PERC NEWS

Florida Public Employees Relations Commission

April 1—June 30, 2005

Practice Pointers: Effective Exceptions

by: Commissioner Jessica E. Varn.

The Commission and its staff review exceptions to recommended orders on a daily basis. The goal of exceptions is to highlight error on the part of the hearing officer. Many litigants reach that goal by filing exceptions that are artfully drafted; that is, they are organized, specific, have the correct demeanor and make the Commission's work of addressing them effort-less. Here are some style tips that can assist in the drafting of effective exceptions.

To begin with, the Administrative Procedures Act, Section 120.57(1)(k), Florida Statutes, provides litigants with the right to file exceptions to recommended orders, and it gives some guidelines:

> *The agency shall allow each party 15 days in which to submit written exceptions to the recommended order.* An agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.*

As to organization, the following is a list of helpful tips:

Follow the organization of the recommended order.
Address only one issue per exception.
List exceptions by numbers, not letters.
Use only one sequence of numbered exceptions; do not start over for different areas of the recommended order.
Refer to numbered paragraphs in the recommended order, or to page numbers when paragraphs are not numbered.

As to content, valid exceptions get lost when they are bundled with inconsequential exceptions. In other words, focus on exceptions that will ultimately effect the result of the case. Vague or general exceptions will not be granted; be specific and concise. Recall that if the exception is to a factual finding, the Commission needs a transcript to review. It is also important to cite to the transcript for ease of review.

As to demeanor, it is never advantageous to ridicule opposing counsel or the hearing officer. Mere statement of mis-understanding or error is sufficient. Maintain a professional demeanor; inflammatory comments only distract from the substance of the exceptions.

If a litigant drafts exceptions by following these general guidelines, it makes the review of such exceptions easier, and thus makes it more likely that the exceptions will be received as intended by the litigant.

*Exceptions in career service cases must be filed within five working days.

In this Issue:

Service First Challenges

by: H. Lee Cohee II, Hearing Officer.

The American Federation of State, County, and Local Employees Council 79, AFSCME, AFL-CIO, has appealed three Commission orders affirming the General Counsel's summary dismissals of unfair labor practice charges brought by AFSCME against the State of Florida involving issues arising from the Service First legislation passed in 2001. These cases were stayed pending AFSCME's challenge to the constitutionality of that legislation in the circuit court and the First District Court of Appeal.

In the oldest case of the three, *AFSCME Public Employees Council 79 v. State of Florida, John Ellis Bush as Governor and State of Florida, Department of Management Services*, 31 FPER ¶ 76 (2005), a majority of the Commission rejected AFSCME's charge that the State unlawfully removed 7,000 employees from its four state-wide bargaining units of career service employees pursuant to "Service First" legislation that exempted managerial, confidential, and supervisory employees from the career service system. The majority concluded that the Commission had no jurisdiction to review the actions taken pursuant to the Service First legislative mandate. AFSCME contended that removing positions from its bargaining units without invoking the Commission's processes by filing either a unit clarification petition or a petition to determine whether an employee satisfies the statutory criteria to obtain managerial or confidential status was unlawful. The Commission also concluded that AFSCME, as well as the State, could have filed a unit clarification petition with the Commission when it learned of the legislature's intent in 2001, and chose not to do so.

Commissioner Kossuth dissented, stating that since the legislature did not identify specific classifications as exempt from the career service system but rather exempted only generic classifications without stating who is to determine which employees meet the definition of supervisory, managerial, and confidential, it is the Commission's prerogative to make those determinations and not that of the State, one of the parties to the bargaining relationship.

In the other two AFSCME cases, *Florida Public Employees Council 79, AFSCME v. State of Florida, Governor John Ellis "Jeb" Bush*, Case No. CA-2005-012 (Fla. PERC June 20, 2005) and *Florida Public Employees Council 79, AFSCME v. Jeb Bush, Governor of the State of Florida*, 30 FPER ¶ 290 (2004), the Commission affirmed the General Counsel's summary dismissals finding that AFSCME had contractually waived its right to bargain over changes in state personnel rules that were repealed by the Service First legislation, and that that legislation precluded arbitration over a pending grievance concerning layoff "bumping rights."

All three cases have been appealed to the First District Court of Appeal. *AFSCME v. State of Florida, John Ellis Bush as Governor*, Case Nos. 1D05-1967, 1D04-5064, and 1D04-5066.

