.

The court affirmed PERC's decision that the school district improperly refused to impact bargain. The court rejected the school district's argument that it had no duty to impact bargain because the requirement that teachers submit their lesson plans electronically was merely substituting one customary duty for another, holding that, because the manner of compliance with an already existing policy was changed, the union had the right to demand impact bargaining once it identified impacts upon wages and terms and conditions of employment resulting from the change in the method of compliance with the existing management prerogative.

The court reversed PERC's award of attorney's fees and litigation costs, noting that the school district continuously requested evidence from the union that the impact of the change would be substantial. The court held that in ruling that the school district knew or should have known that its conduct constituted an unfair labor practice, PERC failed to recognize that the school district could not have known that the union would be able to make a showing of substantial impact at the hearing.

265. Communications Workers of America v. City of Gainesville, 65 So. 3d 1070 (Fla. 1st DCA 2011), rev'g 36 FPER ¶ 56 (2010).

The court, with Judge Davis dissenting, reversed a PERC final order dismissing an unfair labor practice charge regarding a change in retiree healthcare benefits. The court found that the past practice doctrine required the continuation of benefits until bargaining changed the status quo.

266. Florida Police Benevolent Association v. Sheriff of Orange County, 67 So. 3d 400 (Fla. 1st DCA 2011), aff'g 36 FPER ¶ 348 (2010).

The court affirmed PERC's dismissal of an unfair labor practice charge and denial of attorney's fees and costs to the sheriff. PERC correctly concluded that the hearing officer arrived at an erroneous conclusion of law by determining the status quo of merit step pay increases during the hiatus period between the expiration of the parties' previous agreement and a successor agreement based on extraneous evidence of the parties' past practice, rather than on the explicit terms embodied in the relevant bargaining agreements.

267. United Teachers of Dade v. School District of Miami-Dade County, 68 So. 3d 1003 (Fla. 3d DCA 2011), aff'g in part and rev'g in part 36 FPER ¶ 548 (2010).

The court affirmed a PERC order finding that a teachers' union committed an unfair labor practice when it negotiated a collective bargaining agreement provision that provided a benefit, entitlement to having up to two union representatives present at predisciplinary conferences-for-the-record, available only to dues-paying union members. The court concluded, however, that PERC erred in denying the individual charging party, Shawn Beightol, an award of attorney's fees and costs where

respondent knew or should have known that it violated established law based on 23-year-old precedent of Spiegel v. Dade County Police Benevolent Association, 14 FPER ¶ 19092 (1988). PERC's denial of a fee award was based, in large part, on the erroneous belief that Beightol did not bring Spiegel to the attention of the hearing officer.

268. City of Miami Beach v. Board of Trustees of the City Pension Fund for Firefighters and Police Officers, 91 So. 3d 237 (Fla. 3d DCA 2012).

The court decided a voter referendum was not necessary to approve or disapprove a collective bargaining agreement covering pensions.

269. Koren v. School Board of Miami-Dade County, 97 So. 3d 215 (Fla. 2012), quashing 46 So. 3d 1090 (Fla. 3d DCA 2010) (affirming 35 FPER ¶ 173 (2009) and 35 FPER ¶ 206 (2009)).

The Florida Supreme Court quashed the decision of the Third District Court of Appeal affirming PERC's affirmance of its General Counsel's summary dismissals of three unfair labor practice charges and remanded with instructions to reinstate the charges for further proceedings. The unfair labor practice charges were based on violations of section 447.501(1)(a) and (d), Florida Statutes.

In proving a section 447.501(1)(a) violation, an employee must show that his or her otherwise protected activity was a substantial or motivating factor in the employer's decision or action which constituted the alleged violation. The preponderance of the evidence standard is the usual burden upon the charging party at agency proceedings. However, this heightened standard is not appropriate when first determining whether a claimant has stated a prima facie violation in his or her charge.

The requirements to establish a prima face charge alleging a violation of section 447.501(1)(a) and (d) were enunciated in Gibbons v. State Public Employees Relations Commission, 702 So. 2d 536, 537 (Fla. 2d DCA 1997). That court concluded that proof 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.

The Florida Supreme Court concluded that the charging party fulfilled each of those requirements. First, he assisted a fellow employee in drafting an unfair labor practice charge, a protected activity under section 447.501, Florida Statutes. Second, he alleged being falsely accused of job abandonment and misuse of his password and being involuntarily transferred more than twenty-four miles from his current school. The totality of the circumstances were sufficient to demonstrate prima facie evidence that he

suffered an adverse employment action. Lastly, he alleged facts sufficient to establish that the protected activity and the adverse employment action were not wholly unrelated.

270. City of Deland v. Landolfi, 97 So. 3d 869 (Fla. 1st DCA 2012), aff'g in part and rev'g in part 38 FPER ¶ 206 (2011).

The court affirmed without comment PERC's dismissal of a veteran's preference complaint on the grounds that the employer hired a more qualified applicant. However, it reversed PERC's award of attorney's fees and costs to the veteran, holding that PERC abused its discretion in ordering the award because finding a violation of the veteran's preference statute is a prerequisite to such relief under section 295.14(1), Florida Statutes, and the employer did not violate the statute by failing to give an interview to a veteran who was ultimately determined to be less qualified than the successful applicant.

271. Sheriff of Palm Beach County v. Palm Beach County Police Benevolent Association, Inc., 97 So. 3d 933 (Fla. 1st DCA 2012), aff'g 38 FPER ¶ 171 (2011).

The court affirmed PERC's decision that the sheriff's office violated section 447.501(1)(a) and (f), Florida Statutes, by refusing to process a former deputy's grievance to arbitration in reliance on a "last chance agreement" where PERC found that due to its ambiguity the agreement did not waive the deputy's right to grieve.

272. City of Miami v. Fraternal Order of Police, Lodge 20, 98 So. 3d 1236 (Fla. 3d DCA 2012)

The court held that a temporary injunction preventing the city manager from invoking the "financial urgency" statute without formal action or authorization of the city commission should be vacated since PERC has preemptive jurisdiction in a "financial urgency" dispute during bargaining.

273. School District of Polk County v. Polk Education Association, 100 So. 3d 11 (Fla. 2d DCA 2011), aff'g 36 FPER ¶ 260 (2010).

The court held that PERC's determination that the union did not waive its right to collectively bargain and that there were no exigent circumstances providing an exception to the union's right to collectively bargain was supported by competent, substantial evidence.

274. School District of Polk County v. Polk County Non-Industrial Employees Union, Local 227, AFSCME, AFL-CIO, 100 So. 3d 16 (Fla. 2d DCA 2011), aff'g 36 FPER ¶ 261 (2010).

The court concluded that there was competent, substantial evidence in the record supporting PERC's determination that the union did not clearly and unmistakably waive its right to collectively bargain over proposed changes to its members' health insurance plans. In addition, the court held the projected budgetary shortfall did not constitute an exigent circumstance permitting the school district to restrict the union's right to collective bargaining.

275. Miami-Dade County and Miami-Dade County Mayor Carlos A. Gimenez v. Dade County Police Benevolent Association, 103 So. 3d 236 (Fla. 3d DCA 2012).

The court quashed the order of a PERC hearing officer denying a motion to quash subpoenas from the union that required the mayor to testify in an unfair labor practice hearing and denying a motion for a protective order. The court held that the subpoena improperly sought testimony as to the mayor's motive for vetoing resolutions of the board of county commissioners and improperly sought to compel a high-ranking government official to testify as to information that is readily available from other sources. Judge Cortinas stated in dissent that he would have denied the petition for writ of certiorari on the ground that the petitioners had not shown irreparable injury.

