

IN THE SUPREME COURT OF FLORIDA

COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION, INC.,

Petitioner,

v.

Case No. SC00-1860

PHILLIP B. (PHIL) WILLIAMS,
SHERIFF OF BREVARD COUNTY,

Respondent.

/

REPLY BRIEF OF PETITIONER
COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.

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PRELIMINARY STATEMENT

The following abbreviations and references will be used throughout the text of Petitioner's brief:

Coastal Florida Police Benevolent Association, Inc: CFPBA.

Phillip B. Williams, Sheriff of Brevard County: Sheriff Williams.

Public Employees Relations Commission: PERC.

Petitioner's Initial Brief: I.B. at _____.

All references to the Florida Statutes will be to the 1999 version, unless otherwise noted.

STATEMENT ON TYPE STYLE

I hereby certify the Reply Brief of the Petitioner, COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., has been typed in Courier New 12 point, a font that is not proportionately spaced.

SUMMARY OF THE ARGUMENT

Sheriff Williams urges the Court to decide this case based upon the doctrine of stare decisis; however, stare decisis is not a basis for perpetuation of an erroneously decided case, especially one which involves a fundamental constitutional right. In the present case, the doctrine of stare decisis is not a basis for the perpetuation of the fiction that a Florida law enforcement officer's constitutional right to bargain collectively is dependent upon whether the officer is "appointed" or "employed" or whether the uniform the officer wears to work is "deputy green" or "police blue."

As an examination of the answer brief reveals, Sheriff Williams' argument in support of his position is built on two legal premises: (1) Murphy v. Mack, 358 So.2d 822 (Fla. 1978), was correctly decided, and (2) the Florida Legislature has not legislatively overruled the Murphy decision. Thus, Williams suggests the legislature must intend Murphy continue to be the law and deputy sheriffs not have the constitutional right to bargain collectively.

Sheriff Williams is simply incorrect. The Murphy decision was erroneously decided. It was predicated on an archaic and hyper-technical view of the relationship between a Florida sheriff and his or her deputy sheriffs which no longer exists in contemporary society.

In contrast, the correct legal analysis is found in the recent cases of Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations

Commission, 752 So.2d 569 (Fla. 2000) and Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999). The legal analyses in these cases focus appropriately on the fundamental nature of the right to bargain collectively under Florida's Constitution and a common sense approach to its implementation for Florida's public sector workers.

Sheriff Williams' reliance on the lack of legislative expression which overrules Murphy as "signaling" the legislature's approval of the Murphy decision is entirely misplaced. As recognized by the Court in the Chiles case, the exclusion of a class of public workers, "employees in the ordinary sense of the word," from the fundamental right to bargain collectively is authorized only when there exists a compelling state interest to support such exclusion. 734 So.2d at 1033. Neither Sheriff Williams in his brief nor the Florida Legislature through its enactments offers the Court a single compelling state interest which is served by excluding Florida's deputy sheriffs from the right to bargain collectively.

Furthermore, the thrust of legislation following the Murphy decision - some specifically granting the right to collective bargaining to deputy sheriffs, others granting deputy sheriffs career service protection or job security - demonstrates both a legislative recognition of deputy

sheriffs as "employees - in the ordinary sense of the word" and a substantial erosion of the rationale which underlies the Murphy decision. Certainly, such legislation does not establish a compelling state interest to deny deputy sheriffs the constitutional right to bargain collectively.

As the court recognizes in the Service Employees case, "times have changed". The historical perspectives found in Murphy have little application in contemporary society and certainly do not offer a "compelling state interest" for denying Florida's public workers - in this case Florida's deputy sheriffs - the fundamental constitutional right to bargain collectively. Under the circumstances and consistent with the Service Employees rationale, this Court should overturn the case of Murphy v. Mack and answer the certified question propounded by the Fifth District Court of Appeal by finding that deputy sheriffs are not categorically excluded from having collective bargaining rights under Chapter 447, Part II, Florida Statutes.

REPLY TO RESPONDENT'S ARGUMENT

DEPUTY SHERIFFS ARE PUBLIC EMPLOYEES
WITHIN THE MEANING OF ARTICLE I, SECTION
6 OF THE FLORIDA CONSTITUTION AND
CHAPTER 447, PART II, FLORIDA STATUTES.

