

### Winds of Change

by Chair Donna M. Poole

One of the strengths of PERC has always been the stability of the staff. I believe this is a consequence of a combination of a pleasant work atmosphere, interesting work, and the general collegiality of the staff. We refer to each other as our PERC family. This unusual duration of staff has a significant effect on productivity, with little time wasted in attaining historical knowledge and initial training. But, all good things must come to an end, which is the case with some recent retirements at PERC. These include Lou Ann Demont (39-year State employee), who served as PERC’s Executive Assistant II, Darlene Alligood (19-year State employee) who served as Chief Deputy Commission Clerk, and Nancy Marchant (47-year State employee) who served as Deputy Clerk II. We will certainly miss these proficient employees and good friends. In recognition of the departure of these key PERC players, the Commissioners hosted a retirement party at my home.

Although Lou Ann, Darlene, and Nancy will certainly be missed, we are getting positive feedback that, with certain critical position changes that we have implemented, the operations of the Clerk’s office and Personnel remain smooth and efficient. We have moved Mary Ann Burns, who has been the Clerk for many years, into Lou Ann’s job with a modification of job duties. We have moved June Farrell into the Clerk’s position. Some of you may recall that June was previously the Clerk, so she is well suited for that position. As part of her move, June has also consolidated all scheduling matters into the Clerk’s office. Long-time PERC employee Susan Townsend has also been moved from Personnel into the Clerk’s office and has proven to be an asset in assisting the Clerk’s office with performing the job duties previously done by Darlene and Nancy.

The Commission is now preparing for the annual Public Employment Labor Relations Forum to be held on October 23 and 24 at the Airport Hyatt in Orlando. This year many of our hearing officers will be attending, to receive feedback from practitioners during PERC’s portion of the program. We look forward to seeing you.

In this Issue:	Practice Pointers: Modification in Back Pay Procedures.....	2	Public Employment Labor Relations Forum.....	4
	Fifth DCA Affirms Dismissal of Untimely Appeal.....	2	Career Service Cases.....	5
	Union’s Right to Initiate and Process Grievance In Its Own Name .....	3	Unfair Labor Practice Case.....	6
	SES Employees Challenge Their Status.....	4	Representation Cases.....	7
	Circuit Court Recognizes PERC’s Preemptive Jurisdiction .....	4	Declaratory Statement Case.....	10
			Whistle-Blower Case.....	10
			Elections and Certifications .....	10



## Practice Pointers: Modifications in Back Pay Procedures

The First District Court of Appeal's decision in *Department of Corrections v. Chesnut*, 28 Fla. L. Weekly D1421d (Fla. 1st DCA 2003), holding that a Commission order that awards back pay but does not calculate the amount of the back pay award is not a final appealable order, has necessitated changes in the Commission's case processing procedures. While Commission orders which dismiss an appeal or unfair labor practice charge continue to be final orders and to end with the standard notice regarding the right to appeal, orders that award back pay without calculating the amount of the award are no longer designated as final orders and do not include the notice of appeal rights.

Under the revised procedure, orders awarding back pay are given a title indicating the Commission's disposition of the merits of the case (i.e., Order Vacating Agency Action, Order Mitigating Agency Action). Such an order specifically states that it is not an appealable final order because the amount of the back pay must still be determined. To resolve the outstanding back pay issue, the order advises the parties that the Commission must receive either a settlement agreement, a back pay petition or PERC Form 18 within thirty days. Upon receipt of one of these documents, or at the end of thirty days if no document is received, the Commission will open a back pay case and appoint a hearing officer. After appropriate proceedings in the back pay case, the hearing officer will issue a recommended order on back pay, and the Commission will entertain exceptions and issue a final order that will allow either party to appeal either the merits of the case or the amount of back pay.

Career service cases involving a suspension will not be processed according to this plan. Because issues of mitigation of damages and performance of a good faith job search do not arise in the context of a suspension, it is possible to calculate the amount of back pay without the necessity of a separate back pay proceeding, thereby greatly expediting the resolution of these cases. Therefore, in the appeal of a suspension, the parties will be directed in the Notice of Hearing and Prehearing Order to include the amount of the employee's daily gross earnings in their prehearing statements. If the hearing officer decides the appeal in favor of vacating or reducing the suspension, the resultant recommended order will include a calculation of the back pay award. The ensuing Commission order, whether it adopts the hearing officer's recommendation to vacate/mitigate or disagrees with the hearing officer and sustains the agency, will be a final appealable order.

The publication *Career Service Appeals Under Service First* has been amended to reflect these procedural changes. Amended pages can be downloaded from the Commission's website, <http://www2.myflorida.com/les/perc/default.html>.

## Fifth DCA Affirms Dismissal of Untimely Appeal

In *Whiting v. Florida Department of Law Enforcement*, 28 Fla. L. Weekly D1646c (Fla. 5th DCA 2003), the Fifth DCA affirmed the Commission's dismissal of an untimely filed appeal. Whiting attempted to file his appeal by fax after 5:00 p.m. on the last day of the 14-day filing period, but was unsuccessful because the Commission's fax machine is only available during business hours. Therefore, he elected to complete the fax the next morning. The appellate court held that under these circumstances Section 120.569(2)(c), Florida Statutes, requires dismissal. Further, the court found that Whiting's mistaken belief as to when the filing period ended and the fact that the Commission's fax machine was not available to him at the time he wanted to send his notice of appeal were insufficient to support a claim of equitable tolling.

### PERC NEWS

Published quarterly by the  
Public Employees Relations Commission  
4050 Esplanade Way  
Tallahassee, Florida 32399-0950  
(850) 488-8641  
FAX (850) 488-9704

Donna Maggert Poole	Chair
Charles H. Kossuth, Jr	Commissioner
Jessica E. Varn	Commissioner
Stephen A. Meck	General Counsel
Suzanne M. Choppin	Editor
Christi Gray Sundberg	Case Summaries
Barbara Kirkland	Designer

PERC News does not contain official expressions of Commission or court decisions and should not be cited as authority.