Note that in Miami-Dade County, et. al. v. Dade County Police Benevolent Association, Case No. 3D15-170 (Fla. 3d DCA Apr. 16, 2015), the court denied a petition for writ of certiorari challenging a PERC hearing officer's order refusing to quash subpoenas compelling the mayor and county commission chairperson to testify at an unfair labor practice hearing regarding their conversation during an impasse hearing after the hearing officer determined at hearing that the information sought was not available from other sources.

276. Florida State Fire Service Association, IAFF, Local S-20 v. State of Florida, 128 So. 3d 160 (Fla. 1st DCA 2013), rev'g 39 FPER ¶ 193 (2012).

The court reversed PERC's order that found that the governor had not committed an unfair labor practice when he proposed a change to a contract provision governing retirement benefits several days before he submitted his proposed budget to the Florida Legislature. The change delegated the issue of pension benefits to the legislature. By operation of law, the submission of the proposed budget creates an impasse in contract negotiations on all matters that have not been resolved by that point. The court held that the practical effect and timing of the proposal denied the union's right to negotiate on a mandatory subject of bargaining. Because of the posture of the case, the only remedy that could be afforded was an award of costs and attorney's fees to the union.

277. School District of Collier County v. Fuqua, 136 So. 2d 687 (Fla. 2d DCA 2014), rev'g 39 FPER ¶ 227 (2013).

The court reversed PERC's final order finding that a school district violated the veteran's preference law by not hiring a veteran for a school teacher position. The court held that the hearing officer's finding that the non-veteran who was hired was more qualified for the job was supported by competent substantial evidence. Despite the veteran's impressive educational background that included a doctorate and extensive work experience, the hearing officer found the non-veteran more suited for the middle school teacher position based on specific experience. The court expressly held that the decision about who is more qualified is a fact question for the hearing officer, not the Commission.

278. Amalgamated Transit Union, Local 1593 v. Hillsborough Area Regional Transit Authority, 139 So. 3d 345 (Fla. 2d DCA 2014), rev'g 39 FPER ¶ 175 (2014).

The union filed charges alleging that HART refused to resume negotiations after a failed ratification vote, conducted a legislative body impasse hearing instead of resuming bargaining, and unilaterally altered terms and conditions of employment by implementing the articles resolved at the impasse hearing. The hearing officer issued a recommended order in which he concluded that HART had committed an unfair labor practice on all three grounds. PERC concluded that HART did not commit an unfair labor practice by refusing to return to bargaining after the union members rejected the tentative agreement and dismissed the charge.

The court reversed PERC, relying on Sarasota County Board of County Commissioners v. Amalgamated Transit Union, Local 1701, 88 So. 3d 945 (Fla. 2d DCA 2012). The court stated that PERC did not expressly recede from its holding in Sarasota that a legislative body is not authorized to resolve disputed issues when the parties have reached a tentative agreement following a declaration of impasse.

279. Brennan v. City of Miami, 146 So. 3d 119 (Fla. 3d DCA 2014), rev'g 39 FPER ¶ 164 (2012).

The court held that PERC erred in concluding that a veteran's failure to submit documentation of his veteran status to the city when he applied for a promotion precluded him from being entitled to a veteran's preference. The court held that, pursuant to the veteran's preference statutes and administrative rules, the requirement that job applicants claiming veteran preference in employment are responsible for providing documentation of their status applies only to applicants for original appointment and retention, not to applicants for promotion. Additionally, the court held that a city ordinance requiring that veterans submit verification for all positions conflicts with state statutes and cannot be sustained.

280. School District of Orange County v. Orange County Classroom Teachers Association, 146 So. 3d 1203 (Fla. 5th DCA 2014), aff'g 40 FPER ¶ 151 (2014).

The court affirmed PERC's final order finding that the school district committed an unfair labor practice. The court wrote only to question the practicality of PERC's practice of requiring the actual posting of a notice to employees about the violation of law "[g]iven the advancements in modern technology."

281. Dade County Police Benevolent Association, Inc. v. Miami-Dade County Board of County Commissioners, 160 So. 3d 482 (Fla. 1st DCA 2015), rev'g 40 FPER ¶ 198, rev. denied, SC15-880 (Fla. Sep. 8, 2015).

The court held that a mayor's veto of the county commission's resolution of a collective bargaining agreement impasse constituted an unfair labor practice and remanded the case to PERC for further proceedings on the remedy for the unfair labor practice. During bargaining for a successor contract, the mayor and union reached an impasse on the amount of employees' contribution toward the cost of health insurance. To resolve the impasse, the parties agreed to waive special magistrate proceedings and have the county commission, sitting as the legislative body, resolve the issue. Initially, the legislative body resolved the impasse with no additional contribution by employees. However, the mayor vetoed the legislative body's action pursuant to his authority under the county's charter. At its next meeting, the county commission imposed a 4% contribution toward the cost of health insurance.

The court determined that there was nothing in the impasse resolution process in section 447.403, Florida Statutes (2015), that allows a chief executive officer to reject the resolution of the impasse issues by the legislative body. The statutes governing the impasse process make it clear that the chief executive officer's role is limited to that of an advocate for the governmental entity's position on the impasse issue. When the chief executive officer is not a member of the legislative body, it is inconsistent with the statute and general principles of due process to allow the executive to participate in the legislative body's decision-making process beyond his or her role as an advocate.

The court also discussed the fact that the mayor's veto authority was derived from the county's charter, which was adopted pursuant to authority granted by the Florida Constitution. However, the charter conflicted and was superseded by statute to the extent that it gave the mayor the authority to veto the action taken by the county commission to resolve disputed impasse issues.

282. Allen v. United Faculty of Miami Dade College, 197 So. 3d 604 (Fla. 3d DCA 2016), aff'g 42 FPER ¶ 168 (2015), rev. denied, SC-16-1336 (Fla. Feb. 24, 2017).

The court affirmed PERC's decision affirming the General Counsel's summary dismissal of an amended unfair labor practice. The court held that PERC did not err in its determination that the charge lacked a clear and concise statement of the facts required by section 447.503(1), Florida Statutes, and Florida Administrative Code Rule 60CC-5.001(3), and that the charge's alleged Sunshine Law violation was outside of PERC's jurisdiction.

283. Headley v. City of Miami, 215 So. 3d 1 (Fla. 2017), quashing Headley v. City of Miami, 118 So. 3d 885 (Fla. 1st DCA 2013) (affirming 38 FPER ¶ 330 (2012)), and approving Hollywood Fire Fighters, Local 1375, IAFF, Inc. v. City of Hollywood, 133 So. 3d 1042 (Fla. 4th DCA 2014) (reversing 39 FPER ¶ 54 (2012)).

Miami Association of Fire Fighters v. City of Miami, Case No. SC-14-1627, 42 Fla. L. Weekly S926, 2017 WL 4856482 (Fla. Oct. 27, 2017) (unpublished), quashing Miami Association of Fire Fighters, Local 587, of International Association of Fire Fighters of Miami, Florida v. City of Miami, 145 So. 3d 172 (Fla. 3d DCA 2014) (affirming 38 FPER ¶ 352 (2012)).

In three cases, PERC defined financial urgency under section 447.4095, Florida Statutes, to be a financial condition requiring immediate attention and demanding prompt and decisive action which requires the modification of an agreement, but not necessarily a financial emergency or bankruptcy. PERC interpreted the statute to provide that an employer may unilaterally change the agreement before completing the impasse resolution procedure in section 447.403, Florida Statutes. In each case, PERC determined that the city had demonstrated that it was facing a financial urgency requiring immediate modification of the collective bargaining agreement. See Headley v. City of Miami, 38 FPER ¶ 330 (2012); Hollywood Fire Fighters, Local 1375, IAFF, Inc. v. City of Hollywood, 39 FPER ¶ 54 (2012); Miami Association of Fire Fighters, Local 587, of the International Association of Fire Fighters of Miami, Florida v. City of Miami, 38 FPER ¶ 352 (2012).