Sheriff Williams urges this court perpetuate a fiction. The fiction Williams seeks to perpetuate is that the law enforcement officers working for him and paid by him are not public employees within the meaning of Article I, Section 6 of the Florida Constitution. The bases for Sheriff Williams' fiction are: (1) in medieval times these law enforcement officers were considered to be "deputies" and not "servants"; (2) these law enforcement officers are "appointed" and not "employed"; (3) these law enforcement officers wear "green" uniforms when performing their duties and responsibilities as opposed to police "blue"; and (4) most significantly, the Court said these law enforcement officers were not public employees in the case of Murphy v. Mack, 358 So.2d 822 (Fla. 1978). Succinctly stated, Sheriff Williams asserts that Murphy has been good law for 22 years and based upon the doctrine of stare decisis it should not be overturned.

Contrary to Sheriff Williams' contention, the doctrine of stare decisis is not a basis for perpetuation of an

erroneously decided case especially one involving a fundamental constitutional right. Moreover, the doctrine of stare decisis is not a basis for perpetuation of a fiction, built on archaic concepts, that a deputy sheriff is not "an individual who works as an employee in the ordinary sense of the word." See, Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission, 752 So.2d 569, 573 (Fla. 2000). In fact, in the Service Employees case, after surveying the historical status of deputies at common law, this Court flatly rejects application of such historical perspectives to the contemporary concept of collective bargaining stating:

Thus, "deputies" of old were generally managerial level employees—to use the lexicon of chapter 447—who could take charge in the principal's absence.

Times have changed and the public officials who once required one or two deputies to assist them in their tasks now might require a host of assistants. Further, the range of tasks performed by these workers has expanded and the tasks themselves have become specialized. ... In deference to tradition, such employees are often still called "deputies," but their positions bear little resemblance to the deputies of old. As noted by the district court below, the deputies of today often "look surprisingly like other public employees." (citation omitted)

Id. at 573. The same result should obtain in this case.

Murphy v. Mack

Certainly, it is understandable that Sheriff Williams desires to base his argument on the Murphy case and the historical status of a deputy sheriff as an "officer" rather than an "employee". However, noticeably absent from Williams' argument are three factors which the Court finds significant in Service Employees and Chiles v. State Employees Attorneys Guild, 734 So.2d 1030 (Fla. 1999). First, Sheriff Williams does not assert that the actual duties and responsibilities of a deputy sheriff in the performance of his or her work differ in any significant degree from Florida's other law enforcement officers, all of whom have the right to bargain collectively.¹ Thus, while the titles of these officers (whether "police officer", "deputy sheriff," "special agent" or carrying some higher paramilitary rank) may differ, it must be concluded the work they perform does not. Second, Sheriff Williams does not assert the existence of any "compelling state interest" which warrants denying deputy sheriffs the right to bargain collectively. See, Chiles v. State Employees Attorneys Guild, 734 So.2d at 1033-1034. Thus, it must be concluded there is no

¹ As explained in the initial brief, all other law enforcement officers at the state, county or municipal level enjoy the right to bargain collectively. I.B. at 19, fn.5.

compelling state interest, nor even a valid reason, for denying Florida's deputy sheriffs this fundamental right. Finally, Sheriff Williams does not attempt to distinguish his "deputies" from those of other constitutional officers which this Court reviewed in the Service Employees case. Thus, it must be concluded there is no significant legal distinction between deputy sheriffs and the deputies of other constitutional officers which renders application of the Service Employees rationale to Florida's deputy sheriffs inappropriate.

Simply put, Sheriff Williams requests this Court reaffirm the Murphy case based primarily on the contention that it is "controlling case precedent."

The problem with Sheriff Williams' primary contention is the Murphy case was erroneously decided. It is a decision based upon historical technicalities and not the strong broad-based policy considerations normally utilized when evaluating the fundamental right to bargain collectively. See, Hillsborough County Governmental Employees Association, Inc. v. Hillsborough County Aviation Authority, 522 So.2d 358 (Fla. 1988).