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Constructive Suspension Vacated

In *Faircloth v. Department of Corrections*, Case No. CS-2004-279 (Fla. PERC June 1, 2005), the Commission addressed the issue of an employee placed on leave without pay pending the conclusion of an investigation into his alleged criminal conduct. The employee, a correctional officer, had been placed on administrative leave when he was arrested on criminal charges and then released upon condition that he wear a GPS tracking device. The employee's pretrial release orders allowed him to be at home, work or church, but required that he wear the GPS device at all times. The Agency eventually placed the employee on leave without pay pending resolution of an investigation, and the employee appealed.

While agreeing with the hearing officer's finding that the employee was unable to work as a correctional officer responsible for inmate care and custody while encumbered by the GPS device, the Commission held that the Agency was required by Florida Administrative Code Rule 60L-34.0071(3)(f) to either offer the employee alternative duties or place him on administrative leave while he remained under formal investigation. The Commission rejected the Agency's arguments that it had authority to limit the application of that rule by a practice of reserving alternative assignments for officers recovering from on-the-job injuries or by attachment of a caveat requiring persons on administrative leave to be capable of fully performing the duties of their regular position.

In concluding that the employee's suspension must be vacated, the Commission noted that by placing the employee on leave without pay pending resolution of its investigation, the Agency had imposed an indefinite suspension. The Commission pointed out that this practice, if allowed to stand, would permit an agency to maintain an employee in the limbo of a constructive suspension, without the agency risking any concomitant back pay liability, and continue the investigation until the employee was forced by financial straits to seek employment elsewhere, thereby rendering meaningless any career service protections. The Commission also noted that the Agency could have dismissed the employee at any time for his alleged criminal conduct (which the Agency would only be required to prove by a preponderance of evidence in any ensuing career service appeal), for absenteeism while incarcerated, or for inability to perform the essential duties of his correctional officer position due to the GPS device. However, when the Agency chose not to impose discipline, but to maintain an open investigation, the Agency triggered the application of Rule 60L-34.0071(3)(f) and subjected itself to the requirement to continue to pay the employee's wages, either in an alternative assignment or while on administrative leave. The issue of the amount of back pay to be awarded to the employee remains unresolved.

Appellate Decisions

***State Employees Attorneys Guild, FPD, NUHHCE, AFSCME, AFL-CIO v. JEB Bush, As Governor of the State of Florida,* Case No. 1D04-2660**
(Relates to RC-2000-045, EL-2003-026, and CR-2002-001)

On May 14, 2004, a majority of the Commission certified the State Employees Attorneys Guild (SEAG) as the exclusive bargaining agent for a unit of State of Florida non-supervisory selected exempt service professional employees. On June 14, the State appealed the Commission's order to the First District Court of Appeal. On June 13, 2005, the district court affirmed per curiam the Commission's order, denied the State's motion for appellate attorney's fees, granted SEAG's motion for appellate attorney's fees and costs, and remanded the case to the Commission for a determination of the amount of attorney fees and costs if the parties are unable to agree on the amounts. Mandate has issued.

Hayes v. Leon County School Board,
Case No. 1D04-3145 (Relates to CA-2004-111)

The Commission affirmed the General Counsel's dismissal of an employee's unfair labor practice charge as untimely where the charge was not filed within six month of when the employee received notice that her employment was ending. On June 29, 2005, the First District Court of Appeal affirmed, per curiam, the Commission's order.

***Florida Prosecuting Attorneys Association, Inc., et al v. Dade County Police Benevolent Association, Inc., et al*, Case No. 1D04-3224 (Relates to RC-2003-048)**

On July 6, 2005, the First District Court of Appeal issued an order affirming, per curiam, *Florida Prosecuting Attorneys Association, Inc., et al v. Dade County Police Benevolent Association, Inc, et al*. In the case below, the PBA petitioned the Commission to become the certified bargaining agent for two units of investigators employed by the Miami-Dade County State Attorney's Office (Miami-Dade SAO), a rank-and-file unit including investigator I and II classifications (RC-2003-048) and a supervisory unit including the investigator III classification (RC-2003-049). The Miami-Dade SAO disagreed that the units were appropriate arguing that the public employer was the State of Florida and that only a statewide unit including the investigator I, II, and III classifications was appropriate. Subsequently, Case No. RC-2003-048 was amended to include all three classifications and Case No. RC-2003-049 was dismissed.

