

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

UNITED FACULTY OF FLORIDA,

Charging Party,

v.

FLORIDA STATE UNIVERSITY
BOARD OF TRUSTEES,

Respondent.

Case No. CA-2008-025

FINAL ORDER

Order Number: 08U-174

Date Issued: July 23, 2008

Thomas W. Brooks, Tallahassee, attorney for charging party.

Carolyn A. Egan, Tallahassee, attorney for respondent.

On March 11, 2008, the United Faculty of Florida (UFF) filed an unfair labor practice charge alleging that the Florida State University Board of Trustees (FSU) violated Section 447.501(1)(a) and (c), Florida Statutes (2007),¹ by continuing to grant administrative discretionary salary increases after the collective bargaining agreement between the parties expired on June 30, 2007. The charge was found sufficient.

On June 16, the Commission-appointed hearing officer issued an order pursuant to a stipulated record recommending that this case be dismissed. She concluded that FSU did not violate Section 447.501(1)(a) and (c) by continuing to grant administrative discretionary salary increases after the agreement expired. The hearing officer further concluded that an award of attorney's fees and costs of litigation to FSU as the prevailing respondent is appropriate.

¹All statutory references are to the 2007 edition of the Florida Statutes.

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On July 1, the UFF filed exceptions and a request for oral argument. On July 2, the UFF amended exceptions and a motion to substitute the amended exceptions for the original exceptions. On July 3, the UFF filed notice that its motion to substitute was unopposed. Upon consideration, the motion to substitute is granted. The UFF's motion for oral argument is denied as unnecessary.

In exception one, the UFF argues that the provision, dealing with FSU's ability to grant administrative discretionary salary increases, did not survive the expiration of the agreement and that the case law cited by the hearing officer should be overruled as inconsistent with prior Commission precedent when read as allowing waivers to survive the expiration of a collective bargaining agreement. Specifically, the UFF argues that the Commission's decisions cited by the hearing officer are contrary to the Commission's holding in Duval Teachers United v. Duval County School Board, 7 FPER ¶ 12056 (1980). In that case, the Commission opined that the survival of an expired waiver depends upon whether it relates to a mandatory subject of bargaining or a term and condition of employment. Id. at 131. Here, the UFF argues that a waiver cannot be a mandatory term and condition of employment that survives the expiration of the agreement.

The hearing officer's interpretation of the Commission's holdings does not expand the status quo doctrine concerning waivers. The subject matter of the clause in this case concerns itself with wages, a mandatory subject of bargaining. As indicated by the UFF

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in its exceptions, the case of International Association of Firefighters, Local 2266 v. City of St. Petersburg, 13 FPER ¶ 18116 (1987), cited by the hearing officer, holds that such a provision survives the expiration of a collective bargaining agreement, even though it waives negotiations about a mandatory subject of bargaining. Further, the Commission has recently held, citing the second case cited by the hearing officer, that waivers concerning mandatory subjects of bargaining survive the expiration of agreements and establish the status quo pending the resolution of negotiations for a new agreement. See Florida Public Employees Council 79, AFSCME v. State, 31 FPER ¶ 139 at 319-20 (2005), aff'd, 939 So. 2d 946 (Fla. 1st DCA 2006) citing Volusia County Firefighter Association, Local 3574 v. Volusia County, 22 FPER ¶ 27066 (1996). Consequently, as the Commission agrees with the hearing officer's analysis and sees no conflict between its case law, the UFF's first exception is denied.

In its second exception, the UFF argues that the hearing officer should not have awarded FSU its attorney's fees as the prevailing respondent based upon the UFF's argument that its unfair labor practice charge should be considered to have had merit as argued in its first exception. Essentially, the UFF argues that it could not be concluded that reasonable persons could not have disagreed on the issues presented herein. This exception is denied as the case law cited by the hearing officer is clearly dispositive absent the Commission overruling that law.

Upon review of the complete record, we conclude that the hearing officer's findings of fact are supported by competent substantial evidence in a proceeding that

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satisfied the essential requirements of law. Therefore, we adopt the hearing officer's findings. § 120.57(2), Fla. Stat. In addition, we agree with the hearing officer's analysis of the dispositive legal issues, her conclusions of law, and her recommendations. Thus, the hearing officer's recommended order is incorporated herein. Accordingly, the UFF is ordered to pay FSU its reasonable attorney's fees and costs of litigation incurred in defense of this case, and this unfair labor practice charge is dismissed.

This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes, and the Florida Rules of Appellate Procedure.

It is so ordered.

POOLE, Chair, KOSSUTH, JR., and VARN, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on July 23, 2008.

BY: Banyedum
Clerk

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