Ironically, even the Murphy court recognized that from a normal, common sense perspective, an employer-employee relationship exists between sheriffs and their personnel:

Undoubtedly, sheriffs perform the functions normally associated with an employer and exercise the requisite control over their personnel and the conditions under which they work.

358 So.2d at 824.

However, having acknowledged the sheriffs' "normal" relationship with "their personnel," the Murphy court foregoes any analysis of the significant policy considerations involving the fundamental right to bargain collectively and the broad implications of denying individuals that right. Instead, in rote fashion, it recites the prior case law regarding the traditional relationship between a sheriff and deputy sheriff. Utilizing those cases, the court finds that "officers", while not specifically excluded from the definition of "employee" found in Section 447.203(2), Florida Statutes, are impliedly excluded. *Id.* at 824-826.²

It is apparent that the Murphy decision constitutes an abdication of the Court's responsibility to "attend with special vigilance" those fundamental rights found
in

² Inexplicably the *Murphy* court seizes on the "officer" title carried by deputy sheriffs to imply their exclusion from Section 447.203(2) without mentioning that police officers and other certified law enforcement officers carry the same title and status, but retain the right to bargain collectively. *See, Curry v. Hammond*, 16 So.2d 523 (Fla. 1944). *See also*, Fla. AGO 90-15, 86-84 and 77-63 (prohibiting police and other law enforcement officers from dual officeholding pursuant to Article II, Section 5(A) of the Florida Constitution).

Florida's Constitution. See, Rev. Dr. James Armstrong v. Katherine Harris, _____ So.2d _____, 25 Fla. L. Weekly S656, S660 (Fla. Opinion Issued September 7, 2000). Rather than ensuring the full and fair implementation of the right to bargain collectively for these public workers, the court seizes on highly technical and archaic concepts to deny deputy sheriffs this fundamental right enjoyed by Florida's other law enforcement officers. 358 So.2d at 824-826.

The Coastal Florida P.B.A. finds itself in complete agreement with the analysis of the Murphy case set out in Service Employees. It bears repeating:

The Court in *Murphy* appears to have exalted form over substance in contravention of the plain language and broad purpose of the Act. The fact that deputy sheriffs are said to be "appointed" rather than "employed" is of little import under chapter 447—the definition of "public employee" in section 447.203(3) draws no such distinction. As for the cases that the Court relied on in *Murphy*, none involved the same facts or policy concerns that were in issue in *Murphy*. Further, the fact (asserted by the Clerk) that the legislature has not revisited chapter 447 in the wake of *Murphy* is not sufficient reason to extend that holding to deputy court clerks in contravention of the plain language and broad purpose of part II.

752 So.2d at 573.

In summary, Murphy was erroneously decided and should be overturned. The analysis and rationale used by the Court in the Service Employees and Chiles cases should be applied to deputy sheriffs to find they are not categorically excluded from having collective bargaining rights under Chapter 447, Part II, Florida Statutes.

Legislative Intent

There remains for consideration Sheriff Williams' secondary contention that the Florida Legislature has never expressly rejected the Murphy decision or specifically extended collective bargaining rights to all of Florida's deputy sheriffs. Sheriff Williams argues that such failures by the legislature "signal" its intent to exclude deputy sheriffs for the exercise of this fundamental constitutional right.

Sheriff Williams' reliance on legislative enactments (or failure to enact) which followed the Murphy decision as "signaling" the legislature's intent to deny deputy sheriffs the right to bargain collectively is misplaced. More importantly, it demonstrates a basic misunderstanding of the nature of that right. See, Chiles v. State Employees Attorneys Guild, 734 So.2d at 1033-1034.

As this Court explains in the Chiles case, the right to bargain collectively, secured to Florida's public workers

by Article I, Section 6, cannot be abridged, even by the Florida Legislature, absent a compelling state interest making it necessary to do so. *Id.* Yet, Sheriff Williams does not offer or even argue that there is a compelling state interest for denying deputy sheriffs the right to bargain collectively. The legislation which Sheriff Williams cites in its brief does not establish a compelling state interest for denying deputy sheriffs the right to bargain. There is no such interest. Thus, it follows that there is no basis for denying deputy sheriffs the right to bargain collectively. 734 So.2d at 1035.