Each of the three cases was appealed. In Headley, 118 So. 3d 885, the First District Court of Appeal approved PERC's definition of financial urgency, held that the local government is not required to demonstrate that funds are not available from any other possible source to preserve the agreement, and concluded that the local government is not required to proceed through the impasse resolution process before modifying the agreement. In City of Miami, 145 So. 3d 172, the Third District Court of

Appeal affirmed PERC's decision, citing the First District's decision in Headley. In City of Hollywood, 133 So. 3d 1042, the Fourth District Court of Appeal adopted PERC's definition of financial urgency, but otherwise disagreed with the First District's decision in Headley and certified conflict with it.

Upon review of the First District's decision in Headley, the Florida Supreme Court adopted PERC's definition of a financial urgency. See Headley v. City of Miami, 215 So. 3d 1 (Fla. 2017). The Court further held that the local government must demonstrate that the only way of addressing its dire financial condition is through modification of the collective bargaining agreement; to do this, the local government must demonstrate that the funds are available from no other reasonable source. Finally, the Court interpreted the statute to permit the unilateral implementation of changes to the collective bargaining agreement only after parties have completed the impasse resolution proceedings and failed to ratify the agreement. Accordingly, the Court quashed the First District's decision in Headley and approved the Fourth District's decision in City of Hollywood.

In Miami Association of Fire Fighters, the Florida Supreme Court quashed the Third District's decision and remanded for reconsideration in light of its decision in Headley.

284. International Association of Firefighters Local S-20 v. State, 221 So. 3d 736 (Fla. 1st DCA 2017), aff'g 42 FPER ¶ 233 (2016), rev. denied, 257 So. 3d 364 (Fla. 2018).

The court affirmed PERC's dismissal of an unfair labor practice charge against the Governor for vetoing a proviso in the general appropriations act that would have given a raise to firefighters that work for the state. Under section 447.403, Florida Statutes, the legislature is responsible for resolving impasse issues for state employees. In resolving the impasse in this case, the legislature included a proviso in the general appropriations bill giving a raise to firefighters that work for the state, which the Governor vetoed. The court held that the Governor has constitutional authority to veto specific appropriations in the general appropriations act. The court reasoned that, after the veto, the legislature took no action to override the veto and, therefore, effectively resolved the impasse by maintaining the status quo.

285. City of Miami v. Miami Lodge #20 Fraternal Order of Police, 247 So. 3d 618 (Fla. 3d DCA 2018), rev'g 44 FPER ¶ 43 (2017), rev. denied, SC18-1272 (Fla. Dec. 17, 2018).

The court reversed PERC's order finding that the city engaged in an unfair labor practice by refusing to advance the union's grievance of the employee's dismissal to arbitration. The employee had been suspended for 120 hours and elected to appeal his

suspension to the city's civil service board. Under this process, the board reviews evidence and makes a recommendation to the city manager, who may sustain, reverse, or modify the board's findings or recommendations. The city manager modified the employee's discipline from a 120-hour suspension to dismissal. The employee then filed a petition for certiorari in the circuit court seeking review of the city manager's determination by the circuit court. The union also then filed a grievance of the dismissal on the employee's behalf and sought to arbitrate it, which the city refused to do. The court held that the employee was entitled to only one remedy and by appealing his suspension to the civil service board and the subsequent dismissal to the circuit court, the employee was precluded from re-litigating his disciplinary action through the grievance process. The court concluded that PERC erred by addressing the employee's grievance and determining that the city had committed an unfair labor practice.

286. City of Miami v. Headley, 249 So. 3d 630 (Fla. 3d DCA 2017) (dismissing appeal of 44 FPER ¶ 128 (2017)).

The court dismissed the appeal because the order being appealed found the city liable but did not establish an amount the city must pay and PERC had directed its clerk to open a case to establish the amount. The court held that the order was non-final and non-appealable.

287. Orlando Professional Fire Fighters, Local 1365, IAFF v. City of Orlando, 317 So. 3d 276 (Fla. 1st DCA 2021), aff'g 46 FPER ¶ 218 (2020).

The court affirmed PERC's final order dismissing a unit clarification petition seeking to add two newly created classifications to a unit the petitioner represents. The petitioner sought to sever the classifications from a unit represented by a different union, to which the classifications had been added just months prior. PERC held that the petitioner had not met the severance standard and rejected the petitioner's arguments regarding the limited bargaining history of the other union. PERC held that once it defines a bargaining unit, the principles favoring maintenance of labor stability disfavor disturbing that bargaining unit's composition and require proof of unworkability before the Commission will grant a severance.

On appeal, the court held that deference was appropriately afforded to PERC's prior decision to add the classifications to the other unit, PERC consistently applied its established legal standards to this case, and PERC's decision was based on competent, substantial evidence. The court held that any failure to notify the appellant of the prior proceedings had no impact on the fairness of the independent proceeding regarding the viability of the petitioner's unit clarification petition.

288. Koop v. Miami Shores Village, 322 So. 3d 704 (Fla. 1st DCA 2021), aff'g 46 FPER ¶ 310 (2020), petition for review filed, Case No. SC21-1129 (Fla. Aug. 2, 2021).

Under the "tipsy coachman" doctrine, the court affirmed PERC's final order dismissing a veterans' preference complaint on different grounds than that upon which PERC's final order was based. The court found that Koop was not eligible for a veterans' preference for promotion because the police department had already promoted him once after he returned from military service. The First District reasoned that the Koop's advancement to the detective position bears all the hallmarks of a promotion as that term is ordinarily understood, including an application and exam process, the requirement of at least one year's experience, an increase in salary, a ceremony for the promotion, the receipt of a new badge, and taking a new oath of office.

CASES DECIDED WITHOUT OPINION

1. Duval County School Board v. Supervisor's Association of Jacksonville, 367 So. 2d 1128 (Fla. 1st DCA 1979), per curiam aff'g 4 FPER ¶ 4161 (1978).

2. City of Sarasota v. PERC, 368 So. 2d 1379 (Fla. 2d DCA 1979), per curiam aff'g 4 FPER ¶ 4148 (1978).

3. City of Tampa v. PERC, 372 So. 2d 475 (Fla. 2d DCA 1979), per curiam aff'g 4 FPER ¶ 4210 (1978).

4. School Board of Palm Beach County v. PERC, 371 So. 2d 613 (Fla. 4th DCA 1979), per curiam aff'g 4 FPER ¶ 4052 (1978).

5. City of Tampa v. PERC and ATU, Local 1464, 373 So. 2d 465 (Fla. 2d DCA 1979), per curiam aff'g 4 FPER ¶ 4042 (1978).

6. City of Winter Haven v. PERC and Teamsters Local 444, 379 So. 2d 212 (Fla. 1st DCA 1979), per curiam aff'g 5 FPER ¶ 10089 (1979).

7. City of St. Petersburg v. PERC, 375 So. 2d 914 (Fla. 2d DCA 1979), dismissing cert. 5 FPER ¶ 10182 (1979).

8. School Board of Martin County v. Martin County Education Association, Local 3615, 390 So. 2d 830 (Fla. 1st DCA 1980), per curiam aff'g 5 FPER ¶ 10302 (1979).

9. School Board of Hamilton County v. Grace, 390 So. 2d 830 (Fla. 1st DCA 1980), per curiam aff'g 6 FPER ¶ 11010 (1979).

10. IAFF, Local 2135 v. City of Ocala, 394 So. 2d 1156 (Fla. 1st DCA 1981), per curiam aff'g 5 FPER ¶ 10252 (1979).

11. Lee v. City of Winter Haven, 399 So. 2d 140 (Fla. 2d DCA 1981), denying review of 6 FPER ¶ 11034 (1980), rev. denied, 399 So. 2d 1144 (Fla. 1981).