The Commission agreed with the hearing officer that the Miami-Dade SAO, and not the State of Florida, was the public employer of its investigators. This was so because statutory changes have removed investigators as employees of the State and, notwithstanding the statutory classification and pay plan, Miami-Dade SAO possesses sufficient control over its investigators to bargain effectively. §§ 27.25 and 447.203(2), Fla. Stat. (2004). The Commission also declined to determine that a multi-employer unit was required because Miami-Dade SAO failed to provide authority for such a unit. Finally, the Commission concluded that because Miami-Dade SAO was the public employer, a unit composed of its investigators was not overly fragmented.

The Commission ordered a secret ballot election of the investigators limited to the Miami-Dade SAO. No union won the election and the Florida Prosecuting Attorney's Association, Inc., and the Miami-Dade SAO appealed the Commission's decision to the First District Court of Appeal, which affirmed.

Career Service Cases

***Powers v. Department of Children and Families,* 20 FCSR 115 (2005).**

Dismissal of economic self-sufficiency specialist II for failing to comply with computer security procedures vacated where employee did not violate the agency's security policy. Back pay awarded.

***Donnell v. Department of Juvenile Justice,* 20 FCSR 116 (2005).**

Back pay awarded to juvenile detention officer dismissed for negligence where use of extraordinary dismissal procedure was not justified.

***Poole v. Department of Health,* 20 FCSR 117 (2005).**

Dismissal of senior clerk for poor performance for failing to submit weekly reports and enter bills, violations of agency rules for taking excessive breaks, and conduct unbecoming a public employee for being intentionally deceptive about FMLA leave affirmed.

***Hayes v. Department of Corrections,* 20 FCSR 123 (2005).**

Dismissal of probation and parole office manager for negligence for failure to ensure a high-priority probation violation report was timely filed and false entry of the report's completion date affirmed. Ten days of back pay awarded where use of extraordinary dismissal procedure was unjustified.

***Burkett v. Department of Corrections,* 20 FCSR 136 (2005).**

Dismissal of correctional officer for conduct unbecoming a public employee affirmed. Officer was adjudicated guilty of petit theft twice after being charged with grand theft and selling stolen property to a fellow officer. Mitigation not warranted where alleged disparate treatment was not based on comparable dishonest misconduct.

***Pignatelli v. Desoto County Board of County Commissioners,* 20 FCSR 138 (2005); *Manzo v. ADP Total Resources,* 20 FCSR 174 (2005).**

Appeal dismissed for lack of jurisdiction because employee was not a state career service employee.

***Prescott v. Department of Corrections,* 20 FCSR 139 (2005).**

Five-day suspension of correctional officer sergeant for conduct which violates state statutes, rules, directives or policy statement; failure to report for duty in an emergency situation; absence without authorized leave; conduct inconsistent with the maintenance of proper security and welfare of the institution; conduct unbecoming a public employee; willful violation of rules, directives, or policy statements; and failure to follow oral or written instructions for failure to report to work affirmed. Mitigation not warranted where extraordinary circumstances and disparate treatment were lacking, and employment record was outweighed by seriousness of conduct.

***Legette v. Department of Business and Professional Regulation,* 20 FCSR 142 (2005).**

Appeal of probationary employee dismissed for lack of jurisdiction.

***Elliott v. Department of Children and Families,* 20 FCSR 144 (2005).**

Dismissal of clerk typist specialist for negligence for giving a coworker approximately 1,000 pages of current case documents to be shredded affirmed.

***Bryant v. Department of Corrections,* 20 FCSR 146 (2005).**

Demotion of employee from correctional probation senior supervisor to correctional probation supervisor for failing to follow oral and written instructions and for negligence for implementing a team supervision approach and using an unapproved form to do so affirmed. Mitigation not warranted where lengthy employment record is outweighed by seriousness of conduct.

***Mullen v. Department of Corrections,* 20 FCSR 151 (2005).**

Five-day suspension of correctional officer sergeant for negligence or willful misconduct for failure to report to work vacated because officer reasonably believed he had authorized leave. Back pay and benefits awarded.

***Long v. Department of Corrections,* 20 FCSR 153 (2005).**

Five-day suspension of correctional officer sergeant for willful violation of rules, regulations, directives or policy statements and failure to follow oral or written instructions for failure to report to work affirmed. Mitigation not warranted.

***Thompson v. Department of Corrections,* 20 FCSR 156 (2005).**

Dismissal of correctional officer sergeant for conduct unbecoming a public employee for making an offensive and profane statement to superior officers and for absence without authorized leave affirmed. Mitigation not warranted where mid-length employment record is outweighed by seriousness of conduct.

