

IN THE SUPREME COURT OF FLORIDA

Case No. SC12-520

RICK SCOTT, et al.,

Appellants,

L.T. Case Nos.: 2011 CA 1584,
1D12-1269

vs.

GEORGE WILLIAMS, et al.,

Appellees.

NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW the appellee, Rodney Durbin, by and through his undersigned attorney and files this notice of supplemental authority, and for grounds would state:

1. This notice is filed pursuant to Fla. R. App. P. 9.225.
2. This notice of supplemental authority is significant to the issue

presented in the Appellants' reply brief, page 19, which states:

B. Plaintiffs Fail to Identify Any Collective Bargaining Agreement the Plan Amendment Violates

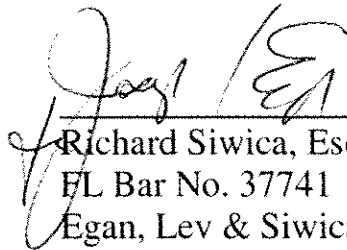
The only plaintiff who even contends that the Plan Amendment violates a specific collective bargaining agreement ("CBA") is Rodney Durbin, who claims that the Plan Amendment violates the CBA between the State and the Florida State Fire Service Association (the "FSFSA") (Durbin br. at 4-5). But even this assertion is wrong.

During the 2011 legislative session, the Legislature resolved an impasse between the State and the FSFSA by adopting the State's last offer. Ch. 2011-48, § 1(1), at 734, Laws of Fla. That offer removed the "no cost" language and instead provided that the State would administer the FRS in accordance with any applicable provision or Act (R14.2566). The Legislature's adoption of the State's last offer was codified at Chapter 2011-48, Laws of Florida, which also took effect on July 1, 2011. Ch. 2011-48, § 2, at 736, Laws of Fla. Therefore, when Chapter 2011-68 took effect, Durbin's CBA no longer provided participation in FRS at no cost. The Plan Amendment is therefore entirely consistent with Durbin's CBA. 8

8 Durbin's CBA contemplates the possibility that a provision can "be rendered or declared invalid...or not enforceable by reason of ...subsequently enacted legislation" (R12.2251).

Following what the appellees describe as "...the Legislature resolved an impasse between the State and the FSFSA by adopting the State's last offer." (Appellees' Reply Brief 13), Durbin's union, the Florida State Fire Service Association (FSFSA) filed an unfair labor practice (ULP) against the State of Florida on August 22, 2011, with the Florida Public Employee Relations Commission (PERC) concerning the FRS changes and others. The case is *The Florida State Fire Association Local 5-20 v. State of Florida*, Case No. CA 2011-109. This case is undecided and is still pending before PERC. (ULP and Exhibit "D" attached).

Respectfully submitted,



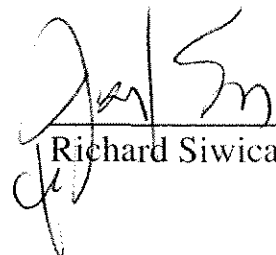
Richard Siwica, Esquire
FL Bar No. 37741
Egan, Lev & Siwica, P.A.
Post Office Box 2231
Orlando, Florida 32802
Telephone: (407) 422-1400
Facsimile: (407) 422-3658
Email: rsiwica@eganlev.com

Attorney for Appellee, Durbin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail this 30th day of August, 2012, to: **Ronald G. Meyer**, Esquire, **Jennifer S. Blohm**, Esquire, and **Lynn C. Hearn**, Esquire, Meyer, Brooks, Demma and Blohm, P.A., 131 North Gadsden St., Tallahassee, FL 32301; **Pamela L. Cooper**, Esquire, Florida Education Association, 300 East Park Ave., Tallahassee, FL 32301; **Alice O'Brien**, Esquire, National Education Association, 1201 16th St., N.W., Washington, D.C. 20036; **Pamela Jo Bondi**, Esquire, and **Timothy D. Osterhaus**, Esquire, Office of the Attorney General, State of Florida, The Capitol, PL-01, Tallahassee, FL 32399-1050; **G. Hal Johnson**, Esquire, 300 East Brevard St., Tallahassee, FL 32301; **Jill S. Schwartz**, Esquire, Jill S. Schwartz & Associates, P.A., 180 North Park Ave., Suite 200, Winter Park, FL 32789; **Donald D. Slesnick**, Esquire, and **James C. Casey**, Esquire, Slesnick and Casey, LLP, 2701 Ponce De Leon Blvd., Suite 200, Coral Gables, FL 33134; **Aaron Nisenson**, Esquire,