12. Palm Beach County CTA v. School Board of Palm Beach County, 402 So. 2d 1383 (Fla. 4th DCA 1981), per curiam aff'g 6 FPER ¶ 11283 (1980).

13. Lampkin-Asam v. Lee County School Board, 404 So. 2d 869 (Fla. 1st DCA 1981), per curiam aff'g 6 FPER ¶ 11273 (1980).

14. Bradford County School Board v. Bradford Education Association, Local 3603, 407 So. 2d 1107 (Fla. 1st DCA 1981), per curiam aff'g 6 FPER ¶ 11228 (1981).

15. Duval County School Board v. Duval Teachers United, 407 So. 2d 1108 (Fla. 1st DCA 1981), per curiam aff'g 7 FPER ¶ 12056 (1980).

16. Riviera Beach Association of Fire Fighters, Local 1621 v. PERC, 411 So. 2d 388, 7 FPER ¶ 12452 (Fla. 1st DCA 1981), per curiam aff'g 7 FPER ¶ 12029 (1981).

17. City of Winter Haven v. Hillsborough County PBA, Inc., 411 So. 2d 386 (Fla. 1st DCA 1981), per curiam aff'g 7 FPER ¶ 12129 (1981).

18. Dade Teachers' Association v. United Teachers of Dade, Local 1974, 412 So. 2d 474 (Fla. 1st DCA 1982), per curiam aff'g 7 FPER ¶ 12142 (1981).

19. Pinellas County PBA, Inc. v. PERC, 412 So. 2d 479 (Fla. 1st DCA 1982), per curiam aff'g 7 FPER ¶ 12121 (1981).

20. City of Lake Wales v. PERC, 412 So. 2d 482 (Fla. 2d DCA 1982), denying review of 7 FPER ¶ 12246 (1981).

21. Florida PBA, Inc. v. PERC, 418 So. 2d 1282 (Fla. 1st DCA 1982), per curiam aff'g 7 FPER ¶ 12430 (1981).

22. City of Bradenton v. PERC, 418 So. 2d 1287 (Fla. 2d DCA 1982), per curiam aff'g 7 FPER ¶ 12441 (1981).

23. Charity v. State, 433 So. 2d 520 (Fla. 1st DCA May 16, 1983), per curiam aff'g 8 FPER ¶¶ 13385 and 13386 (1982).

24. Dade Teachers Association v. United Teachers of Dade Local 1974, 436 So. 2d 115 (Fla. 3d DCA 1983), per curiam aff'g 8 FPER ¶ 13380 (1982).

25. City of Bradenton v. Southwest Florida PBA, Inc., 440 So. 2d 358 (Fla. 2d DCA 1983), per curiam aff'g 9 FPER ¶ 14100 (1983).

26. Broward Educational Support Personnel Association v. School Board of Broward County, 441 So. 2d 640 (Fla. 4th DCA 1983), per curiam aff'g 9 FPER ¶ 14007 (1982).

27. Florida Board of Regents v. UFF, 443 So. 2d 982 (Fla. 1st DCA 1983), per curiam aff'g 9 FPER ¶ 14144 (1983).

28. DeMarois v. Military Park Fire Control Tax District No. 4, 446 So. 2d 120 (Fla. 4th DCA 1984), per curiam aff'g 9 FPER ¶ 14074 (1983).

29. Collier County Association of Educational Office and Classroom Aide Personnel v. School Board of Collier County, 456 So. 2d 1185 (Fla. 2d DCA 1984), per curiam aff'g 9 FPER ¶¶ 14243, 14326, and 14333 (1983).

30. Florida Public Employees Council 79, AFSCME v. State and PERC, 472 So. 2d 1184 (Fla. 1st DCA 1985), per curiam aff'g 10 FPER ¶ 15208 (1984).

31. Broward County CTA, Inc. v. School Board of Broward County, 475 So. 2d 697 (Fla. 1st DCA 1985), per curiam aff'g 10 FPER ¶ 15246 (1984).

32. Shivers v. School Board of Dade County, 476 So. 2d 686 (Fla. 3d DCA 1985), per curiam aff'g 11 FPER ¶ 16161 (1985).

33. City of Hallandale v. Hallandale Professional Fire Fighters, Local 2238, 478 So. 2d 63 (Fla. 4th DCA 1985), per curiam aff'g 11 FPER ¶ 16071 (1985).

34. IBPO, Local 621 v. City of Hollywood, 482 So. 2d 361 (Fla. 4th DCA 1986), per curiam aff'g 10 FPER ¶ 15294 (1984).

35. DaCosta v. PERC, 484 So. 2d 11 (Fla. 1st DCA 1986), per curiam aff'g 11 FPER ¶ 16007 (1984), on remand from 443 So. 2d 1036 (Fla. 1st DCA 1983).

36. Gadsden Memorial Hospital v. Cheshire, 485 So. 2d 832 (Fla. 1st DCA 1986), per curiam aff'g 11 FPER ¶ 16132 (1985).

37. District Board of Trustees of Palm Beach Junior College v. United Faculty of Palm Beach Junior College, 489 So. 2d 749 (Fla. 4th DCA 1986), per curiam aff'g 11 FPER ¶ 16101 (1985).

38. Metropolitan Dade County v. Bacchus, 490 So. 2d 1266 (Fla. 3d DCA 1986), per curiam aff'g 11 FPER ¶ 16250 (1985), reh'g denied, 12 FPER ¶ 17039 (1985).

39. City of North Port v. Southwest Florida PBA, Inc., 497 So. 2d 246 (Fla. 2d DCA 1986), per curiam aff'g 11 FPER ¶ 16291 (1985).

40. City of Sarasota v. Southwest Florida PBA, Inc. and PERC, 497 So. 2d 246 (Fla. 2d DCA 1986), per curiam aff'g 11 FPER ¶ 16293 (1985).

41. ATU, Local 1596 v. Orange-Seminole-Osceola Transportation Authority, 500 So. 2d 1352 (Fla. 1st DCA 1987), per curiam aff'g 12 FPER ¶ 17134 (1986).

42. Florida PBA, Inc. v. City of Jacksonville and PERC, 508 So. 2d 1239 (Fla. 1st DCA May 28, 1987), per curiam aff'g 12 FPER ¶ 17313 (1986).

43. City of Miramar v. FOP, Florida State Lodge on Behalf of FOP, Local 59, 509 So. 2d 321 (Fla. 1st DCA 1987), per curiam aff'g 12 FPER ¶ 17332 (1986).

44. Weaver v. Leon CTA, 515 So. 2d 987 (Fla. 1st DCA 1987), per curiam aff'g 12 FPER ¶ 17339.

45. City of Palatka v. Brown, 515 So. 2d 755 (Fla. 5th DCA 1987), per curiam aff'g, 12 FPER ¶ 17336 (1986).

46. City of Tampa v. International Association of Fire Fighters, Local 754, 522 So. 2d 392 (Fla. 2d DCA 1988), per curiam aff'g, 13 FPER ¶ 18129 (1987).

47. Hampton v. PERC, Duval Teachers United, and Duval County School Board, 543 So. 2d 225 (Fla. 1st DCA 1989), per curiam aff'g, 14 FPER ¶ 19138 (1988).

48. Board of County Commissioners of Suwannee County v. International Union of Operating Engineers, Local 673, 544 So. 2d 202 (Fla. 1st DCA 1989), per curiam aff'g, 14 FPER ¶ 19192 (1988).

49. Florida Police Benevolent Association, Inc. v. Escambia County Sheriff's Department, 545 So. 2d 870 (Fla. 1st DCA 1989), per curiam aff'g, 14 FPER ¶ 19170 (1988).