Assuming arguendo, the enactments of the Florida Legislature have some import to the present case, the primary importance is recognition by the legislature of deputy sheriffs as "employees in the ordinary sense of the word" and a clear erosion of the rationale which underlies the Murphy decision.

For example, the Florida Legislature has specifically recognized that deputy sheriffs in Escambia and Broward counties are public employees and may engage in collectively bargaining. See, Chapter 89-492, Laws of

Florida and Chapter 93-370, Laws of Florida. Today, these deputy sheriffs are engaging in collective bargaining.³ Furthermore, the Florida Legislature has extended career service protection and in some instances, career service employee status, to numerous deputy sheriffs including those in Alachua, Brevard, Polk, Charlotte, Sarasota and Palm Beach counties. See, Chapter 86-344, 86-349 and 86-342, Laws of Florida, Chapter 88-443, Laws of Florida and Chapter 93-367, Laws of Florida. See also, Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979). While these laws do not grant collective bargaining rights to deputy sheriffs, they represent a recognition and movement by the legislature toward a more contemporary view of the sheriff and his or her deputies, as a normal employer-employee relationship.

Finally, in 1994 the Florida Legislature enacted Chapter 94-143, Laws of Florida, which prohibits political retaliation against deputy sheriffs and provides procedures for appealing terminations for lawful political activity. This general law does not establish collective bargaining rights for Florida's deputy sheriffs, but it does establish a clear legislative distinction between

³ These facts eliminate any arguable contention that there is a compelling state interest for denying Florida's other deputy sheriffs the right to bargain collectively.

regular deputy sheriffs and those with managerial and confidential responsibilities. See, Section 30.072(2), Florida Statutes. Once again, this definition and the distinction it contains reflect a contemporary view of the sheriff, his managerial personnel and regular deputy sheriffs, individuals who work as "employees in the ordinary sense of the word."⁴

Thus, contrary to Sheriff Williams' assertion, the legislature's enactments following Murphy do not support finding it to be "controlling case precedent." On the contrary, the legislature's action support the application of the standards set out in the Attorneys Guild and Service Employees cases to Florida's deputy sheriffs and result, in the final analysis, with the legal conclusion that Florida's deputy sheriffs are not categorically excluded from having collective bargaining rights.

⁴ To a limited degree, the movement of the legislature is reflective of the attitudes of the courts on this matter. As noted in the initial brief, the Eleventh Circuit Court of Appeal recently rejected the historical "alter ego" relationship of a sheriff and his deputy found in the case of Blackburn v. Brorein, 70 So.2d 273 (Fla. 1954), as "contrary to common sense." I.B. at 20 and Brown v. Neumann, 188 F.3d 1289 (11th Cir. 1999).

CONCLUSION

Based upon the foregoing discussion and analysis, and in light of the Court's recent pronouncement in the Attorneys Guild and Service Employees cases, the Coastal Florida Police Benevolent Association, Inc., urges the Court to answer the question certified to it by the district court in the negative and find that deputy sheriffs in Florida are not categorically denied the right to collectively bargain under Chapter 447, Part II, Florida Statutes.

DATED this 13th day of December, 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Petitioner, has been furnished by mail, to PHILLIP P. QUASCHNICK, Esquire, LEONARD J. DIETZEN, III, Esquire, and WILLIAM E. POWERS, JR., Attorneys for Phillip B. Williams, Post Office Box 12186, Tallahassee, Florida 32317-2186; JACK E. RUBY, Assistant General Counsel, Public Employees Relations Commission, 2586 Seagate Drive, Turner Building, Suite 100, Tallahassee, Florida 32301-5032; ELLEN LEONARD, Esquire, Attorney for Cal Henderson, Sheriff of Hillsborough County, P.O. Box 3371, Tampa, Florida 33601; and to JAMES G. BROWN, Esquire and DOROTHY F. GREEN, Esquire, Attorneys for Robert E. Newmann, Sheriff of Palm Beach County, P.O. Box 3108, Orlando, Florida 32802-3108, this 13th day of December, 2000.

Of Counsel