To be placed on or removed from the PERC News mailing list, please call (850) 488-8641 or email [suzanne.choppin@perc.state.fl.us](mailto:suzanne.choppin@perc.state.fl.us)



## Union's Right To Initiate And Process Grievance In Its Own Name

by Joey D. Rix, Hearing Officer

The Commission recently reaffirmed the principle that a labor organization has a right to initiate and process to arbitration grievances that involve the interpretation and application of a collective bargaining agreement to which it is a party. In *Communications Workers of America v. School Board of St. Lucie County*, Case No. CA-2003-017 (Fla. PERC Sept. 16, 2003), the CWA filed an unfair labor practice charge alleging that the School Board violated Section 447.501(1)(a) and (c), Florida Statutes, by restricting the CWA's right to initiate and process to arbitration grievances that involve the interpretation and application of the parties' collective bargaining agreement.

The charge stemmed from the negotiations between the parties that began in August 2002. The parties reached an agreement on a three-year contract, except as to Article 14, the Grievance and Arbitration Procedure, which provided that only an employee or group of employees may file a grievance. Thereafter, the parties engaged in negotiations with each making proposals and counterproposals regarding Article 14. The CWA took the bargaining position that it had the right to be designated as a "grievant" in the contract. The School Board took the position that the right to file a grievance under the contract was the exclusive right of the employees in the bargaining unit and, except for some narrow exceptions such as dues check-off, bulletin boards, no strikes, and union representation, the CWA did not have a right to file grievances in its own name. The parties were unable to resolve the dispute and the School Board declared impasse. The CWA subsequently filed an unfair labor practice charge with the

Commission and the Commission hearing officer ruled in favor of the CWA.

Relying on the legal rationale established in *Duval County School Board v. Duval Teachers United FEA/United, AFT, AFL-CIO, Local No. 3326*, 393 So. 2d 1151 (Fla. 1st DCA 1981), *aff'd In re Duval Teachers United FEA/United, AFT, AFL-CIO, Local No. 3326*, 5 FPER ¶ 10353 (1979), the Commission held that Section 447.401, Florida Statutes, does not restrict a union's participation as a party to the grievance procedure, and does not lend itself to an interpretation that the requirement to negotiate grievance procedures includes a requirement that the union also negotiate whether or not it may file or process grievances in its own name. The Commission reiterated that a certified bargaining agent's right to initiate and process grievances in its own name flows from the its duty to bargain on behalf of bargaining unit employees and from its status as a signatory to the collective bargaining agreement.

In reaching this decision, the Commission rejected the School Board's assertion that the precedential value of *Duval* is diminished because it arose within the context of a petition for a declaratory statement. Rather, the Commission found *Duval* directly applicable to *School Board of St. Lucie County* because the bargaining position maintained by the School Board through impasse was that, with the exception of some narrow circumstances, the CWA must bargain for the right to file and process grievances involving the interpretation or application of the parties' collective bargaining agreement in its own name.

The Commission also rejected the School Board's argument that the Commission's decision in *District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees Union, Affiliated with American Maritime Officers v. Canaveral Port Authority*, 26 FPER ¶ 31221 (2000), *aff'd per curiam*, 799 So. 2d 1062 (Fla. 5th DCA 2001), calls into question the continued validity of *Duval* because in *Canaveral Port Authority* the Commission discussed and categorized mandatory and permissive subjects regarding grievance and arbitration articles and did not find the issue of who can initiate a grievance to be a permissive subject of bargaining. The Commission distinguished *Canaveral Port Authority*, holding that it does not overrule *Duval*, nor does it support the School Board's position that the subject of whether a union may be a grievant is a mandatory subject of bargaining which may be bargained to impasse.

The Commission held that the School Board could not lawfully insist to impasse on contract language which restricts the right of the CWA to initiate and process grievances in its own name. A public employer may not attempt to impose a permissive subject of bargaining through legislative action pursuant to its authority to resolve impasse issues under Section 447.403(4), Florida Statutes. Thus, the Commission concluded that the School Board's insistence to impasse on a permissive subject of bargaining constitutes an unlawful failure to bargain in good faith. Finally, the Commission awarded attorney's fees and costs of litigation to the CWA, finding that the School Board knew or should have known that its conduct was unlawful.



## SES Employees Challenge Their Status

In July 2003, the First District Court of Appeal held that employees whose positions were reclassified from career service to selected exempt status as part of the Service First initiative should have been provided a point of entry into the administrative process to challenge their reclassifications when their positions were reclassified. *Reinshuttle v. Agency for Health Care Administration*, *Watson v. Department of Children and Families*, *Cooper v. Department of Children and Families*, *Jolly v. Department of Children and Families*, and *Barkley v. Department of Children and Families*, 28 Fla. L. Weekly D1658a (Fla. 1st DCA 2003). Since that decision, over seventy selected exempt employees have filed career service appeals indicating that they are entitled to appeal their discipline because they were improperly reclassified as selected exempt employees. These employees have all filed petitions for hearing with their agencies to determine whether their positions were lawfully reclassified, and these cases will likely be assigned to the Division of Administrative Hearings. All of these career service appeals have been stayed pending resolution of the DOAH proceedings.

## Circuit Court Recognizes PERC's Preemptive Jurisdiction

by Jack E. Ruby, Hearing Officer

In 2002, a circuit court action was filed by the Indian River County School Board to vacate an arbitrator's award in favor of the Communications Workers of America (CWA) relating to unilateral changes to the School Board's health insurance plan without negotiations pursuant to the "financial urgency" provision of Section 447.4095, Florida Statutes. The circuit court held that the arbitrator incorrectly found that the remedy of arbitration was available and that he could interpret the School Board's actions under Section 447.4095. The circuit court set aside the arbitrator's decision for exceeding the powers granted to the arbitrator. The circuit court held that the unfair labor practice provisions of Sections 447.501 and 447.503, Florida Statutes, preempted the arbitrator's consideration of the issue of whether the School Board violated the provisions of Section 447.4095. In addition, the circuit court decided that it would not reach the question of the constitutionality of Section 447.4095. *See Indian River County School Board v. Communications Workers of America*, 10 Fla. L. Weekly Supp. 899a (Fla. 19th Cir. Ct. 2003). A representative of the Commission has been informed that the CWA intends to file an appeal of the circuit court's decision to a Florida district court of appeal.