50. International Association of Fire Fighters, Local 2416 v. City of Cocoa, 545 So. 2d 1371 (Fla. 1st DCA 1989), per curiam aff'g, 14 FPER ¶ 19311 (1988).

51. City of Starke Police Department v. Alachua County Police Benevolent Association, 551 So. 2d 1216 (Fla. 1st DCA 1989), per curiam aff'g, 15 FPER ¶ 20020 (1988).

52. Kallon v. United Faculty of Florida, 555 So. 2d 859 (Fla. 1st DCA 1989), per curiam aff'g, 15 FPER ¶ 20079 (1988).

53. Florida American Union v. Duval County School District v. Florida Public Employees Council 79, AFSCME, 563 So. 2d 636 (Fla. 1st DCA 1990), per curiam aff'g, 15 FPER ¶ 20326 (1989).

54. Alvarado v. North Broward Medical Center, 572 So. 2d 920 (Fla. 4th DCA 1990), per curiam aff'g, 16 FPER ¶ 21054 (1990).

55. International Association of Fire Fighters, Local 2416 v. City of Cocoa, 575 So. 2d 657 (Fla. 1st DCA 1991), per curiam aff'g, 16 FPER ¶ 21044 (1990).

56. Guerrero v. Department of Transportation, 581 So. 2d 1308 (Fla. 3d DCA 1991), per curiam aff'g, Case No. CA-90-036 (PERC Sept. 26, 1990) (unpublished opinion).

57. International Brotherhood of Correctional Officers v. PERC and Department of Corrections, 584 So. 2d 1000 (Fla. 1st DCA 1991), per curiam aff'g, 16 FPER ¶ 21322 (1990).

58. Newman v. Florida Public Employees District Council 79, AFSCME and City of Jacksonville, 592 So. 2d 1092 (Fla. 1st DCA 1992), per curiam aff'g, Case No. UC-91-005 (PERC Feb. 28, 1991) (unpublished opinion).

59. City of Atlantic Beach v. Professional Fire Fighters of Jacksonville Beach, 596 So. 2d 1059 (Fla. 1st DCA 1992), per curiam aff'g, 17 FPER ¶ 22079 (1991).

60. Lake County Board of County Commissioners and Lake County Sheriff's Office v. PERC and Teamsters, Chauffeurs, Warehousemen, and Helpers, Local 385, 596 So. 2d 1076 (Fla. 5th DCA 1992), per curiam aff'g, 17 FPER ¶ 22113 (1991).

61. Anastasi v. School District of Pinellas County, 599 So. 2d 1285 (Fla. 2d DCA 1992), per curiam aff'g, 17 FPER ¶ 22105 (1991).

62. Putnam Federation of Teachers v. School District of Putnam County, 600 So. 2d 1108 (Fla. 1st DCA 1992), per curiam aff'g, 17 FPER ¶ 22182 (1991).

63. Hillsborough County Fire Fighters, Local 2294, IAFF v. Hillsborough County Board of County Commissioners, 602 So. 2d 945 (Fla. 2d DCA 1992), per curiam aff'g, 18 FPER ¶ 23018 (1991).

64. District 2A, Transportation, Technical, Warehouse, Industrial, and Service Employees v. Port Everglades Authority, 616 So. 2d 618 (Fla. 4th DCA 1993), per curiam aff'g, 17 FPER ¶ 22175 (1991).

65. Federation of Public Employees, a Division of District 1, MEBA/NMU, AFL-CIO v. Professional Association of Independent Government Employees, 623 So. 2d 497 (Fla. 1st DCA 1993), per curiam aff'g, 18 FPER ¶ 23133 (1992).

66. Price v. Department of Professional Regulation, 623 So. 2d 498 (Fla. 1st DCA 1993), per curiam aff'g, 18 FPER ¶ 23505 and 18 FPER ¶ 23517 (1992).

67. City of Daytona Beach v. PERC, 630 So. 2d 194 (Fla. 5th DCA 1993), per curiam aff'g, 19 FPER ¶ 24068 (1993).

68. Price v. Department of Banking and Finance, 636 So. 2d 510 (Fla. 1st DCA 1994), per curiam aff'g, 19 FPER ¶ 24504 (1993).

69. Shabazz v. PERC, 638 So. 2d 949 (Fla. 2d DCA 1994), per curiam aff'g, 19 FPER ¶ 24231 (1993).

70. Nelson v. Department of Labor and Employment Security, 645 So. 2d 461 (Fla. 1st DCA 1994), per curiam aff'g, 22 FPER ¶ 27093 (1993).

71. International Brotherhood of Firemen and Oilers, Local 1220 v. City of St. Petersburg, 645 So. 2d 467 (Fla. 2d DCA 1994), per curiam aff'g, Case No. CA-93-079 (PERC Dec. 21, 1993) (unpublished opinion).

72. Big Bend Police Benevolent Association v. City of Callaway, 650 So. 2d 993 (Fla. 1st DCA 1995), per curiam aff'g, 19 FPER ¶ 24190 (1993).

73. Dlugolecki v. Indian River Community College, 653 So. 2d 1042 (Fla. 4th DCA 1995), per curiam aff'g, 20 FPER ¶ 25503 (1994).

74. City of Gainesville v. Communications Workers of America, Local 3170, 662 So. 2d 934 (Fla. 1st DCA 1995), per curiam aff'g, 20 FPER ¶ 25226 (1994).

75. Lake County Sheriff's Office v. PERC and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 385, 666 So. 2d 157 (Fla. 5th DCA 1995), per curiam aff'g, 20 FPER ¶ 25270 (1994).

76. Milford v. City of Coral Springs, 666 So. 2d 904 (Fla. 1st DCA 1996), per curiam aff'g, 21 FPER ¶ 26080 (1995).

77. Florida Public Employees Council 79, AFSCME v. School District of Duval County and Aramark Corp., 675 So. 2d 125 (Fla. 1st DCA 1996), per curiam aff'g, 21 FPER ¶ 26231 (1995).

78. Alachua County Fire/Rescue Benevolent Association v. Alachua County, 683 So. 2d 486 (Fla. 1st DCA 1996), per curiam aff'g, 21 FPER ¶ 26077 (1995).

79. Broward County PBA and Weiss v. Cochran, Sheriff of Broward County, Broward County Sheriff's Office, and PERC, 686 So. 2d 584 (Fla. 1st DCA 1996), per curiam aff'g, 22 FPER ¶ 27060 (1996).

80. Broward County PBA v. Chamboredon and Hartzell, 706 So. 2d 287 (Fla. 1st DCA 1995), per curiam aff'g, 21 FPER ¶ 26054 (1995).

81. Hispanic Association of Correctional Officers v. Dade County PBA, 718 So. 2d 1249 (Fla. 3d DCA 1998), per curiam aff'g 24 FPER ¶ 29045 (1998).

82. Organization of Minority Correctional Officers v. Dade County PBA, 719 So. 2d 296 (Fla. 3d DCA 1998), per curiam aff'g 24 FPER ¶ 29045 (1998).

83. City of St. Petersburg v. Pinellas County PBA, Inc., 719 So. 2d 896 (Fla. 2d DCA 1998), per curiam aff'g 24 FPER ¶ 29059 (1997).

84. Miami General Employees Association, AFSCME v. City of Miami, 719 So. 2d 908 (Fla. 3d DCA 1998), per curiam aff'g 24 FPER ¶ 29081 (1998).

85. Jacksonville Employees Together v. AFSCME and Jacksonville Electric Authority, 731 So. 2d 1276 (Fla. 1st DCA 1999), per curiam aff'g 24 FPER ¶ 29130 (1998).