International Union of Police Associations, 1549 Ringling Blvd., Suite 600, Sarasota, FL 34236; **Richard A. Sicking** Esquire, 1313 Ponce de Leon, Blvd., Suite 300, Coral Gables, FL 33134; **Osnat K. Rind**, Esquire, and **Holly E. Van Horsten**, Esquire, Phillips, Richard & Rind, P.A., 9360 S.W. 72 St., Suite 283, Miami, FL 33173; **James W. Linn**, Esquire, and **Glenn E. Thomas**, Esquire, Lewis, Longman & Walker, P.A., 315 South Calhoun St., Suite 830, Tallahassee, FL 32301; **Harry Morrison, Jr.**, Esquire, and **Kraig A. Conn**, Esquire, Florida League of Cities, Inc., 301 South Bronough St., Suite 300, Tallahassee, FL 32301; **Craig A. Meyer**, Esquire, **Thomas Ross McSwain**, Esquire, and **Leah L. Marino**, Esquire, The Florida Senate, Suite 409, The Capitol, Tallahassee, FL 32399-1100; and **George T. Levesque**, Esquire, and **Don Rubottom**, Esquire, Florida House of Representatives, Suite 422, The Capitol, Tallahassee, FL 32399-1300.



Richard Siwica

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

4050 Esplanade Way
Tallahassee, Florida 32399-0950
(850) 488-8641

DO NOT WRITE IN THIS BOX

CASE NUMBER

CA- 2011-109

DATE FILED

8/22/11

CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

Submit an original and one (1) copy of this charge to the Public Employees Relations Commission along with proof of simultaneous service upon the other parties. (NOTE: Pursuant to Florida Administrative Code Rule 60CC-5.001(5), the charge must be accompanied by sworn statement(s) setting forth facts of which the affiant has personal knowledge, and where applicable, documentary evidence sufficient to support a prima facie violation of the applicable unfair labor practice provision(s). Such supporting evidence is not to be attached to the charge and is to be furnished only to the Commission.)

The Charging Party alleges that the public employer or its agents named below have engaged in (an) unfair labor practice(s). Charging Party requests the Public Employees Relations Commission to process this charge under its proper authority.

1. **NAME OF CHARGING PARTY:** The Florida State Fire Association Local S-20

Phone No. (407) 902-5106

Facsimile (Fax) No. _____

Address 11310 South Orange Blossom Trail, #218

Orlando, FL 32837

2. **CHARGING PARTY REPRESENTATIVE:** Richard Siwica

Title: Attorney

Phone No. (407) 422-1400

Facsimile (Fax) No. (407) 422-3658

Address P.O. Box 2231, Orlando, FL 32802

3. **NAME OF EMPLOYER:** State of Florida

Address 4050 Esplanade Way, Tallahassee, FL 32399-0950

4. **EMPLOYER REPRESENTATIVE:** James J. "Jim" Parry, Esq.

Title: Assistant General Counsel, Dept. of Management Services

Phone No. (850) 488-2786

Facsimile (Fax) No. (850) 922-6149

Address 4050 Esplanade Way, Suite 160, Tallahassee, FL 32399-0950

5. **The above-named employer or its agents has (have) engaged in (an) unfair labor practice(s) within the meaning of Section 447.501(1)(a) and (c)** _____, Florida Statutes.

(list sections)

SEE ATTACHED

I have read the charge. The statements contained therein are true to the best of my knowledge and belief. A copy of this fully executed form has been mailed or delivered to the representative(s) of the employer and any other party.

[Handwritten Signature]

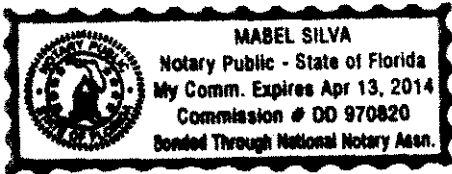
Signature of Charging Party Representative

Sworn to and subscribed before me this 22nd day of August, 2011

Mabel Silva

Notary Public

My Commission expires: April 13, 2014



FALSE STATEMENTS MAY RESULT IN FINE AND IMPRISONMENT
PURSUANT TO CHAPTER 837, FLORIDA STATUTES

2011 AUG 22 PM 1:35

Attachment

1. The Florida State Fire Service Association ("FSFSA") is the duly certified collective bargaining representative of the classifications of employees employed by the State of Florida (the "Employer") in the classifications set forth in Appendix "A" of the current collective bargaining agreement (hereinafter the "Agreement", attached hereto and incorporated herein as Exhibit "A").

