

**IN THE
SUPREME COURT OF FLORIDA**

CASE NO. SC05-813

UNIVERSITY OF WEST FLORIDA, ETC., ET AL.,
Petitioner,

vs.

UNITED FACULTY OF FLORIDA, ET AL.,
Respondents.

On Petition for Discretionary Review of the
Opinion of the First District Court of Appeal
(Case No. 1D03-4689)

**JURISDICTIONAL BRIEF OF PETITIONER,
UNIVERSITY OF WEST FLORIDA BOARD OF TRUSTEES**

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STATEMENT OF THE CASE AND FACTS

Petitioner, University of West Florida Board of Trustees (“UWFBOT”), urges this Court to invoke its Discretionary Jurisdiction available under Article V, Section 3(b)(3) of the Florida Constitution on the basis that the Opinion of the First District Court of Appeal (“Opinion”) expressly affects a class of constitutional officers, namely the Boards of Trustees (“BOT”) at each State University and College.¹ Prior to the Opinion, the UWFBOT, like all Boards of Trustees, conducted itself as a new and different public employer for purposes of establishing the terms and conditions of their respective employees and collective bargaining under Florida Statutes, Chapter 447.

The Opinion, however has redefined the constitutionally created BOTs into successor employers to the former Board of Regents (“Regents”), thereby holding that each BOT was obligated to observe the terms and conditions of the Regents’ expired collective bargaining agreement with the Respondents. The Opinion greatly diminishes the BOTs’ constitutional grant of authority by restricting their power to act as the public employer and affecting the labor relationships each Board has developed with its employees and the Respondents.

1. Petitioner is authorized to express the interest of the Board of Governors and the following Boards of Trustees to appear as *Amicus Curiae* should the Court accept jurisdiction of this Appeal: University of Florida, Florida International University, Florida Atlantic University, University of South Florida and University of Central Florida.

To provide context to the impact of this Opinion, in 2002, the Florida Education Governance Reorganization Act was passed to authorize the Florida Board of Education (“BOE”) to provide statewide oversight to the education system. *See* Chapter 2002-387, Laws of Florida. At that time, the Respondents were parties to collective bargaining agreements with the Regents that were set to expire in 2002. The BOE and Respondents agreed to extend the contract for one additional transitional year, with the express limitation that the contract would expire on January 7, 2003.

In November 2002, Article IX, Section 7, was passed amending the Florida Constitution to create two wholly new constitutional bodies *effective* January 7, 2003; a Board of Governors (“BOG”) to govern and provide oversight to the State’s Universities, and BOTs to administer each University. The Constitutional Amendment further authorized the BOG to define the powers and duties of the BOTs.

On January 7, 2003, the BOG and BOTs came into existence. Simultaneously, the BOG exercised its constitutional authority and delegated the BOTs to serve as the public employers for their respective Universities. The BOTs’ powers and obligations included the establishment of a personnel system, including compensation and other conditions of employment. The exercise of this

constitutional power did not impair any existing contractual obligation because the Regents' contract expired by its terms on this date.

Respondent AFSCME then filed a series of Amendment to Certification petitions with the Florida Public Employees Relations Commission ("Commission") asserting that the BOG was the successor employer to the Regents (through the BOE) and its pre-existing bargaining units should be recertified. The Commission dismissed the petitions finding that the BOG was not a successor employer to the Regents. AFSCME appealed the Commission's Order to the First District who upheld the Commission's decision citing to the constitutional authority of the BOG and BOTs. *Fla. Pub. Employees Council 79, AFSCME, AFL-CIO v. Pub. Employees Rel. Commn.*, 871 So.2d 270 (Fla. 1st DCA 2004), rev. denied *Fla. Pub. Employees Council 79 v. Pub. Employees Rel. Commn.*, 884 So.2d 22 (Fla. 2004).