86. Callin v. City of Auburndale and PERC, 731 So. 2d 1282 (Fla. 2d DCA 1999), per curiam aff'g 24 FPER ¶ 29243 (1998).

87. Department of Juvenile Justice v. Gibbons, 737 So. 2d 1080 (Fla. 1st DCA 1999), per curiam aff'g, 24 FPER ¶ 29287 (1998).

88. Mallor v. Department of Transportation and PERC, 748 So. 2d 281 (Fla. 4th DCA 1999), per curiam aff'g 24 FPER ¶ 29512 (1998).

89. Florida State Lodge, FOP, Inc. v. City of Oakland Park, 752 So. 2d 601 (Fla. 1st DCA 2000), per curiam aff'g 25 FPER ¶ 30096 (1999).

90. City of Jacksonville v. Florida Public Employees, Council 79, AFSCME, 767 So. 2d 1204 (Fla. 1st DCA 2000), per curiam aff'g 25 FPER ¶ 30231 (1999).

91. General Services Employees Union, Local 747 v. City of Boynton Beach and PERC, 768 So. 2d 449 (Fla. 1st DCA 2000), per curiam aff'g 25 FPER ¶ 30261 (1999).

92. Federation of Public Employees, A Division of the National Federation of Public and Private Employees v. School Board of Broward County, 771 So. 2d 538 (Fla. 4th DCA 2000), per curiam aff'g 26 FPER ¶ 31067 (1999).

93. Jacksonville Electric Authority v. IBEW, Local 1618, 778 So. 2d 304 (Fla. 1st DCA 2000), per curiam aff'g 25 FPER ¶ 30045 (1998).

94. Julius v. Department of Corrections, 782 So. 2d 387 (Fla. 1st DCA 2000), per curiam aff'g Case No. DF-99-001 (PERC Feb. 7, 2000) (unpublished opinion).

95. Bradley v. PERC, 782 So. 2d 400 (Fla. 5th DCA 2001), per curiam aff'g 26 FPER ¶ 31103 (2000).

96. Harris v. PERC, 798 So. 2d 726 (Fla. 1st DCA 2001), per curiam aff'g 26 FPER ¶ 31193 (2000).

97. Professional Tradesmen Union v. Duval County School District v. Florida Public Employees Council 79, AFSCME and PERC, 799 So. 2d 1029 (Fla. 1st DCA 2001), per curiam aff'g 26 FPER ¶ 31047 (2000).

98. Canaveral Port Authority v. District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, 799 So. 2d 1062 (Fla. 5th DCA 2001), per curiam aff'g 26 FPER ¶ 31221 (2000).

99. City of Winter Haven v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees, 810 So. 2d 932 (Fla. 2d DCA 2002), per curiam aff'g 27 FPER ¶ 32145 (2001).

100. AFSCME District Council 79 v. Department of Environmental Protection, 818 So. 2d 502 (Fla. 1st DCA 2002), per curiam aff'g 27 FPER ¶ 32150 (2001).

101. Broward County, Local Union 5342, AFSCME v. Florida State Lodge, FOP, Inc., City of Ft. Lauderdale, and PERC, 821 So. 2d 1057 (Fla. 1st DCA 2002), per curiam aff'g 27 FPER ¶ 32189 (2001).

102. School Board of Manatee County v. Manatee County and Municipal Employees, Local 1554, AFSCME, 826 So. 2d 290 (Fla. 1st DCA 2002), per curiam aff'g 27 FPER ¶ 32274 (2001).

103. JEA Supervisors Association v. Jacksonville Electric Authority and Florida Public Employees Council 79, AFSCME, 827 So. 2d 982 (Fla. 1st DCA 2002), per curiam aff'g 27 FPER ¶ 32269 (2001).

104. Palm Beach County PBA, Inc. v. PERC v. City of Greenacres, 833 So. 2d 148 (Fla. 4th DCA 2002), per curiam aff'g 28 FPER ¶ 33057 (2001).

105. Florida Public Employees Council 79, AFSCME v. PACE and City of Jacksonville, 819 So. 2d 755 (Fla. 1st DCA 2002), per curiam aff'g 27 FPER ¶ 32187 (2001).

106. Florida Public Employees Council 79, AFSCME v. State of Florida, John Ellis Bush as Governor, 821 So. 2d 1059 (Fla. 1st DCA 2002). Denying appeal of non-final order in case no. CA-2001-042.

107. Professional Firefighters of Tallahassee, Local 2339, IAFF v. City of Tallahassee, 842 So. 2d 116 (Fla. 1st DCA 2003), per curiam aff'g 28 FPER ¶ 33097 (2002).

108. Charles E. Brookfield, Lodge 86, FOP v. Orange County, 854 So. 2d 206 (Fla. 5th DCA 2003), per curiam aff'g 29 FPER ¶ 11 (2003).

109. PACE v. City of Jacksonville, 853 So. 2d 413 (Fla. 1st DCA 2003), per curiam aff'g 28 FPER ¶ 33229 (2002).

110. PACE v. City of Jacksonville, 856 So. 2d 985 (Fla. 1st DCA 2003), per curiam aff'g 28 FPER ¶ 33224 (2002).

111. City of Jacksonville v. PACE, 871 So. 2d 206 (Fla. 1st DCA 2004), per curiam aff'g 29 FPER ¶ 14 (2003).

112. PACE v. City of Jacksonville, 871 So. 2d 213 (Fla. 1st DCA 2004), per curiam aff'g 29 FPER ¶ 83 (2003).

113. School Board of St. Lucie County v. CWA, 876 So. 2d 574 (Fla. 4th DCA 2004), per curiam aff'g 29 FPER ¶ 250 (2003).

114. Thompson v. Palm Beach County School District, Palm Beach County CTA, and PERC, 888 So. 2d 649 (Fla. 4th DCA 2004), per curiam aff'g 30 FPER ¶ 1 (2003).

115. Clarke v. Transport Workers' Union of America, Local 291, 889 So. 2d 78 (Fla. 3d DCA 2004), per curiam aff'g 30 FPER ¶ 63 (2004).

116. Kiper v. Department of Environmental Protection, 898 So. 2d 941 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 110 (2004).

117. Jeb Bush as Governor of the State of Florida v. State Employees Attorneys Guild, 903 So. 2d 938 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 134 (2004).

118. Hayes v. Leon County School Board, 905 So. 2d 894 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 194 (2004).

119. Florida Prosecuting Attorneys v. Dade County PBA, 908 So. 2d 1060 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 104 (2004).

120. Broward Teachers Union v. School Board of Broward County, 914 So. 2d 972 (Fla. 4th DCA 2005), per curiam aff'g 30 FPER ¶ 304 (2004).

121. Washington v. Youth Services International, 911 So. 2d 106 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 326 (2004), rev. dismissed, 917 So. 2d 196 (2005).

122. Cagle v. St. Johns County School District, 923 So. 2d 1181 (Fla. 5th DCA 2006), per curiam aff'g 31 FPER ¶ 96 (2004), rev. dismissed, 930 So. 2d 621 (2006).

123. Florida Public Employees Council 79, AFSCME v. State of Florida and John Ellis Bush as Governor, 923 So. 2d 496 (Fla. 1st DCA 2005), per curiam aff'g 31 FPER ¶ 76 (2005).

124. Wallace v. PERC, City of Miami, and AFSCME, Local 1907, 919 So. 2d 455 (Fla. 3d DCA 2006), per curiam aff'g 31 FPER ¶ 66 (2005).

125. Florida Public Employees Council 79, AFSCME v. State of Florida, John Ellis Bush as Governor, 917 So. 2d 867 (Fla. 1st DCA 2005), per curiam aff'g 30 FPER ¶ 291 (2004).

126. Thompson v. Palm Beach County School District, 934 So. 2d 471 (Fla. 4th DCA 2006), per curiam aff'g 31 FPER ¶ 225 (2005).