2. The Agreement in Article 32, Section 1(D) (at page 31) provides for a reopener as follows: "The State and FSFSA further agree that, in addition to Article 25, Wages, changes in any three (3) articles within this agreement that FSFSA or the State desire to open shall be subject to negotiations during the second year of this Agreement for Fiscal Year 2011-2012." Pursuant to this provision, the State and the FSFSA engaged in reopener negotiations over the issues of Article 3 (Dues Checkoff), Article 13 (Health and Welfare), Article 16 (Retirement) and Article 25 (Wages).

3. Pursuant to Section 216.136(6), Florida Statutes, impasse was deemed to have occurred between the parties with respect to Article 3 (Dues Checkoff), Article 13 (Health and Welfare), Article 16 (Retirement) and Article 25 (Wages) on or about February 11, 2011.

4. Pursuant to Section 447.403(5), Florida Statutes, on February 21, 2011, a joint select committee appointed by the President of the Senate and the Speaker of the House of Representatives (hereinafter the "Committee") conducted a hearing to review the positions of the parties on the four (4) articles remaining at impasse. At the hearing, the Employer presented the following proposed language with respect to Article 3 (Dues Checkoff), Article 13 (Health and Welfare) and Article 16 (Retirement):

A. With respect to Article 3 (Dues Checkoff), the Employer, over the objections of the FSFSA, presented to the Committee the February 10, 2011 Dues Checkoff language attached hereto and made a part hereof as Exhibit "B". The Employer further urged the Committee, over the objections of the FSFSA, render a recommended resolution (within the meaning of Section 447.403(5), Florida Statutes) of the issue consistent with Exhibit "B".

B. With respect to Article 13 (Health and Welfare), the Employer, over the objections of the FSFSA, presented to the Committee with the February 10, 2011 Health and Welfare language attached hereto and made a part hereof as Exhibit "C". The Employer further urged the Committee, over the objections of the FSFSA, render a recommended resolution (within the meaning of Section 447.403(5), Florida Statutes) of the issue consistent with Exhibit "C".

C. With respect to Article 16 (Retirement), the Employer, over the objections of the FSFSA, presented to the Committee with the February 10, 2011 Retirement language attached hereto and made a part hereof as Exhibit "D". The Employer further urged the Committee, over the objections of the FSFSA, render a

recommended resolution (within the meaning of Section 447.403(5), Florida Statutes) of the issue consistent with Exhibit "D".

5. Pursuant to Section 447.403(5), Florida Statutes, the Legislature took "action" and resolved the issues at impasse between the Employer and the FSFSA, including Article 3 (Dues Checkoff), Article 13 (Health and Welfare) and Article 16 (Retirement), as follows: "collective bargaining issues at impasse between the State of Florida and the Florida State Fire Service Association regarding Article 3 'Dues Checkoff,' Article 13 'Health and Welfare,' and Article 16 'Retirement' shall be resolved pursuant to the state's last offer dated February 10, 2011", to wit: Exhibits "B", "C" and "D" hereto.

The Unfair Labor Practices

6. The Employer violated Section 447.501(1)(a) and (c), Florida Statutes, by on February 21, 2011, and thereafter, presenting to the Committee, and urged/argued that the Committee make recommended resolutions, which in turn caused the Florida Legislature to resolve/impose language in Article 3 (Dues Checkoff), Article 13 (Health and Welfare) and Article 16 (Retirement) that was permissive in nature, waived employees rights under the Public Employees Relations Act, and otherwise constituted a refusal to bargain as follows:

A. With respect to Article 3 (Dues Checkoff), Exhibit "B" hereto, the Employer's language strikes the entire dues checkoff clause in the Agreement notwithstanding dues checkoff being a mandatory subject of bargaining.

B. With respect to Article 13 (Health and Welfare), Exhibit "C" hereto, the Employer's language (in Section 1) operates to waive the Union's right to bargain by making health insurance benefits subject to "any statutory provision or Act effecting the plan or its operation."

C. With respect to Article 16 (Retirement), Exhibit "D" hereto, the Employer's language removes the issue of employee cost for participation in the Florida Retirement System from the bargaining process and instead subjects employee costs to determination outside the bargaining process (i.e., "in accordance with any statutory provision or Act affecting the plan or its operation). Because the cost to participate in pensions/retirements is a mandatory subject of bargaining, this language unlawfully waives employees' right to bargain.

Remedy

7. It is requested that the Commission issue an appropriate remedy, including injunctive relief for the foregoing violations and award the Charging Party reasonable costs and attorneys fees.

2011 AUG 22 PM 4: 35

**Article 16
RETIREMENT**

All bargaining unit members shall continue to participate in The State agrees to administer the Florida Retirement System (FRS) at no cost to the employee in accordance with any statutory provision or Act affecting the plan or its operation.

State _____

Union _____

Date _____

Date _____

D