***Vasquez v. Department of Corrections,* 20 FCSR 163b (2005).**

Back pay awarded to correctional officer whose dismissal was vacated.

***Bigler v. Department of Corrections,* 20 FCSR 167 (2005).**

Appeal of employee's reprimand and reassignment dismissed for lack of jurisdiction.

***Reynolds v. Department of Education,* 20 FCSR 168 (2005).**

Dismissal of staff assistant for inefficiency or inability to perform her assigned duties affirmed.

***Andrews v. Department of Environmental Protection*, 20 FCSR 170 (2005); *Haygood-Bruce v. Department of Children and Families*, Case No. CS-2005-091 (May 2, 2005).**

Appeals dismissed as abandoned where employees failed to appear at hearings.

***Lawhorn v. Department of Corrections*, 20 FCSR 171 (2005).**

Five-day suspension of correctional officer for negligence in leaving keys in a lock to which inmates had access affirmed. Mitigation not warranted due to seriousness of the offense and recent disciplinary record, both of which outweigh mid-length employment record.

***Harden v. Department of Corrections*, 20 FCSR 173 (2005).**

Appeal of employee's transfer dismissed for lack of jurisdiction.

***Santiago v. Department of Revenue*, Case No. CS-2004-273 (May 3, 2005).**

Three-day suspension of revenue specialist II for second occurrence of discourteous or rude conduct affirmed.

***Smarte v. Department of Juvenile Justice*, Case No. CS-2005-052 (May 3, 2005).**

Dismissal of juvenile detention officer for failure to perform required ten minute room checks affirmed.

***Carbo v. Department of Children and Families*, Case No. CS-2005-053 (May 3, 2005).**

Dismissal of economic self-sufficiency specialist I for making unauthorized Medicaid eligibility determination affirmed.

***Zackery v. Department of Juvenile Justice*, Case No. CS-2005-009 (May 6, 2005).**

Dismissal of senior juvenile detention officer for releasing detainee prior to date stated in one circuit court order vacated where detention officer acted upon another circuit court order ordering detainee's immediate release.

***Flowers v. Department of Revenue*, Case No. CS-2005-095 (May 9, 2005).**

Appeal of dismissal filed two days late dismissed as untimely. Stress from dismissal and non-disabling illness do not establish an equitable basis to excuse untimeliness.

***Thurman v. Department of Corrections*, Case No. CS-2005-040 (May 10, 2005).**

Dismissal of correctional officer for unsafe handling of a weapon and failure to truthfully answer questions affirmed. Mitigation not warranted where good mid-range employment record is outweighed by seriousness of incident. Employee failed to demonstrate disparate treatment where comparable employee also accidentally discharged firearm but immediately reported incident and received five-day suspension.

***Mitchell v. Department of Corrections*, Case No. BP-2005-009 (Relates to CS-2004-220) (May 11, 2005).**

Back pay awarded.

***Garcia v. Department of Juvenile Justice*, Case No. CS-2005-102 (May 16, 2005).**

Appeal of dismissal of employee dismissed as untimely filed.

***Rodriquez v. Department of Corrections*, Case No. CS-2005-103 (May 17, 2005).**

Dismissal of vocational instructor II for negligence in leaving a PVC pipe cutter in inmate dormitory affirmed.

***Santana v. Department of Juvenile Justice*, Case No. CS-2005-106 (May 20, 2005).**

Dismissal of senior juvenile detention officer for inability to perform assigned duties due to non-work-related illness affirmed.

***Williams v. Department of Corrections*, Case No. CS-2005-043 (May 23, 2005).**

Five-day suspension of correctional officer for unauthorized absence mitigated to one-day suspension where seriousness of incident was outweighed by extraordinary circumstances due to injured back. Back pay awarded.

***Obas v. Department of Corrections*, Case No. CS-2005-048 (May 24, 2005).**

Twenty-day suspension of correctional officer for unauthorized absences and willful violation of agency rules affirmed. Mitigation not warranted where seriousness of conduct outweighed satisfactory disciplinary record.

***Harris v. Department of Juvenile Justice*, Case No. CS-2005-105 (May 24, 2005).**

Dismissal of senior juvenile detention officer for poor performance for unauthorized and excessive use of family medical leave while working an unapproved second job affirmed.

***Reynolds v. Department of Education*, Case No. CS-2005-076 (May 31, 2005).**

Employee's motion to reopen the record is denied where documents were available prior to the evidentiary hearing and would not advance the employee's position even if admitted.