127. Mallor v. Miami-Dade County School Board, 925 So. 2d 329 (Fla. 4th DCA 2006), per curiam aff'g 30 FPER ¶ 270 (2004) and 31 FPER ¶ 182 (2005).

128. University of Florida Board of Trustees v. Florida Public Employees Council 79, AFSCME, 951 So. 2d 837 (Fla. 1st DCA 2007), per curiam aff'g 32 FPER ¶ 91 (2006).

129. City of Marathon v. Professional Firefighters of Marathon, Inc., Local 4396, IAFF and PERC, 994 So. 2d 1118 (Fla. 3d DCA 2007), per curiam aff'g 32 FPER ¶ 143 (2006).

130. Emergency Medical Services Alliance v. International Association of EMTs, 961 So. 2d 958 (Fla. 5th DCA 2007), per curiam aff'g 31 FPER ¶ 75 (2005).

131. Sheriff of Broward County v. PERC and Jean-Baptiste, 968 So. 2d 575 (Fla. 4th DCA 2007), per curiam aff'g 33 FPER ¶ 81 (2007).

132. Martone v. Professional Fire Fighters and Paramedics of Martin County, Local 2959, 980 So. 2d 1080 (Fla. 4th DCA 2008), per curiam aff'g 33 FPER ¶ 73 (2007).

133. SEIU Local 8 v. Orange County Board of County Commissioners, 986 So. 2d 619 (Fla. 5th DCA 2008), per curiam aff'g 33 FPER ¶ 119 (2007).

134. Ramirez v. PERC and Amalgamated Transit Union, Local 1577, 987 So. 2d 89 (Fla. 4th DCA 2008), per curiam aff'g 33 FPER ¶ 228 (2007).

135. Florida State Lodge, FOP v. Sheriff of Pasco County, 991 So. 2d 858 (Fla. 1st DCA 2008), per curiam aff'g 33 FPER ¶ 278 (2007).

136. Henry v. University of South Florida Board of Trustees and PERC, 995 So. 2d 964 (Fla. 2d DCA 2008), per curiam aff'g 34 FPER ¶ 65 (2008).

137. Federation of Public Employees v. City of Winter Haven, 1 So. 3d 177 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 76 (2008).

138. IUPA, AFL-CIO v. State, Department of Management Services and Florida Police Benevolent Association, Inc., 3 So. 3d 320 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 21 (2008).

139. Williams v. Duval Teachers United, 4 So. 3d 1229 (Fla. 1st DCA 2009), per curiam aff'g 33 FPER ¶ 314 (2008), rev. dismissed, 7 So. 3d 1099 (Fla. 2009).

140. Pursley v. School District of Lake County, Florida and SEIU Local 8, 7 So. 3d 539 (Fla. 1st DCA 2009), per curiam aff'g 33 FPER ¶ 64 (2007).

141. United Faculty of Florida v. Florida State University Board of Trustees and PERC, 9 So. 3d 622 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 159 (2008).

142. Local 4350, Clermont Professional Fire Fighters, IAFF v. City of Clermont, 10 So. 3d 636 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 148 (2008).

143. Duley v. Florida Department of Transportation, 11 So. 3d 357 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 70 and 34 FPER ¶ 114 (2008).

144. City of Winter Haven v. Federation of Public Employees, a Division of the National Federation of Public and Private Employees, AFL-CIO and PERC, 12 So. 3d 754 (Fla. 1st DCA 2009), per curiam aff'g 34 FPER ¶ 76 (2008).

145. McCall v. School Board of Polk County, 16 So. 3d 138 (Fla. 2d DCA 2009), per curiam aff'g 34 FPER ¶ 108 (2008).

146. School District of Manatee County v. Raven and PERC, 22 So. 3d 84 (Fla. 2d DCA 2009), per curiam aff'g 34 FPER ¶ 135 (2008).

147. Dade County, Florida School District Employees Local 1184 of the American Federation of State, County and Municipal Employees, AFL-CIO and Dade County School Administrators' Association, Local 77, American Federation of State, County and Municipal Employees, AFL-CIO v. Miami-Dade County Public Schools, 23 So. 3d 725 (Fla. 3d DCA 2009), per curiam aff'g 34 FPER ¶ 256 (2008).

148. Patino v. Department of Business and Professional Regulation, 31 So. 3d 789 (Fla. 3d DCA 2010), per curiam aff'g 35 FPER ¶ 169 (2009).

149. Gator Lodge 67, Inc., Fraternal Order of Police and Van Wie v. Sheriff of Alachua County, 50 So. 3d 1139 (Fla. 3d DCA 2011), per curiam aff'g 36 FPER ¶ 16 (2010).

150. Teamsters Local 769, Affiliated with the International Brotherhood of Teamsters v. City of Fort Pierce, 51 So. 3d 1158 (Fla. 1st DCA 2011), per curiam aff'g 36 FPER ¶ 72 (2010).

151. Sheriff of Clay County v. Florida State Lodge, Fraternal Order of Police, Inc., 58 So. 3d 295 (Fla. 1st DCA 2011), per curiam aff'g 36 FPER ¶ 199 (2010).

152. Federation of Physicians and Dentists v. City of Riviera Beach, 61 So. 3d 1116 (Fla. 1st DCA 2011), per curiam aff'g 36 FPER ¶ 371 (2010).

153. Sheriff of Broward County v. Public Employees Relations Commission and Federation of Public Employees, 77 So. 3d 184 (Fla. 1st DCA 2012), per curiam aff'g 38 FPER ¶ 24 (2011).

154. Port Orange Professional Firefighters Association, IAFF, Local 3118 v. City of Port Orange, 86 So. 3d 1121 (Fla. 1st DCA 2012), per curiam aff'g 37 FPER ¶ 99 (2011).

155. City of Hialeah v. Florida Public Employees Council 79, AFSCME, AFL-CIO, 86 So. 3d 1128 (Fla. 3d DCA 2012), per curiam aff'g 37 FPER ¶ 70 (2011).

156. Sarasota County Board of County Commissioners v. ATU, Local 1701, 88 So. 3d 945 (Fla. 2d DCA 2012), per curiam aff'g 36 FPER ¶ 453 (2010).

157. United Teachers of Monroe, FEA, Local 3709, AFL-CIO v. Monroe County School District, 98 So. 3d 574 (Fla. 1st DCA 2012), per curiam aff'g 58 FPER ¶ 288 (2012).

158. Teamsters Local Union No. 385 v. City of Winter Park, 107 So. 3d 411 (Fla. 1st DCA 2013), per curiam aff'g 38 FPER ¶ 360 (2012).

159. Broward County Police Benevolent Association, Inc. v. City of Hollywood, Florida, 115 So. 3d 362 (Fla. 1st DCA 2013), per curiam aff'g 39 FPER ¶ 62 (2012).

160. Schafer v. City of Pompano Beach, Pompano Beach Professional Firefighters, IAFF, Local 1549, 121 So. 3d 1042 (Fla. 1st DCA 2013), per curiam aff'g 39 FPER ¶ 120 (2012).

161. Daytona Beach Fire Rescue Local 1162 v. City of Daytona, 121 So. 3d 1058 (Fla. 5th DCA 2013), per curiam aff'g 39 FPER ¶ 28 (2012).

162. Local Union 1618 of the International Brotherhood of Electrical Workers, Jacksonville, Florida v. St. Johns River Power Park, 124 So. 3d 920 (Fla. 1st DCA 2013), per curiam aff'g 39 FPER ¶ 215 (2012).

163. Professional Firefighters of Naples, IAFF, Local 2174 v. City of Naples, 129 So. 3d 1075 (Fla. 2d DCA 2013), per curiam aff'g 39 FPER ¶ 329 (2013).

