IN THE SUPREME COURT OF THE STATE OF FLORIDA

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL S-20, FLORIDA STATE FIRE SERVICE ASSOCIATION,

Petitioner,

v.

Case No. SC17-1434
L.T. Case Nos. 1D16-0618
CA-2015-076

STATE OF FLORIDA,

Respondent.
_____/

BRIEF OF AMICUS CURIAE FLORIDA POLICE BENEVOLENT ASSOCIATION IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

The Florida Police Benevolent Association, Inc. (FLPBA) is an employee organization comprised of 18 chapters and charters throughout the State of Florida, with a membership of over 36,000 law enforcement officers. It is a party to collective bargaining agreements with the Respondent State of Florida and with county and municipal governments throughout Florida.

The instant case involves the interpretation and application of Section 447.403(5), Florida Statutes (2017)[1] to the resolution of impasses in negotiations between certified bargaining agents and the state. In its capacity as a certified bargaining agent for bargaining units of state employees, the FLPBA has reached and will continue to reach impasse in collective bargaining negotiations with the state. It therefore has a direct interest in how this provision is interpreted by this Court.

SUMMARY OF THE ARGUMENT

The First District Court of Appeal erred in ruling that the State of Florida, acting through Governor Rick Scott, did not commit an unfair labor practice by vetoing a pay raise for employees of the Florida State Fire Service that was the result of action taken by the Legislature to resolve a disputed impasse issue under Section 447.403(5), Florida Statutes. As stated by Judge Thomas in his dissent, the

[1] References to the Florida Statutes will be to the 2017 version unless otherwise noted.

Governor's veto power under Article III, Section 8 of the Florida Constitution must be harmonized with the rights guaranteed by Article I, Section 6 just as this Court did regarding Article III, Section 7 in *Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993). In this case, Judge Thomas correctly concluded that the balance must be struck in favor of Article I, Section 6 to avoid evisceration of the right to meaningful collective bargaining.

Article I, Section 6 of the Florida Constitution guarantees public employees the right to *effective* collective bargaining. As the First District held in *Dade County Police Benevolent Ass'n v. Miami-Dade County Bd. of County Commissioners*, 160 So. 3d 482, 486 (Fla. 1st DCA 2015), there can be no effective collective bargaining if the chief executive officer, a party to the negotiations, can veto action taken by the legislative body of the public employer to resolve a disputed impasse issue. This rationale applies to negotiations between the State and the certified bargaining agents representing state employees also.

The "real impact and practical effect" of requiring the union to persuade the Legislature to override the Governor's veto is to eliminate the right to effective bargaining for public employees at the state level. Thus, the requirement for legislative override should be rejected because it fails to harmonize two Constitutional provisions, nullifying one in favor of the other instead.

The proper reconciliation of the competing constitutional provisions in this case is, as Judge Thomas noted, dictated by *Chiles*, requiring that any veto of the Legislature's resolution of an impasse be limited to circumstances satisfying the compelling state interest test.

ARGUMENT

Article I, Section 6 should be harmonized with Article III, Section 8 by limiting the Governor's use of a veto to nullify the Legislature's resolution of an impasse to those circumstances involving a compelling state interest

The FPBA agrees with the Petitioner Local S-20 that the First District majority failed to harmonize the Governor's veto power with the right to collectively bargain guaranteed by Article I, Section 6 of the Florida Constitution. It submits this brief to emphasize that Judge Thomas' dissenting opinion properly harmonizes the competing constitutional provisions based on this Court's previous ruling in *Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993).

In *Chiles*, this Court harmonized Article I, Section 6 with Article III, Section 7 relating to the Legislature's power to make laws, finding that the former prevailed over the latter when the Legislature seeks to rescind salary provisions of a collective bargaining agreement. Where, as here, the Legislature creates a contract by resolving an impasse and funding the agreement, this contract can be

changed only upon meeting the strict scrutiny standard.[2] The only material difference between *Chiles* and this case is the particular section of Article III involved. The Governor's veto authority in Section 8 is not afforded, or entitled to, any greater deference than Section 7.

The analysis applied by the majority in this case was necessarily rejected in *Chiles*. Justices Overton and McDonald argue in their dissenting opinions that the Legislature's power to appropriate funds is exclusive and unrestricted. Justice Overton stated that once the Governor calls the Legislature into special session to address a revenue shortfall, "every item in the appropriations bill should be 'back on the table,' and the legislature, through its exclusive authority to grant appropriations, should be the sole entity to determine what items must be cut to constitutionally balance the budget." 615 So. 2d at 674. Likewise, Justice McDonald stated that in the event of a budget shortfall, "the legislature, in such circumstances, has the unrestricted power to meet the compelling state interest of a balanced budget by reducing whatever appropriations it deems advisable." 615 So. 2d at 677. By finding that the Legislature's appropriations power was not unrestricted, but subject to the compelling state interest test, this Court rejected the

[2] This Court recently reaffirmed and applied this principle in *Headley v. City of Miami*, 215 So.3d 1, 6 (Fla. 2017).

argument that powers bestowed by Article III are immutable regardless of the circumstances. That argument should be rejected here as well.

The majority focused exclusively on Article III, giving no meaningful consideration to "the real impact or practical effect [a veto] may have on the rights guaranteed by article I, section 6." *United Teachers of Dade, etc., Local 1974 v. Dade County School Bd.*, 500 So.2d 508, 510 (Fla. 1986). As Judge Thomas' opinion demonstrates, doing so requires adherence to the statutory scheme intended to implement the right to collectively bargain, which attempts to provide a viable impasse resolution procedure. There can be no effective collective bargaining without one.