## Public Employment Labor Relations Forum

The 29th Annual Public Employment Labor Relations Forum will be held in Orlando on October 23 and 24, 2003. Presentations include:

- ✓ Federal and state retirement issues
- ✓ Ethical obligations of public officials
- ✓ Recent developments in affirmative action
- ✓ Union duty of fair representation
- ✓ Recent developments at PERC
- ✓ Florida Commission on Human Relations update
- ✓ Proposed changes to wage and hour regulations: Clarification or further confusion?
- ✓ The Health Insurance Portability and Accountability Act: Why should public employers care?
- ✓ State University System update
- ✓ Mediating public sector cases

Senator Rod Smith will address the question, "Is there life after labor law?" in a presentation on Friday morning. At lunch on that day, Peter Hurtgen, Director of the Federal Mediation and Conciliation Service, will speak on the future of the FMCS. This course is classified at the intermediate level and is approved for 12.5 hours of CLE credit and one hour of ethics credit.





## Career Service Cases

***Macon v. Department of Children and Families, 18 FCSR 187 (2003).***

Dismissal of administrative secretary for poor performance affirmed. Employee was habitually tardy for work, failed to follow security procedures, and failed to follow supervisor's instructions.

***Odom v. Department of Corrections, 18 FCSR 189 (2003).***

Dismissal of sergeant for falsifying her timesheet and for failing to provide documentation verifying that medical services were provided to her during the period of her absences affirmed.

***Maggiore v. Department of Children and Families, 18 FCSR 193 (2003).***

Dismissal of child protective investigator for poor performance concerning foster child incidents and for inability to work with the child protection team affirmed.

***Gardner v. Department of Juvenile Justice, 18 FCSR 192 (2003).***

Dismissal of senior juvenile detention officer for inability to perform job duties affirmed. Employee failed to complete the required certification.

***Figueroa v. Department of Corrections, 18 FCSR 197 (2003); Morrison v. Department of Corrections, Case No. CS-2003-156 (Aug. 5, 2003); Kelley v. Department of Children and Families, Case No. CS-2003-192 (Aug. 12, 2003); Scheeler v. Department of Corrections, Case No. CS-2003-211 (Sept. 8, 2003).***

Appeals dismissed because employees failed to appear at hearing.

***Walker v. Department of Corrections, 18 FCSR 200a (2003).***

Commission awarded employee back pay in the amount of \$4,140.01.

***Schmidtke v. Department of Health, 18 FCSR 198 (2003).***

Appeal dismissed for lack of jurisdiction where employee had been reassigned.

***Registro v. Department of Juvenile Justice, 18 FCSR 201b (2003).***

Five-day suspension of juvenile probation officer for disruptive conduct affirmed. Employee spread false rumors that certain employees had been fired. Employee failed to establish that a prima facie violation of her right to free speech occurred.

***McGland v. Department of Corrections, 18 FCSR 204 (2003).***

Dismissal of correctional officer sergeant for participating in scheme to steal from Wal-Mart affirmed. Mitigation not warranted.

***Johnson v. Department of Health, 18 FCSR 208 (2003).***

Dismissal of senior community health nurse for negligently destroying a fax and failing to follow the Agency's Information Security Policy regarding the faxing of confidential information affirmed. Employee also violated nursing procedures by not having a physician or nurse practitioner review the results before discussing them with a patient. Mitigation not warranted.

***Fugatt v. Department of Corrections, 18 FCSR 216 (2003).***

Five-day suspension of correctional officer for not following procedure when checking his revolver and for negligent discharge of a weapon affirmed.

***Bruton v. Department of Juvenile Justice, 18 FCSR 213 (2003).***

Dismissal of senior juvenile detention officer for the mistreatment of juvenile residents affirmed.

***Bennett v. Department of Corrections, Case No. CS-2003-164 (Aug. 5, 2003).***

Dismissal of correctional officer sergeant for failing to report his convictions, his driver license's suspensions, and an inmate's absence affirmed. Mitigation not warranted.

***Bennett v. Department of Corrections, Case No. CS-2003-159 (Aug. 6, 2003).***

Ten-workday suspension of correctional officer for excessive absences and failure to follow instructions affirmed. Employee was unexpectedly absent for six days in a three-month period, and she did not appear for work as instructed despite

having no accrued leave left.

***Almodovar v. Department of Juvenile Justice, Case No. CS-2003-163 (Aug. 6, 2003).***

Dismissal of senior juvenile detention officer for negligent supervision of detainees, which resulted in one detainee escaping, affirmed.

***White v. Department of Agriculture and Consumer Services, Case No. CS-2003-166 (Aug. 8, 2003).***

Senior forest ranger was negligent for failing to respond to a wildfire. Five workday suspension mitigated to a one-day suspension and back pay awarded.

***Ortiz v. Department of Health, Case No. CS-2003-157 (Aug. 12, 2003).***

Dismissal of medical disability program specialist for failure to complete work on time affirmed.

***Brown v. Department of Management Services, Case No. CS-2003-185 (Aug. 12, 2003); McKenzie v. Department of Corrections, Case No. CS-2003-195 (Aug. 27, 2003).***

Appeals dismissed for lack of jurisdiction where employees did not attain permanent status in their positions.

***Shackelford-Chance v. Department of Children and Families, Case No. CS-2003-149 (Aug. 14, 2003).***

Dismissal of interviewing clerk for inability to perform assigned duties affirmed.

***Hall v. Department of Corrections, Case No. CS-2003-187 (Aug. 21, 2003).***

Ten-workday suspension of distributed computer systems analyst for failing to timely submit travel vouchers and falsifying travel vouchers vacated. Back pay awarded.