164. School District of Orange County v. Orange County Classroom Teachers Association, 133 So. 3d 942 (Fla. 5th DCA 2014), per curiam aff'g 40 FPER ¶ 23 (2013).

165. Curtis v. West Palm Beach Association of Fire Fighters, IAFF, Local 727, 136 So. 3d 1217 (Fla. 1st DCA 2014), per curiam aff'g 39 FPER ¶ 244 (2013).

166. Capo v. Florida Public Employees Council 79, AFSCME and Department of Children and Families, 138 So. 3d 1038 (Fla. 4th DCA 2014), per curiam aff'g 39 FPER ¶ 180 (2012).

167. Department of Corrections v. Smith, 139 So. 3d 890 (Fla. 1st DCA 2014), per curiam aff'g 40 FPER ¶ 77 (2013).

168. Williams v. City of Jacksonville, 141 So. 3d 262 (Fla. 1st DCA 2014), per curiam aff'g 39 FPER ¶ 167 (2012).

169. Bloxam-Williams v. Florida Public Employees Council 79, AFSCME, AFL-CIO, 141 So. 3d 782 (Fla. 1st DCA 2014), per curiam aff'g 39 FPER ¶ 312 (2013).

170. Fraternal Order of Police, Miami Lodge 20 v. City of Miami, 143 So. 3d 953 (Fla. 3d DCA 2014), per curiam aff'g Case No. 10-047918-CA-01 (Fla. 11th Cir. Ct. Sept. 3, 2013).

171. Crawford v. Citrus County Board of County Commissioners, 146 So. 3d 51 (Fla. 5th DCA 2013), per curiam aff'g 39 FPER ¶ 339 (2013).

172. School District of Orange County, Florida v. Orange County Classroom Teachers Association, 146 So. 3d 149 (Fla. 5th DCA 2014), per curiam aff'g 40 FPER ¶ 157 (2013).

173. School District of Collier County v. Fuqua, 152 So. 3d 579 (Fla. 2d DCA 2014), per curiam aff'g 40 FPER ¶ 122 (2013).

174. Robinson v. Lakeland Area Mass Transit District v. Public Employees Relations Commission, 152 So. 3d 579 (Fla. 2d DCA 2014), per curiam aff'g 40 FPER ¶ 139 (2013).

175. Miami-Dade Water and Sewer Department Employee's Local 121 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Miami-Dade County Board of County Commissioners and Government Supervisors Association of Florida, Office and Professional Employees International Union Local 100, AFL-CIO, 173 So. 3d 900 (Fla. 3d DCA 2015), per curiam aff'g 41 FPER ¶ 143 (2014).

176. Roman v. Department of Transportation, 174 So. 3d 1000 (Fla. 2d DCA 2015), per curiam aff'g 41 FPER ¶ 159 (2014).

177. Freeman v. Hillsborough Area Regional Transit Authority, 175 So. 3d 798 (Fla. 1st DCA 2015), per curiam aff'g 41 FPER ¶ 262 (2015), rev. denied, 192 So. 3d 36 (Fla. 2015).

178. Harbin v. Miami-Dade County Board of County Commissioners, 177 So. 3d 265 (Fla. 3d DCA 2015), per curiam aff'g 42 FPER ¶ 72 (2015).

179. Clarke v. Transport Workers Union Local 291 AFL-CIO, 171 So. 3d 723 (Fla. 3d DCA 2015), per curiam aff'g Final Order in Case No. CB-14-008 (2014).

180. Roman v. Department of Transportation, 174 So. 3d 1006 (Fla. 2d DCA 2015), per curiam aff'g 41 FPER ¶ 159 (2014).

181. Castellon v. Orlando Utilities Commission, 197 So. 3d 55 (Fla. 5th DCA 2016), per curiam aff'g 41 FPER ¶ 341 (2015).

182. Allen v. Miami Dade College, 210 So. 3d 677 (Fla. 3d DCA 2016), per curiam aff'g 42 FPER ¶ 256 (2016).

183. United Faculty of Palm Beach State College v. Palm Beach State College Board of Trustees, Case No. 4D15-2397, 2016 WL 4141096, 43 FPER ¶ 72 (Fla. 4th DCA Aug. 4, 2016), per curiam aff'g 41 FPER ¶ 394 (2015).

184. Allen v. Miami Dade College Board of Trustees, 222 So. 3d 1218 (Fla. 3d DCA 2017), per curiam aff'g 43 FPER ¶ 6 (2016).

185. Dade County Police Benevolent Association, Inc. v. Miami-Dade County Board of County Commissioners, 231 So. 3d 1242 (Fla. 1st DCA 2017), per curiam aff'g 43 FPER ¶ 105 (2016).

186. Teamsters Local Union No. 2011 v. Florida Police Benevolent Association, Inc., 234 So. 3d 667 (Fla. 1st DCA 2017), per curiam aff'g 43 FPER ¶ 175 (2016).

187. Local Union 108, International Brotherhood of Electrical Workers v. City of Leesburg, 238 So. 3d 221 (Fla. 1st DCA 2018), per curiam aff'g 43 FPER ¶ 301 (2017).

188. Santa Rosa Professional Educators v. Poterek, 245 So. 3d 658 (Fla. 1st DCA 2018), per curiam aff'g 43 FPER ¶ 274 (2017).

189. United Correctional Officers Federation, Inc. v. Miami-Dade County Board of County Commissioners, 255 So. 3d 309 (Fla. 3d DCA 2018), per curiam aff'g 44 FPER ¶ 172 (2017).

190. Armand v. Miami-Dade County, 258 So. 3d 392 (Fla. 1st DCA 2018), per curiam aff'g 44 FPER ¶ 206 (2018).

191. Fortier v. Miami-Dade County, 258 So. 3d 393 (Fla. 1st DCA 2018), per curiam aff'g 44 FPER ¶ 114 (2017).

192. Tal v. City of Lauderhill, 262 So. 3d 698 (Fla. 1st DCA 2019), per curiam aff'g 44 FPER ¶ 251 (2018).

193. Williams v. School District of Broward County, 269 So. 3d 548 (Fla. 4th DCA 2019), per curiam aff'g 45 FPER ¶ 107 (2018).

194. Northeast Florida Public Employees, Local 630 v. City of Palm Coast, 284 So. 3d 439 (Fla. 1st DCA 2019), per curiam aff'g 45 FPER ¶ 146 (2018).

195. City of Orlando v. Escobar, 291 So. 3d 588 (Fla. 5th DCA 2020), per curiam aff'g 45 FPER ¶ 244 (2019).

196. Eldridge v. Pinellas County Board of Commissioners, 291 So. 3d 945 (Fla. 2d DCA 2020), per curiam aff'g 45 FPER ¶ 387 (2019).

197. School District of Orange County v. Orange County Classroom Teachers Association, 292 So. 3d 1190 (Fla. 5th DCA 2020), per curiam aff'g 46 FPER ¶ 58 (2019).

198. Gable v. Florida Gulf Coast University, 307 So. 3d 643 (Fla. 2d DCA 2020), per curiam aff'g 45 FPER ¶ 309 (2019).

199. Florida Gulf Coast University Board of Trustees v. United Faculty of Florida, 308 So. 3d 975 (Fla. 1st DCA 2020), per curiam aff'g 46 FPER ¶ 223 (2020).

200. District Board of Trustees of College of the Florida Keys v. United Faculty of Florida, 321 So. 3d 116 (Fla. 1st DCA 2021), per curiam aff'g 47 FPER ¶ 15 (2020).

201. Orange County School Board v. Orange County Classroom Teachers Association, Case Nos. 5D21-216 and 5D21-657, 2021 WL 4270048 (Fla. 5th DCA Sept. 21, 2021), per curiam aff'g 47 FPER ¶ 304 (2021) and 47 FPER ¶ 254 (2020).