***Roque v. Department of Corrections* Case No. CS-2005-110 (June 3, 2005).**

Ten-day suspension of correctional officer for negligence for failing to properly escort inmates affirmed. Mitigation not warranted where officer failed to show that another employee, who was not disciplined, was engaged in comparable conduct, and where seriousness of conduct and prior disciplinary action outweighed short term employment.

Felton-Garcia v. Department of Health **Case No. CS-2005-116 (June 9, 2005);** ***Massey v. Department of Corrections*** **Case No. CS-2005-130 (June 29, 2005).**

Appeals of employees dismissed as apparently settled although no agreement was filed.

Williams v. Department of Corrections **Case No. CS-2005-104 (June 15, 2005).**

Demotion of correctional officer lieutenant to sergeant for failing to maintain a professional relationship with staff and failing to follow oral instructions affirmed. Mitigation not warranted where disparate treatment was not demonstrated.

Comite v. Department of Corrections **Case No. CS-2005-118 (June 15, 2005).**

Dismissal of correctional officer for willful violation of its rules for allowing inmate to receive food from outside the institution affirmed. Mitigation not warranted where good long-time employment record is outweighed by seriousness of acting in concert with inmate to facilitate receipt of contraband in violation of Agency's rules.

Green v. Department of Children and Families **Case No. CS-2005-132 (June 16, 2005).**

Appeal of layoff of employee dismissed for lack of jurisdiction.

McCaskill v. Department of Corrections **Case No. CS-2005-107 (June 20, 2005).**

Suspension of correctional officer sergeant for allowing inmate to operate control panel that unlocked door of officer's station and be present during sorting another inmate's property affirmed. Mitigation not warranted where seriousness of conduct and disciplinary history outweighs lengthy employment history.

Carter-Smith v. Department of Corrections **Case No. CS-2005-150 (June 21, 2005).**

Appeal of probationary employee dismissed for lack of jurisdiction.

Powers v. Department of Children and Families **Case No. BP-2005-011 (related to CS-2005-057) (June 23, 2005).**

Back pay awarded where employee attempted to mitigate back pay by continuously searching for other employment throughout the back pay period.

McNeish v. Department of Corrections **Case No. CS-2005-067 (June 29, 2005).**

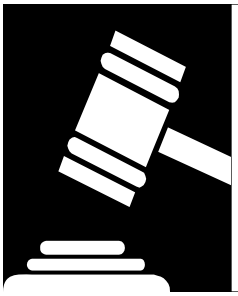
Dismissal of correctional officer for negligence for misplacing her badge, failing to follow oral instructions, and failing to treat other employees with courtesy, consideration, and respect affirmed. Mitigation not warranted.

Williams, Jr. v. Department of Corrections **Case No. CS-2005-083 (June 29, 2005).**

Dismissal of correctional officer sergeant for allegedly withholding food from inmates and giving false testimony vacated where Agency failed to prove officer had any knowledge of same.

Lawhorn v. Department of Corrections **Case No. CS-2005-139 (June 30, 2005).**

Dismissal of correctional officer for failing to maintain the physical custody and security of inmates, where failure provided an inmate with the opportunity to construct a weapon, affirmed. Mitigation not warranted where seriousness of conduct and disciplinary record outweighed mid-length employment record.



Unfair Labor Practice Cases

Cagle v. St. John's County School District, **31 FPER ¶ 70 (2005).**

Commission affirmed the General Counsel's summary dismissal of unfair labor practice charges which failed to provide a factual basis demonstrating that charging party's protected activity, the filing of a veteran's preference complaint and her testimony at a Commission hearing, were the substantial or motivating factors in the alleged retaliation by the School District.

Fisher v. University of South Florida, **31 FPER ¶ 79 (2005).**

Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge alleging that pursuant to court holding that successor employer inherits former employer's bargaining agreement, employee's appeal should be reviewed as if he filed grievance under last bargaining agreement between former employer and union. Argument was without merit in light of employee's concession that he had not filed grievance pursuant to bargaining agreement. Further, even if Commission considered grievance filed pursuant to contract, charge had no merit where employee did not allege he was prevented from fully utilizing grievance procedure.

Jacksonville Employees Together (JET) v. City of Jacksonville, Florida, **31 FPER ¶ 106 (2005).**

The Commission held that JET met the statutory definition of an employee organization because it possessed the semblance of an organizational structure. Further, the City did not discriminate against JET when it allowed

another union, and not JET, to use its bulletin boards to post materials regarding the organization of professional employees. The Commission reasoned that, since JET had not sought to represent the professional employees, it could not argue that the City had treated it differently from the union which did seek to become their bargaining representative. JET was required to pay the City's reasonable attorney's fees and costs because there was no evidence of discrimination against the union.