***George v. Department of Corrections, Case No. CS-2003-206 (Aug. 21, 2003); Morris v. Department of Corrections, Case No. CS-2003-177 (Aug. 27, 2003).***

Appeals dismissed for lack of jurisdiction where Agency voluntarily reduced suspensions to reprimands.

***Alamo v. Department of Corrections,***



**BP-2003-008 (Aug. 26, 2003).**

Case closed where employee failed to file a petition for back pay.

***Weeks v. Department of Revenue*, Case No. CS-2003-194 (Aug. 26, 2003).**

Dismissal of tax auditor II for false statements to the inspector general affirmed.

***Thomas v. Department of Corrections*, Case No. CS-2003-190 (Aug. 27, 2003).**

Dismissal of correctional officer for failing to report the presence of an inmate in a sergeant's vehicle and inmates leaving the work release center vacated. Employee's testimony credited. Back pay awarded.

***Cortijo v. Department of Children and Families*, Case No. CS-2003-193 (Aug. 27, 2003).**

Dismissal of switchboard operator II for failing to promptly report her arrest and for poor performance based upon attendance problems affirmed.

***Blow v. Department of Corrections*, Case No. CS-2003-199 (Aug. 28, 2003).**

Five-workday suspension of correctional officer for negligence and for failing to report that she was incapacitated and not able to be alert on her post affirmed. Mitigation not warranted.

***Marquez v. Department of Corrections*, Case No. CS-2003-155 (Aug. 29, 2003).**

Five-workday suspension of correctional probation officer for substandard quality of work and negligence affirmed. Employee failed to complete closing summary reports on closed cases. Mitigation not warranted.

***Beserock v. Department of Transportation*, Case No. CS-2003-073 (Sept. 3, 2003).**

Employee's motion to compel payment of back pay dismissed. Employee's remedy to correct Agency's alleged failure to comply with its agreement is to initiate an enforcement action pursuant to Section 447.5035, Florida Statutes.

***Laster v. Department of Juvenile Jus-******tice*, Case No. CS-2003-147 (Sept. 3, 2003).**

Dismissal of juvenile detention officer for taking a second job without obtaining advance approval for dual employment affirmed.

***Grau v. Department of Children and Families*, Case No. CS-2003-144 (Sept. 4, 2003).**

Dismissal of a family services counselor for failing to visit a child at his home on four dates and falsifying reports indicating that he visited the child affirmed.

***Clark v. Department of Corrections*, Case No. CS-2003-180 (Sept. 9, 2003).**

Dismissal of secretary specialist for having a personal relationship with an inmate affirmed.

***Cobb v. Department of Children and Families*, Case No. CS-2003-174 (Sept. 10, 2003).**

Appeal dismissed for lack of jurisdiction where employee voluntarily resigned from the Agency.

***Harris v. Department of Corrections*, Case No. BP-2003-009 (Sept. 11, 2003).**

Back pay case closed where Agency already issued warrant to employee for back pay.

***Harris v. Department of Corrections*, Case No. CS-2003-167 (Sept. 11, 2003).**

Dismissal of psychological specialist F/C for inability to perform the essential duties of his classification affirmed.

***Lockett v. Department of Corrections*, Case No. CS-2003-181 (Sept. 16, 2003).**

Thirty-day suspension of correctional probation senior officer for substandard quality and/or quantity of work and failure to follow oral and/or written instructions affirmed. Mitigation not warranted.

***Boyer v. Department of Juvenile Justice*, Case No. CS-2003-196 (Sept. 16, 2003).**

Three-day suspension of juvenile detention officer for failing to call in to report that he would not be coming to work affirmed.

***O'Lear v. Department of Corrections*,****Case No. CS-2003-170 (Sept. 18, 2003).**

Ten-day suspension of correctional probation senior officer for violating the rule governing possession of a firearm on Agency premises mitigated to five-day suspension. The preponderance of the evidence did not prove that the employee was negligent or handled gun unsafely.

***Torres v. Department of Corrections*, Case No. CS-2003-191 (Sept. 22, 2003).**

Dismissal of correctional officer sergeant for attempting to break into lock boxes and for not being truthful when he denied under oath that he engaged in such conduct affirmed. Mitigation not warranted.

***Bobo v. Department of Corrections*, Case No. CS-2003-215 (Sept. 30, 2003).**

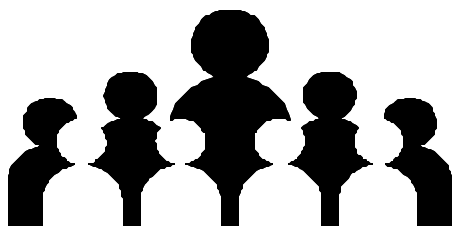
Extraordinary dismissal of correctional officer for receiving telephone calls from an inmate affirmed. Mitigation not warranted.

***Winter Springs Professional Firefighters Association, Local 3296 v. City of Winter Springs*, 29 FPER ¶ 167 (2003).**

City committed an unfair labor practice when the legislative body imposed wage language that froze the employees' salaries after the expiration of the parties' collective bargaining agreement. Additionally, the City committed an unfair labor practice when it imposed a management rights article that it had significantly modified immediately before the impasse hearing. Union awarded attorney's fees for the "wage language" issue.



## Representation Cases



***United Faculty of Florida v. New College of Florida Board of Trustees*, 29 FPER ¶ 165 (2003).**

Recognition-acknowledgment petition seeking to represent a unit of faculty and other professionals granted.

***Palm Beach County Police Benevolent Association, Inc. v. Florida Atlantic University Board of Trustees*, 29 FPER ¶ 166 (2003).**

Recognition-acknowledgment petition seeking to represent a unit of non-supervisory law enforcement officers granted.

***Coastal Florida Police Benevolent Association, Inc. v. Indian River County Sheriff's Office*, 29 FPER ¶ 171 (2003).**

Consent election agreement seeking to represent a unit of deputy sheriffs approved.

***Communications Workers of America, AFL-CIO, CLC v. City of Madeira Beach*, 29 FPER ¶ 170 (2003).**

Citywide bargaining unit of nonsupervisory, nonprofessional employees and citywide bargaining unit of supervisory employees approved.