Article I, Section 6 guarantees public employees the same rights to collectively bargain as enjoyed by private employees with the exception of the right to strike. *Dade County Classroom Teachers Ass'n v. Ryan*, 225 So. 2d 903 (Fla. 1969). This is no small distinction. As conceived and followed in the private sector, resolution of collective bargaining disputes is left to the negotiating parties who may use their economic weapons after reaching an impasse in negotiations to pressure the other party to alter its proposals sufficiently to produce a collective bargaining agreement. *See N.L.R.B v. Insurance Agents*, 361 U.S. 477, 489 (1960) ("the presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system" [in the private sector]).

The primary economic weapon of unions is, of course, the economic strike. Used effectively, even as a threat, it can bring sufficient pressure on the employer to alter its bargaining stance to avoid or end the adverse economic consequences resulting from the shutdown or disruption of the operations of the business. The resulting actual or potential economic loss gives private employees acting through their union tremendous leverage to obtain the fair wages, hours and other terms and conditions of employment they seek. *See* Cox, Bok, Gorman, & Finkin, *Labor Law Cases and Materials* 469 (12th ed. 1996) ("Collective bargaining evidently functions as a method of fixing terms and conditions of employment only because the risk of loss to both parties from a strike can become 'so great that compromise is cheaper than battle'").

Public employees in Florida enjoy no similar leverage, making public sector collective bargaining inherently weaker. Although the absence of the right to strike cannot be replaced entirely, the requirement that the parties go through an impasse resolution procedure before the employer makes changes in the wages, hours and other terms and conditions of the employees is seen as some compensation for this loss of leverage. Impasse resolution processes range from binding interest arbitration as the strongest (*e.g.*, New York Civil Service Law, Section 209) to non-binding recommendation as the weakest (*e.g.*, Section 273-A:12, New Hampshire Statutes).

The impasse resolution procedure required by Section 447.403 is of the latter type. It was one of the measures intended to provide some compensation for the loss of the right to strike.[3] But the majority opinion renders this provision worthless at the state level despite the fact that the First District has already recognized the problem inherent in allowing the chief executive officer of the public employer, a party to the negotiations, to veto legislative body action resolving an impasse.

In *Dade County Police Benevolent Ass'n v. Miami-Dade County Bd. of County Commissioners*, 160 So. 3d 482, 486 (Fla. 1st DCA 2015), the First District stated:

> The language in paragraph (4)(d) clearly and unambiguously contemplates that the impasse will be resolved exclusively by the legislative body, and as observed by PERC Commissioner Delgado in his dissent below, "[t]here is nothing in the impasse resolution proceeding that allows a chief executive officer to reject the resolution of the impasse issues by the legislative body." Indeed, it is clear from subsection (4) as a whole that the chief executive officer's role in the impasse process is limited to that of an *advocate* for the governmental entity's position on the impasse issue. Accordingly, where, as here, the chief executive officer is

[3] Others include the requirement in Section 447.401, Florida Statutes that every collective bargaining agreement contain a grievance procedure ending in final and binding arbitration by an impartial neutral; the right under Section 447.303, Florida Statutes to have union dues deducted from employee paychecks even absent such a provision in a collective bargaining agreement; and a broad scope of mandatory bargaining. *See United Faculty of Palm Beach Junior College v. Palm Beach Junior College Bd. of Trustees,* 7 FPER ¶ 12300 at n. 3 (1981).

> not a member of the legislative body, it would be inconsistent with the statute and general principles of due process to allow the executive to participate in the legislative body's decision-making process beyond his or her role as an advocate.

The same rationale applies here.

In 2002, the Legislature refined Section 447.403 to specifically address impasse resolution at the state level. There is nothing in Section 447.403 that permits the Governor to reject the action of the Legislature acting under Section 447.403(5). On the contrary, Section 447.403(5)(b) expressly prohibits it: "Any actions taken by the Legislature *shall bind the parties* in accordance with paragraph 4(c)." (emphasis added). The statute itself specifies the accommodation of executive and legislative powers required to insure effective collective bargaining at the state level. Put simply, to afford meaningful collective bargaining, the results of the impasse resolution procedure must be binding on both parties to the negotiations.

A further example of the majority's failure to consider the "real impact and practical effect" of a Governor's veto is its assertion that the veto did not "displace the Legislature's power to resolve the impasse" because the Legislature could have overridden the veto. *International Ass'n of Firefighters Local S-20, Florida State Fire Services Ass'n.*, 221 So. 3d 736, 739 (Fla. 1st DCA 2017). Judge Thomas aptly characterized this as "not simply a herculean task," but "a near-impossible

feat." *Id.* at 740. Surely this is true and the veto override "option" is, as a practical matter, no option at all for the public employees represented by the Local S-20 or those in any public employee bargaining unit.

In sum, the proper reconciliation of the competing constitutional provisions in this case is, as Judge Thomas noted, dictated by *Chiles*. The Governor retains his veto power over a Legislative impasse resolution where there is a compelling state interest implemented by the least restrictive means justifying it. In all other cases, the Legislature's resolution of an impasse is binding on the Governor and the union.

CONCLUSION

The Court should reverse the order under review and remand to the First District with instructions to order PERC to find that the Governor committed an unfair labor practice when he vetoed the pay raise appropriated for the employees represented by Local S-20.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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