Northeast Florida Public Employees' Local 630 v. Jacksonville Electric Authority, **Case No. CA-2004-145 (June 1, 2005).**

Employer committed an unfair labor practice when it questioned a union representative about his communications with a union member which occurred during the time he represented the union member. The employer also unlawfully subpoenaed the union representative for a civil service board hearing to testify about communications he had with a union member which arose during his representation of the member.

Cagle v. St. Johns County School District, **Case No. CA-2005-013 (June 10, 2005).**

Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge alleging that the School District refused to pay former employee her accumulated sick leave and misrepresented the length of time she worked. The employee failed to establish that the School District's reasons for denying her sick leave payment were pretextual, and the mere assertion that the School District misrepresented the length of her employment in retaliation for her participation in protected concerted activity was insufficient to establish a prima facie violation.

Cagle v. St. Johns County School District, **Case No. CA-2005-014 (June 10, 2005).**

Commission affirmed the General Counsel's summary dismissal of an unfair labor practice charge alleging that the School District unlawfully falsified former employee's retirement documents to show her last day worked as May 25, instead of April 26, 2004. The School District contended that the employee was placed on paid administrative leave which constitutes work time, and that her last day of work was May 25. Because the School District's position was reasonable, the employee failed to demonstrate pretext or unlawful motivation regarding the establishment of her retirement date.

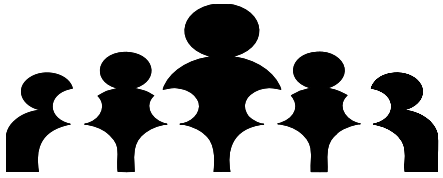
Federation of Public Employees, A Division of the National Federation of Public and Private Employees, AFL-CIO v. The School Board of Broward County, **Case No. CA-2004-142 and CA-2004-156 (June 15, 2005).**

The School Board committed an unfair labor practice when it transferred an employee because his grievances took up too much staff time and imperiled the "operations and safety" of the school. The Commission determined that the employee's grievances were not frivolous or knowingly false, and that the School Board's arguments that the safety of the students and the good of the school justified the transfer were vague and conjectural. Union was awarded attorney's fees and costs.

McNeely v. City of Jacksonville, Office of the Sheriff, **Case No. CA-2004-163 (June 21, 2005).**

Unfair labor charge alleging that the Sheriff retaliated against an employee for complaining to his union representative was dismissed. Where the adverse personnel actions taken by Sheriff were not predicated upon employee's union or other protected activities.

Representation Cases



United Food and Commercial Workers Union, Local 1625 Chartered by the United Food and Commercial Workers International Union, AFL-CIO, CLC v. City of Mulberry, Florida, **31 FPER ¶ 33 (2005).**

Commission dismissed petition seeking to represent service workers in public works department where it failed to list all classifications to be included in the unit and sought a unit comprised of employees from only one department.

International Union of Painters and Allied Trades, AFL-CIO, Local Union 3201 v. City of Cape Coral, **31 FPER ¶ 64 (2005).**

Unit clarification petition seeking to include newly-created classifications in a unit of non-professional supervisory employees granted.

Deland Professional Firefighters, Local 4347, IAFF v. City of Deland, **31 FPER ¶ 65 (2005).**

Consent election agreement seeking to represent a unit of supervisory fire suppression personnel approved.

International Association of EMTs and Paramedics, SEIU/NAGE, AFL-CIO v. Emergency Medical Services Alliance, **31 FPER ¶ 75 (2005).**

Representation-certification petition seeking to represent a unit of dispatchers, emergency medical technicians, and paramedics granted. Part-time and pool employees were appropriate for inclusion in the unit because they had a reasonable expectation of continued employment and shared a

community of interest with the full-time employees.

International Union of Police Associations, Local 6013 v. City of Clermont, **Case No. RC-2005-018 (Apr. 14, 2005).**

Representation-certification petition seeking an opt-in election was dismissed where petition was not filed in the name of the certified bargaining agent and an election bar was in effect.

Crestview Professional Firefighters Association, IAFF, Local 2680 v. City of Crestview, **31 FPER ¶ 80 (2005).**

Unit clarification petition dismissed where petition was not filed in the name of the certified bargaining agent and contained certain technical deficiencies.