***United Service Workers, Local 555, TCU, AFL-CIO v. North Palm Beach Country Club*, Case No. RC-2003-081 (July 9, 2003).**

Petition that failed to provide factual allegations that would satisfy the Commission's severance standard in removing four classifications from an existing unit was deficient. Additionally, the petition sought to represent an overly fragmented unit.

***tion, Inc. v. Sheriff of Highlands County*, 29 FPER ¶ 173 (2003).**

Consent election agreements seeking to represent a rank-and-file unit and a supervisory unit of sworn law enforcement personnel approved.

***Florida Police Benevolent Association, Inc. v. City of Panama City Beach*, 29 FPER ¶ 175 (2003).**

Consent election agreement seeking to represent a rank-and-file unit of law enforcement personnel approved.

***Florida State Lodge, Inc. v. Monroe County Sheriff's Office v. Florida Police Benevolent Association, Inc.*, 29 FPER ¶ 177 (2003).**

Consent election agreement seeking to represent a rank-and-file unit of correctional officer personnel approved.

***Florida State Lodge, Fraternal Order of Police, Inc. v. City of Sunrise v. Broward County Police Benevolent Association, Inc.*, 29 FPER ¶ 176 (2003).**

Consent election agreements seeking to represent a unit of rank-and-file sworn personnel and another unit of lieutenants approved.

***In Re Petition of United Faculty of Florida to Amend Certification No. 502*, 29 FPER ¶ 180 (2003).**

Petition to amend certification to reflect the Board of Trustees of the University of South Florida as the successor employer of graduate students granted.

***JEA Supervisors Association v. St. Johns River Power Park*, 29 FPER ¶ 183 (2003).**

Production leaders' supervisory authority was insufficient to exclude them from the bargaining unit. The parties' stipulation that production leaders do not share a community of interest with employees in the proposed unit because they have a supervisory conflict with those employees was insufficient to support the exclusion of the production leaders. The establishing of a second bargaining unit of supervisory employees would constitute unnecessary overfragmentation.

***Local 3476 v. City of Oviedo*, 29 FPER ¶ 179 (2003).**

Recognition-acknowledgment petition seeking to represent a unit of supervisory fire suppression employees in the classifications of battalion chief and lieutenant approved.

***Pinellas Lodge No. 43, Fraternal Order of Police v. City of Gulfport v. Pinellas County Police Benevolent Association, Inc.*, 29 FPER ¶ 182 (2003).**

Consent election agreement seeking to represent a unit of rank-and-file law enforcement personnel approved.

***Florida Police Benevolent Association, Inc. v. Sheriff of Orange County v. Florida State Lodge, Fraternal Order of Police, Inc.*, 29 FPER ¶ 187 (2003).**

Consent election agreement seeking to represent a unit of rank-and-file sworn law enforcement personnel approved.

***Jacksonville Supervisors Association, Inc. v. City of Jacksonville v. Professional Association of City Employees*, 29 FPER ¶ 185 (2003).**

Unit clarification procedure was not properly invoked where the classification seeking to be included was not newly created or had its job duties revised.

***Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. Jacksonville Seaport Authority d/b/a Jacksonville Port Authority v. Florida Council of Industrial and Public Employees, Local 2081, United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, Case No. RC-2003-061 (July 23, 2003).**

Petition seeking to represent employees employed by the Jacksonville Port Authority granted.

***United Faculty of Florida v. Florida A&M University Board of Trustees*, Case No. RA-2003-011 (July 25, 2003).**

Recognition-acknowledgment petition seeking to represent a unit of faculty and other professional employees granted.

(Continued on page 8)



(Continued from page 7)

**Florida Police Benevolent Association, Inc. v. Charlotte County Sheriff's Office v. Florida State Lodge, Fraternal Order of Police, Case No. RC-2000-066 (July 25, 2003).**

Consent election agreement seeking to represent a unit of sworn law enforcement personnel approved.

**Coastal Florida Police Benevolent Association, Inc. v. Brevard County Sheriff's Office, Case No. RC-2003-023 (July 25, 2003).**

Consent election agreement seeking to represent a unit of non-supervisory correctional personnel approved.

**Florida Police Benevolent Association, Inc. v. Sheriff of Hernando County v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. RC-2003-030 (July 25, 2003).**

Consent election agreement seeking to represent a unit of rank-and-file law enforcement officers approved.

**Florida State Lodge, Fraternal Order of Police, Inc. v. City of Lake Worth v. Palm Beach County Police Benevolent Association, Inc., Case Nos. RC-2003-064 and RC-2003-065 (July 29, 2003).**

Consent election agreements seeking to represent a unit of rank-and-file police department employees and a unit of supervisory police officers approved.

**City of Miramar v. General Association of Miramar Employees, Local 101, of the Office and Professional Employees International Union, Case No. UC-2003-033 (July 30, 2003).**

Unit clarification petition seeking to extensively clarify a comprehensive bargaining unit granted.

**Florida Police Benevolent Association, Inc. v. New College of Florida Board of Trustees, Case No. RA-2003-013 (Aug. 5, 2003).**

Recognition-acknowledgment petition seeking to represent a unit of law enforcement officers granted.

**Florida Public Employees Council**

**79, American Federation of State, County and Municipal Employees, AFL-CIO v. Florida International University Board of Trustees, Case No. RC-2003-043 (Aug. 5, 2003).**

Consent election agreement seeking to represent a non-professional rank-and-file unit approved.

**St. Petersburg Association of Firefighters, IAFF, Local 747 v. City of St. Petersburg, Case No. RC-2003-051 (Aug. 5, 2003).**

Consent election agreement seeking to represent a unit of fire captains and fire district chiefs approved.

**Holly Hill Professional Firefighters v. City of Holly Hill, Case No. RC-2003-060 (Aug. 5, 2003).**

Representation-certification petition seeking to represent a unit of lieutenants approved.