In a separate proceeding, the Respondents filed unfair labor practice complaints with the Commission claiming that the BOG or BOTs were successor employers and bound by the terms of employment set forth in the expired Regents' contract. The Commission rejected the proposition and dismissed the complaints. The Opinion proposed for review has reversed the Commission's decision and concluded that the Regent's expired collective bargaining agreement is binding upon the Trustees. This Opinion also directly conflicts with the decision in

AFSCME v. PERC, where the court affirmed the Commission’s dismissal of AFSCME’s attempt to obtain certification as a successor employer. *See id.*

This Opinion erodes the constitutional authority of every State University BOT to act as a class of constitutional officers and binds their authority by the terms of the expired Regent’s contract. As a result, the Petitioner respectfully submits that this Court has material and compelling reasons to exercise its discretionary authority to review this Opinion. In accordance with Florida Rules of Appellate Procedure 9.120(b), Petitioner filed its Notice to Invoke Discretionary Review of the Florida Supreme Court (“Court”) on May 10, 2005.

SUMMARY OF THE ARGUMENT

The Opinion concluding that the UWFBOT and FSUBOT are successor employers to the Regents expressly affects a class of Constitutional Officers and therefore this Court should exercise its Discretionary Jurisdiction. The Universities’ BOTs are constitutionally created entities designated to serve as the public employer for their respective university. As such, each BOT is a new and different public employer for purposes of establishing the terms and conditions of their respective employees and collective bargaining under Florida Statutes, Chapter 447.

The Opinion impairs the BOTs’ constitutional authority by binding them to the past actions of the Regents, an abolished administrative agency created by

statute with limited statutory authority. In issuing this Opinion, the court was required to balance, as a matter of first impression, the Constitutional provisions contained at Article I, Section 6, and Article IX, Section 7. Expressly, the court reversed the Commission's decision that there is no successor employer to the Regents. To find that the Trustees were successor employers, and thus bound by the Regents' contract, the court necessarily relied upon the constitutional right to collectively bargain set forth at Article I, Section 6 as it applies to the constitutional grant of authority set forth at Article IX, Section 7.

The effect is to nullify the past twenty-eight months of the BOTs' actions thereby disrupting the development of labor relations and collective bargaining at each university. During this time, certain BOTs have negotiated or are negotiating new and different collective bargaining agreements with the Respondents and significant employment and personnel decisions have been taken by each BOT. Accordingly, the Court should exercise its Discretionary Jurisdiction to review this Opinion.

ARGUMENT

I. THE DISTRICT COURT'S OPINION IMPAIRS THE AUTHORITY OF THE BOARDS OF TRUSTEES AS A CLASS OF CONSTITUTIONAL OFFICERS.

The Petitioner submits that this Court's Discretionary Jurisdictional review is implicated because the First District's Opinion expressly affects a class of constitutional officers; the BOTs. Art. V, § 3(b)(3), Fla. Const.; *See also* Fla. R.

App. P. 9.030(a)(2)(A)(iii). “The [term] ‘class’ means two or more constitutional officers who separately and independently exercise identical powers of government.” *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41, 43 (Fla. 1963). The newly created constitutional entities, the BOG and the Universities’ BOTs qualify as a class of constitutional officers.

Specifically, in November 2002, Florida voters approved an amendment to Article IX of the Florida Constitution, which created a new class of constitutional officers including the BOG and the University BOTs to govern the State University System. Art. IX, § 7, Fla. Const.; *see also* §§ 1001.70 – 1001.74, Fla. Stat.

In concluding that FSUBOT and UWFBOT are successor employers to the former Regents, the Opinion has expressly eroded the Petitioner’s (and every other University BOTs) constitutional authority to collectively bargain as newly created constitutional entities rather than as successor employers limited to statutory authority. Accordingly, it is apparent that this Court is with jurisdiction to review the instant Opinion.

The BOG defined the constitutional powers and duties of the Trustees and obligated each BOT to establish:

the personnel program for all employees of the university, including the president ... including: compensation and other conditions of employment, recruitment and selection, nonreappointment, standards for performance and conduct, evaluation, benefits and hours of work,

leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment

See § 1001.74(19), Fla. Stat.

The BOG also resolved that the Universities' BOTs shall be the sole public employers with respect to all public employees of the respective state universities, as provided in sections 447.302(2) and (10) of the Florida Statutes, for the purpose of collective bargaining. *Id.*

In furtherance of this constitutional grant of authority, FSUBOT and the UWFBOT declined to implement a system of payroll deduction for union dues. The deduction was not implemented because neither Respondent was certified to represent any employees at either campus and the Trustees believed in good faith that they were not bound by the Regents' expired contract.