Florida State Lodge, Fraternal Order of Police v. City of Pensacola, **31 FPER ¶ 81 (2005).**

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

Pasco County Professional Firefighters, Local 4420, IAFF v. Pasco County, **31 FPER ¶ 82 (2005).**

Consent election agreement seeking to represent a unit of nonsupervisory fire and emergency medical services personnel approved.

Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. Sheriff of Martin County, **31 FPER ¶ 85 (2005).**

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

Local Union 1205 of the International Brotherhood of Electrical Workers, Gainesville, Florida v. City of Live Oak, **31 FPER ¶ 88 (2005).**

Consent election agreement seeking to represent a unit of blue collar employees approved.

Professional Managers and Supervisors Association, A Division of FPD/AHPE, NUHHCE, AFSCME, AFL-CIO v. Palm Beach County, **31 FPER ¶ 90 (2005).**

Representation-certification petition dismissed where the named petitioner was not registered with the Commission and the unit sought appeared to be departmental in nature.

Government Supervisors Association of Florida/Office and Professional Employees International Union, Local 100 v. City of Naples, **31 FPER ¶ 91 (2005).**

Representation-certification petition seeking to represent a unit of non-supervisory professional employees granted. Union's attempt to include two non-professional classifications within the professional unit because of an alleged community of interest and the fact that they have remained unrepresented for a lengthy period was rejected where the positions would be appropriate for inclusion in another existing unit.

Florida Police Benevolent Association v. City of Marianna, **31 FPER ¶ 92 (2005).**

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

Virguez v. Governmental Supervisors Association of Florida/Office and Professional Employees, International Union, Local 100, AFL-CIO v. City of South Miami, **Case No. RD-2005-006 (Apr. 28, 2005).**

Petition seeking to revoke certified bargaining agent's certification dismissed where the showing of interest was deficient.

Leesburg Employees Unity Council v. City of Leesburg, **31 FPER ¶ 97 (2005).**

Representation-certification petition seeking to represent a unit of all non-supervisory and non-managerial employees dismissed where the titles of classifications to be included in the unit were not specific enough to place the employer on notice regarding which positions were at issue.

King v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. City of DeFuniak Springs, **31 FPER ¶ 101 (2005).**

Petition seeking to revoke certification of incumbent union granted. Commission directed that a secret ballot election be held to determine whether the unit employees desired continued representation by the union.

In Re Petition of St. Pete Beach Professional Firefighters Association, IAFF, Local 2266, To Amend Certification No. 963, **31 FPER ¶ 103 (2005).**

Petition to amend certification 963 to substitute Local 2266 for Local 747 of IAFF approved.

Florida Police Benevolent Association v. Sarasota County Sheriff's Office, **31 FPER ¶ 112 (2005).**

Consent election agreement seeking to represent a unit of nonsupervisory correctional deputies granted.

Virguez v. Government Supervisors Association of Florida/Office and Professional Employees, International Union, Local 100 v. City of South Miami, **Case No. RD-2005-007 (May 20, 2005).**

Petition to revoke certification of incumbent union granted.

Stevens and Demoss v. Service Employees International Union, Local 8 v. Lake County School Board, **Case Nos. RD-2005-002 and RD-2005-003 (May 23, 2005).**

Petitions to revoke certification of incumbent union dismissed where the requisite showing of interest was not filed. Request to extend the window period for filing showing of interest

cards due to a previously filed unfair labor practice charge against union was denied where the case was settled and settlement agreement contained no admission of wrongdoing by the union provision for the relief requested in the petitions.

Transport Workers Union of America, Local 291, AFL-CIO v. Miami-Dade County, Florida (Miami-Dade Transit Authority), **Case No. UC-2005-003 (May 24, 2005).**

Unit clarification petition seeking to include and exclude several classifications in a unit of transit employees approved.

United Faculty of Florida Keys Community College v. Florida Keys Community College, **Case No. RC-2005-008 (May 31, 2005).**

Consent election agreement seeking to represent a rank-and-file bargaining unit of full-time faculty, librarians, and counselors approved.

Washington County School Food Service/Transportation v. Florida Public Employees Council 79, American Federation of State, County, and Municipal Employees, AFL-CIO v. Washington County School District, **Case No. RD-2005-004 (June 2, 2005).**

Petition seeking to revoke incumbent union's certification was dismissed because it was filed within twelve months of AFSCME's certification, and the showing of interest cards were defective.

Emergency Service Professionals of Walton County, IAFF, Local #4413 v. Walton County Board of County Commissioners, **Case No. RC-2005-019 (June 10, 2005).**

Consent election agreement seeking to represent a unit of firefighting and emergency rescue employees granted.