**Coastal Florida Police Benevolent Association, Inc. v. Brevard County Sheriff's Office v. Florida State Lodge, Fraternal Order of Police, Inc., Case Nos. RC-2000-013 and RC-2003-019 (Aug. 6, 2003).**

Consent election agreements seeking to represent a unit of deputy sheriffs, field training officers, and corporals and another unit of sergeants and lieutenants approved.

**West Central Florida Police Benevolent Association, Inc. v. University of South Florida Board of Trustees, Case No. RA-2003-015 (Aug. 12, 2003).**

Recognition-acknowledgment petition seeking to represent a non-supervisory unit of law enforcement officers granted.

**In Re Petition of Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO, Case No. MS-2003-001 (Aug. 15, 2003).**

Union's petition to disclaim interest in unit of operational services employees granted.

**Florida Police Benevolent Association, Inc. v. University of West Florida Board of Trustees, Case No. RC-2003-007 (Aug. 15, 2003).**

Representation-certification petition seeking to represent a unit of law enforce-

ment officers and law enforcement corporals approved.

**Palm Beach County Police Benevolent Association, Inc. v. Sheriff of Martin County, Case Nos. RC-2003-016 and RC-2003-047 (Aug. 15, 2003).**

Consent election agreements seeking to represent a unit of deputy sheriffs and detectives and another unit of sergeants and detective sergeants approved.

**Florida Public Employees Council 79, American Federation of State, County and Municipal Employees. AFL-CIO v. University of West Florida Board of Trustees, Case No. RC-2003-038 (Aug. 18, 2003).**

Representation-certification petition seeking to represent a unit of operational services employees approved.

**Coastal Florida Police Benevolent Association, Inc. v. City of Lake Mary, Case No. RC-2003-044 (Aug. 19, 2003).**

Representation-certification petition seeking to represent a unit of patrol sergeants and criminal investigations sergeants approved.

**Florida Police Benevolent Association, Inc. v. Sheriff of Sarasota County, Case No. RC-2003-050 (Aug. 21, 2003).**

Consent election agreement seeking to represent a unit of deputy sheriffs approved.

**Florida Police Benevolent Association, Inc. v. Orange County Sheriff's Office, Case No. RC-2003-092 (Aug. 25, 2003).**

Representation-certification petition seeking to represent a unit of corporals and sergeants dismissed where the union failed to meet the 30% showing of interest requirement.

**In Re Petition of the Broward Teachers Union, Local 1975 to Amend Certification No. 1317, Case No. AC-2003-012 (Aug. 26, 2003).**

Petition seeking substitution of bargaining agents approved.

(Continued on page 9)



(Continued from page 8)

**International Brotherhood of Teamsters, Local 385 v. City of Holly Hill v. Coastal Florida Police Benevolent Association, Inc., Case No. RC-2003-070 (Aug. 27, 2003).**

Representation-certification petition seeking to represent a unit of police officers, police corporals, police sergeants, and telecommunications operators approved.

**Health Care Workers Council/United Steel Workers of America, AFL-CIO, CLC v. Health Central Hospital, Case No. RC-2003-093 (Aug. 27, 2003).**

Representation-certification petition dismissed where the named petitioner is not a registered employee organization.

**International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. UC-2003-010 (Aug. 27, 2003).**

Unit clarification petition seeking to include newly created classification of accounts payable supervisor and to modify the lead code enforcement officer title to lead code compliance officer in a unit of non-professional supervisory employees granted.

**Florida Police Benevolent Association, Inc. v. Sheriff of Jefferson County, Case No. RC-2003-071 (Sept. 2, 2003).**

Consent election agreement seeking to represent a rank-and-file unit of law enforcement officers approved.

**In Re Petition of the Broward Teachers Union, Local 1975 to Amend Certification No. 1342, Case No. AC-2003-013 (Sept. 3, 2003).**

Petition seeking to substitute a different union as the certified bargaining agent granted.

**Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Santa Rosa County v. Florida Police Benevolent Association, Inc., Case Nos. RC-2003-024 and RC-2003-025 (Sept. 3, 2003).**

Consent election agreements seeking to represent a unit of deputy sheriffs and corporals and another unit of sergeants and lieutenants approved.

**Coastal Florida Police Benevolent Association, Inc. v. Sheriff of St. Johns County v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. RC-2003-073 (Sept. 3, 2003).**

Consent election agreement seeking to represent a unit of deputy sheriffs approved.

**Florida State Lodge, Fraternal Order of Police, Inc. v. Alachua County Sheriff's Office, Case No. RC-2003-084 (Sept. 3, 2003).**

Consent election agreement seeking to represent a unit of rank-and-file correctional officers approved.

**International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. UC-2003-011 (Sept. 3, 2003).**

Unit clarification petition dismissed. Petition was unnecessary because the Commission amended the bargaining unit description in 2002 to change from a description of each individual position to a generic unit description.

**South Daytona Professional Firefighters, IAFF, Local 3193, AFL-CIO v. City of South Daytona, Case No. RC-2002-064 (Sept. 9, 2003).**

Representation-certification petition dismissed because captains are managerial employees based on their anticipated role in collective bargaining.

**United Faculty of Florida v. Florida A&M University Board of Trustees, Case No. RA-2003-018 (Sept. 9, 2003).**

Recognition-acknowledgment petition seeking to represent a unit of faculty of the Florida A&M University Developmental Research School granted.

**Pinellas County Police Benevolent Association, Inc. v. Sheriff of Pinellas County v. Pinellas Lodge No. 43, Inc., Case No. RC-2003-074 (Sept. 9, 2003).**

Consent election agreement seeking to represent a unit of rank-and-file certified correctional officers approved.

**Italico v. Federation of Public Em-**

**ployees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. City of Coconut Creek, Case No. RD-2003-003 (Sept. 9, 2003).**

Petition to revoke certification of bargaining agent dismissed because in another case the Commission granted the bargaining agent's motion to disclaim interest.

**Coffman v. Florida State Lodge, Fraternal Order of Police, Inc. v. Town of Longboat Key, Case No. RD-2003-005 (Sept. 11, 2003).**

Petition to revoke certified bargaining agent approved.