Parenthetically, the Trustees at certain other Universities took similar personnel actions. The instant Respondents filed unfair labor practice complaints with the Commission alleging that these Trustees were bound by the expired Regents' contract because all of the Universities BOTs were "successor" employers. Except for the charges against the FSUBOT and UWFBOT, the complaints were stayed while the Commission considered the issue in the instant

case. The Commission determined that the Trustees were not bound by the Regents' contract.

The Opinion reversed the Commission's decision and held that the Trustees could not exercise their constitutional authority to establish terms of employment, even initial terms of employment, but rather were strictly bound by the Regents' expired contract. This expressly results in the erosion of the Trustees' constitutional authority to the extent they are bound by past actions of the Regents, an abolished administrative agency created by statute with limited statutory authority.

II. IN ITS OPINION THE DISTRICT COURT NECESSARILY APPLIED AND CONSTRUED THE PROVISION OF ARTICLE I, SECTION 6 AS IT RELATES TO ARTICLE IX, SECTION 7.

For the District Court to reach the Opinion that the BOG or the BOTs were bound by the expired contract entered into between the Regents and the Respondents, the court was required to balance, as a matter of first impression, the constitutional provisions contained at Article I, Section 6 and Article IX, Section 7. Expressly, the court reversed the Commission's decision that there is no successor employer to the Regents. To find that the Trustees were successor employers, and thus bound by the Regents' contract, the court necessarily relied upon the constitutional right to collectively bargain set forth at Article I, Section 6 as it applies to the constitutional grant of authority set forth at Article IX, Section 7.

The concept of a successor employer is not found at, nor does it arise from the Public Employees Relations Act, Chapter 447 Part II, Fla. Stat. Rather, it is a policy derived from the application of Article I, Section 6. The concept of contract successorship in collective bargaining was created by the Commission to apply in particular instances where rights under Article I, Section 6 might be otherwise abridged.

In the instant case, the Commission determined that the Trustees' history and authority rendered successorship inapplicable. The Commission also determined that the Article I, Section 6 rights of the employees to determine their collective bargaining representative would not be furthered, but rather would be diminished should a successorship relationship be recognized.

To reverse the Commission's decision, the District Court necessarily weighed these constitutional provisions and determined that certain Article I, Section 6 rights outweighed the concerns of the Commission and the constitutional authority of the Trustees. Accordingly, because the First District construed provisions of the Florida Constitution as a matter of first impression, it is respectfully asserted that this Court should exercise its discretionary jurisdiction to review that Opinion.

III. THE OPINION REQUIRING THE BOARDS OF TRUSTEES TO ADHERE TO THE TERMS OF THE REGENTS' AGREEMENT, WHICH EXPIRED ON JANUARY 7, 2003 MAY DISRUPT THE LABOR RELATIONSHIPS DEVELOPED AND THE PERSONNEL ACTIONS TAKEN DURING THE PAST TWENTY-EIGHT MONTHS.

Prior to the creation of the individual BOTs, the Regents governed all state universities. As such, the terms and conditions for all state university bargaining unit members were contained in single contracts executed with the Respondents. The creation and transfer of public employer status to the individual BOTs has resulted in each Board promulgating a new and different mission for its respective university. Consequently, the development of labor relations and collective bargaining at each university progressed differently and in a different manner.

For the past twenty-eight months, certain BOTs have negotiated or are negotiating new and different collective bargaining agreements with the Respondents. In this time, significant employment and personnel decisions have been taken by the Boards, which are now impacted by the Opinion. Thus, the Court should exercise its Discretionary Jurisdiction to prevent the disruption of labor relations developed through the exercise of the Trustees' constitutionally derived authority.

CONCLUSION

For the reasons outlined above, Petitioner prays that this Most Honorable Court exercise its constitutional review jurisdiction of the Opinion below and render ultimate justice in this cause as empowered.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing, which utilizes a Times New Roman 14-point font, complies with the font requirements set forth in Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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