In re Petition of Gator Lodge 67, Fraternal Order of Police, To Amend Certification No. 1053, **Case No. AC-2005-002 (June 13, 2005).**

Petition to amend certification 1053 to substitute Gator Lodge 67 for the Florida State Lodge, Fraternal Order of Police approved.

Flagler County Professional Firefighters Association v. Flagler County v. Communication Workers of America, Local 3102, **Case No. RC-2005-010 (June 15, 2005).**

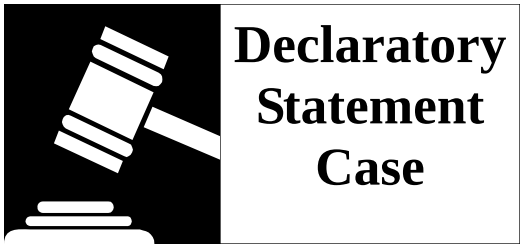
Consent election agreement seeking to represent a unit of emergency medical and firefighter employees granted.

Southwest Florida Professional Firefighters & Paramedics, IAFF, Local 1826 v. Lehigh Acres Fire Control and Rescue District, **Case No. RC-2005-012 (June 22, 2005).**

Consent election agreement seeking to represent a supervisory unit of battalion chiefs granted.

West Central Florida Police Benevolent Association v. City of Ft. Meade v. Teamsters, Chauffeurs and Helpers, Local Union No. 79, **Case No. RC-2005-026 (June 30, 2005).**

Election directed in existing unit of sworn law enforcement officers modified by deletion of abolished sergeant position.



In re Petition for Declaratory Statement of James R. Ervin, **31 FPER ¶ 73 (2005).**

Request that the Commission issue declaratory statement on the legality of employee's treatment by a state agency, the applicability of numerous statutes and rules to him, and the authority certain statutes and rules give state agencies, was denied where employee's previously filed career service appeal was proper vehicle for resolving these issues.

Vilar-Reynolds v. Agency for Workforce Innovation, **31 FPER ¶ 67 (2005).**

Complainant who participated in violation or suspected violation for which protection was sought did not qualify as protected person under Whistle-blower's Act. Award of attorney's fees and costs to respondent was not appropriate where complainant raised novel issue and, thus, it was not clear that there was no justifiable issue in case prior to hearing.

Elections Verified and Certifications Issued

International Association of EMT's and Paramedics, A Division of the National Association of Government Employees v. Polk County Board of County Commissioners, Case No. EL-2005-005; Election 4/7 - 4/8/2005; Union won, Certification 1544..

Coastal Florida Public Employees Association, Inc. v. City of Flagler Beach, Case No. EL-2005-006; Election 3/31 - 4/21/2005; Union lost.

Deland Professional Firefighters, Local 4347, IAFF v. City of Deland, Case No. EL-2005-007; Election 4/26 - 5/17/2005; Union won, Certification 1545.

Pasco County Professional Firefighters, Local 4420, IAFF v. Pasco County, Case No. EL-2005-010; Election 5/19 - 5/20/2005; Union won, Certification 1546.

International Association of EMT's and Paramedics, SEIU/NAGE, AFL-CIO v. Emergency Medical Services Alliance, Case No. EL-2005-008; Election 5/24 - 5/25/2005; Union won.

Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. Sheriff of Martin County, Case No. EL-2005-011; Election 5/12 - 6/2/2005; Union won, Certification 1548.

Local Union 1205 of the International Brotherhood of Electrical Workers, Gainesville, Florida v. City of Live Oak, Case No. EL-2005-012; Election 6/2/2005; Union won, Certification 1547.

Government Supervisors Association of Florida/Office and Professional Employees International Union, Local 100 v. City of Naples, Case No. EL-2005-013; Election 5/17 - 6/7/2005; Union won.

Florida State Lodge, Fraternal Order of Police, Inc. v. City of Pensacola, Case No. EL-2005-009; Election 5/19 - 6/9/2005; Union won.

Florida Police Benevolent Association, Inc. v. City of Marianna, Case No. EL-2005-014; Election 5/19 - 6/9/2005; Union won.

Walter R. King v. Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. City of DeFuniak Springs, Case No. EL-2005-015; Election 6/2 - 6/23/2005; Union won.

Emergency Service Professionals of Walton County, IAFF, Local 4413 v. Walton County Board of County Commissioners, Case No. EL-2005-019; Election 6/24/2005; Union won.

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