**Florida Police Benevolent Association, Inc. v. Sheriff of Orange County v. Florida State Lodge, Fraternal Order of Police, Inc., Case No. RC-2003-020 (Sept. 15, 2003).**

Consent election agreement seeking to represent a unit of rank-and-file sworn law enforcement personnel approved.

**Coastal Florida Police Benevolent Association, Inc. v. Sheriff of Indian River, Case No. RC-2003-072 (Sept. 15, 2003).**

Consent election agreement seeking to represent a unit of rank-and-file sworn correctional personnel approved.

**Florida Public Employees Council 79, American Federation of State, County, and Municipal Employees, AFL-CIO v. Florida A&M University Board of Trustees, Case No. RA-2003-017 (Sept. 16, 2003).**

Recognition-acknowledgment petition seeking to represent a unit of non-professional employees granted.

**Florida Nurses Association v. Florida State University, Case No. RC-2003-100 (Sept. 16, 2003).**

Representation-certification petition dismissed where the union submitted copies rather than original authorization cards.

**International Union of Painters and Allied Trades, AFL-CIO, Local Union 2301 v. City of Cape Coral, Case No. UC-2003-014 (Sept. 16, 2003).**

Unit clarification petition seeking to reflect a classification title change from

(Continued on page 10)



(Continued from page 9)

chief building inspector to deputy building official/chief inspector granted.

**West Central Florida Police Benevolent Association, Inc. v. Pasco County Sheriff's Office v. Florida State Lodge, Fraternal Order of Police, Inc., Case Nos. RC-2003-053 and RC-2003-054 (Sept. 17, 2003).**

Consent election agreement seeking to represent a corrections unit of detention deputies and corporals and another law enforcement unit of deputy sheriffs and corporals approved.

**West Central Florida Police Benevolent Association, Inc. v. Hillsborough County Sheriff's Office, Case No. RC-2000-020 (Sept. 30, 2003).**

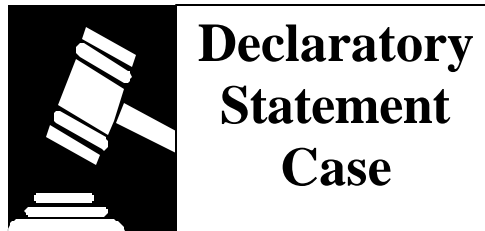
Petition seeking to represent a unit of law enforcement deputies, detectives, and corporals approved. Registration amendments were made sufficiently in advance of an election to allow employees a reasonable opportunity to view registration materials prior to the election. It was not necessary for the Florida PBA's name to be on

the authorization cards because the authorization cards filed specifically inform the individual signing the cards that they are authorizing the West Central Florida PBA or its agents or representatives to act as the collective bargaining representative.

**Florida State Lodge, Fraternal Order of Police, Inc. v. Sheriff of Hernando County v. Florida Police Benevolent Association, Inc., Case No. RC-2003-083 (Sept. 30, 2003).**

Consent election agreement seeking to represent a unit of supervisory law enforcement officers approved.

#### *In Re Petition for Declaratory State-*



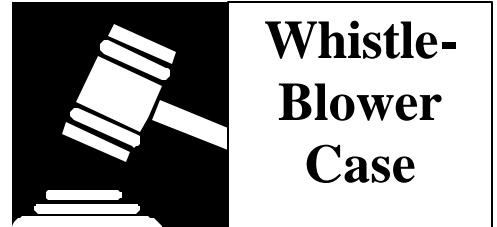
## Declaratory Statement Case

*ment of the School Board of Monroe County, Florida and United Teachers of Monroe, 29 FPER ¶ 184*

(2003).

Declaratory-statement petition dismissed because it was requesting contract interpretation, seeking opinion about the effects of actions the parties took in the past, and requesting to interpret statutes over which the Commission does not have jurisdiction.

#### *Taylor v. Department of Health, 29*



## Whistle-Blower Case

**FPER ¶ 169 (2003).**

Whistle-blower complaint dismissed. Employee utilized the grievance procedure to dispute her written reprimand and was, therefore, barred from maintaining a related whistle-blower complaint due to the election of remedies provisions in Sections 112.3187 and 447.401, Florida Statutes.

## Elections Verified and Certifications Issued July 1 – Sept. 30, 2003

*United Faculty of Florida v. New College of Florida Board of Trustees*, Case No. RA-03-009; Certification 1406.

*Palm Beach County PBA v. Florida Atlantic University Board of Trustees*, Case No. RA-03-010; Certification 1407.

*Florida PBA, Inc. v. University of Central Florida Board of Trustees*, Case No. EL-03-022; Election 6/5 - 6/26/03; Union won; Certification 1408.

*Dade County PBA, Inc. v. Florida International University Board of Trustees*, Case No. EL-03-025; Election 6/5 - 6/26/03; Union won; Certification 1409.

*Oviedo Professional Firefighters, Local 3476 v. City of Oviedo*, Case No. RA-03-007; Certification 1410.

*Government Supervisors Association of Florida, Office & Professional Employees, International Union, Local 100 v. City of South Miami*, Case No. EL-03-027; Election 6/17 - 7/08/03; Union won; Certification 1411.

*Winter Springs PFF, Local 3296, IAFF v. City of Winter Springs*, Case No. EL-03-030; Election 6/18 - 7/8/03; Union lost.

*United Faculty of Florida v. Florida A&M University Board of Trustees*, Case No. RA-03-011; Certification 1412.

*Florida PBA, Inc. v. New College of Florida Board of Trustees*, Case No. RA-03-013; Certification 1413.

*West Central Florida PBA v. University of South Florida*, Case No. RA-03-196; Certification 1414.

*Florida PBA, Inc. v. Department of Management Services v. IUPA*, Case No. EL-03-024; Election 6/19 - 7/24/03; IUPA won; Recertification.

(Continued on page 11)



(Continued from page 10)

*Truck Drivers, Warehousemen, and Helpers, Local Union 512 and Florida State Lodge, FOP v. University of North Florida Board of Trustees*, Case No. EL-03-034; Election 7/08 - 7/29/03; Local 512 won; Certification 1415.

*Florida State Lodge, FOP, Inc. v. University of North Florida Board of Trustees*, Case No. EL-03-058; Election 7/08 - 7/29/03; Union lost.

*Florida PBA, Inc. v. Gadsden County Sheriff's Office*, Case No. EL-03-040; Election 7/30/03; Union lost.

*Palm Beach County PBA, Inc. v. Sheriff of Palm Beach County*, Case No. EL-03-028; Election 7/24 - 8/13/03; Union won; Certification 1416.

*Palm Beach County PBA, Inc. v. Sheriff of Palm Beach County*, Case No. EL-03-029; Election 7/24 - 8/13/03; Union won; Certification 1417.

*Florida PBA, Inc. v. University of Florida Board of Trustees v. Florida State Lodge, FOP, Inc.*, Case No. EL-03-039; Election 7/30 - 8/20/03; PBA won; Certification 1418.

*Florida PBA, Inc. v. City of Panama City Beach*, Case No. EL-03-046; Election 8/20/03; Union lost.

*Pinellas Lodge No. 43, FOP, Inc. v. Pinellas County Sheriff's Office*, Case No. EL-03-031; Election 7/31 - 8/21/03; Union won; Certification 1419.

*Pinellas Lodge No. 43, FOP, Inc. v. Pinellas County Sheriff's Office v. Pinellas County PBA, Inc.*, Case No. EL-03-032; Election 7/31 - 8/21/03; FOP won; Certification 1420.

*Florida Public Employees Council 79, AFSCME v. Florida State University Board of Trustees*, Case No. EL-03-037; Election 7/31 - 8/22/03; Union won; Certification 1421.

*United Faculty of Florida v. Florida A&M University Board of Trustees*, Case No. RA-03-018; Certification 1422.

*Florida State Lodge, FOP, Inc. v. Sheriff of Levy County v. Florida PBA, Inc.*, Case No. EL-03-035; Election 8/5 - 8/26/03; PBA won; Certification 1423.

*Florida Public Employees Council 79, AFSCME v. Florida A&M University Board of Trustees*, Case No. RA-03-017; Certification 1424.

*Florida Public Employees Council 79, AFSCME v. Florida Gulf Coast University Board of Trustees*, Case No. EL-03-033; Election 8/05 - 8/26/03; Union lost.

*Florida State Lodge, FOP v. Monroe County Sheriff's Office v. Florida PBA, Inc.*, Case No. EL-03-049; Election 8/13 - 9/3/03; FOP won; Certification 1425.

*Communication Workers of America v. City of Madeira Beach*, Case No. EL-03-041; Election 8/14 - 9/4/03; Union won; Certification 1426.

*Communication Workers of America v. City of Madeira Beach*, Case No. EL-03-042; Election 8/14 - 9/4/03; Union won; Certification 1427.

*Florida State Lodge, FOP v. City of Sunrise v. Broward County PBA, Inc.*, Case No. EL-03-048; Election 8/14 - 9/4/03; FOP won; Certification 1428.

*JEA Supervisors Association v. St. Johns River Power Park*, Case No. EL-02-049; Election 1/21 - 2/11/03; Union lost.

*Florida PBA, Inc. v. City of Leesburg*, Case No. EL-03-023; Election 6/5 - 6/26/03; Union lost.

*Florida State Lodge, FOP, Inc. v. City of Sunrise v. Broward County PBA, Inc.*, Case No. EL-03-047; Election 8/14 - 9/4/03; PBA won; Recertification.

*Pinellas Lodge No. 43, FOP v. City of Gulfport v. Pinellas County PBA, Inc.*, Case No. EL-03-050; Election 8/20 - 9/10/03; FOP won; Certification 1429.

(Continued on page 12)



(Continued from page 11)

*Florida State Lodge, FOP, Inc. v. City of Lake Worth v. Palm Beach County PBA, Inc.*, Case No. EL-03-057; Election 8/20 - 9/10/03; FOP won; Certification 1430.

*Florida State Lodge, FOP, Inc. v. City of Lake Worth v. Palm Beach County PBA, Inc.*, Case No. EL-03-056; Election 8/20 - 9/10/03; FOP won; Certification 1431.

*Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. Jacksonville Seaport Authority d/b/a Jacksonville Port Authority v. Florida Regional Council of Industrial and Public Employees, Local 2081, United Brotherhood of Carpenters and Joiners of America*, Case No. EL-03-052; Election 8/27 - 9/17/03; Challenges determinative.

*Florida PBA, Inc. v. Sheriff of Highlands County*, Case No. EL-03-044; Election 8/28 - 9/18/03; Union won; Certification 1432.

*St. Petersburg Association of Firefighters, IAFF, Local 747 v. City of St. Petersburg*, Case No. EL-03-059; Election 8/27 - 9/17/03; Union won; Certification 1433.

*Holly Hill Professional Firefighters v. City of Holly Hill*, Case No. EL-03-061; Election 8/27 - 9/17/03; Union won; Certification 1434.

*Florida PBA, Inc. v. Sheriff of Highlands County*, Case No. EL-03-045; Election 8/28 - 9/18/03; Union won; Certification 1435.

*Florida Public Employees Council 79, AFSCME, AFL-CIO v. Florida International University Board of Trustees*, Case No. EL-03-060; Election 9/23/03; Union won; Certification 1436.

*Florida PBA, Inc. v. Sheriff of Orange County v. Florida State Lodge, FOP, Inc.*, Case No. EL-03-051; Election 9/05 - 9/26/03; Runoff.

*Florida Police Benevolent Association, Inc. v. Sheriff of Jefferson County*, Case No. EL-03-071; Election 9/30/03; Union lost.

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

4050 Esplanade Way

Tallahassee, Florida 32399-0950



Presort  
Standard  
U.S. Postage  
**PAID**  
Tallahassee, FL  
Permit No. 55