

AGENCY SNAPSHOT

Public Employees Relations Commission

by Gregg Morton

Background

In 1974, the legislature passed the Public Employees Relations Act in order to lay out the process for public employee collective bargaining guaranteed in Article I, Section 6 of the Florida Constitution. The Act also established the Public Employees Relations Commission (PERC or the Commission), which has jurisdiction over various cases involving public sector labor and employment issues. In addition to hearing cases involving unfair labor practices and certain employee disciplinary procedures, PERC is also responsible for registering employee organizations that would like to represent public employees. PERC's elections division conducts on-site and mail ballot elections for public employees who have expressed the desire to be represented by an employee organization. PERC also coordinates proceedings involving mediators and privately employed arbitrators to resolve impasses in labor negotiations.

The Commission is composed of three commissioners who are appointed by the Governor, subject to confirmation by the Florida Senate, and serve overlapping four-year terms. One of the commissioner positions is designated as chair. By statute, the chair of PERC serves as chief executive and administrative officer of the agency. PERC is administratively housed in the Department of Management Services (DMS), but is not subject to the control, supervision, or direction of DMS and operates as an autonomous agency. PERC employs eight hearing officers who are licensed attorneys with more than five years of experience. The hearing officers hold hearings throughout the state on labor and employment disputes and issue recommended orders that are then reviewed by the Com-

mission and its staff. PERC issues a final order in each of its cases, which can be appealed directly to the district courts of appeal.

Contact Information:

Public Employees Relations Commission
4050 Esplanade Way, Suite 135
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8641
Fax: (850) 488-9704
<http://perc.myflorida.com>

Commissioners:

Mike Hogan, Chair
Donna Poole
John Delgado

Agency Clerk:

Barry Dunn
4050 Esplanade Way, Suite 135
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8641
Fax: (850) 488-9704

Hours for filings are Monday through Friday from 8:00 a.m. to 5:00 p.m. In addition to filings by mail, PERC allows parties to file certain documents in their cases and to access their active case list and associated dockets through an electronic portal. This secure web-based application, called ePERC, is optional and is provided as a convenience and cost-saving measure for the state and registered users. Filings through ePERC that come in after 5:00 p.m. on weekdays or that come in on weekends will be stamped as received the next business day. PERC also allows parties to file documents by fax during business hours.

General Counsel:

Stephen A. Meck received his J.D. with honors from Florida State University College of Law in 1980, and his B.S. magna cum laude from

Florida State University in 1975. Mr. Meck was admitted to The Florida Bar in 1980 and is a past Chair of the Executive Council of The Florida Bar Labor and Employment Law Section. Mr. Meck has been with PERC since 1980, serving as general counsel since 1993. While at PERC, he has presided over numerous unfair labor practice and representation proceedings and presented cases in the Florida Supreme Court and each of the district courts of appeal.

Types of Cases:

The cases that come before PERC can be broadly divided into labor disputes and employment disputes. In the current fiscal year, over a thousand cases have been filed with the Commission. In addition to having its decisions published in the Florida Public Employee Reporter and the Florida Career Service Reporter, PERC offers various publications at its website (<http://perc.myflorida.com>) to explain areas of practice and substantive law applicable in PERC cases. PERC also publishes a quarterly newsletter that contains synopses of cases decided by the Commission along with articles about important developments in public labor and employment law.

Labor Cases

The Commission's jurisdiction in labor cases stems from the constitutional right of public employees in the State of Florida to collectively bargain. In representation cases, PERC is responsible for defining bargaining units associated with public employers and determining which public employees should be included or excluded from the bargaining units. "Public employees" include employees of the state, counties, school boards, municipalities and special taxing districts.

While not an exhaustive list, this includes all fire fighters, police officers, corrections officers, school teachers and support personnel, attorneys, medical personnel, state troopers, toll collectors, sanitation employees, and clerical employees. It is estimated that there are over 600,000 public employees in various bargaining units throughout the State of Florida. The Commission holds hearings and resolves disputes about the composition of bargaining units.

Once a bargaining unit has been defined and an employee organization has been certified by the Commission to represent the employees in the bargaining unit, the employee organization and public employer will enter into negotiations to form a collective bargaining agreement. If negotiations break down or one side accuses the other of bad faith in negotiations, either the public employer or the employee organization can file an unfair labor practice pursuant to the provisions of section 447.501(1) and (2), Florida Statutes. In some circumstances, individual members of the bargaining unit can also file unfair labor practices, particularly in instances where they are accusing

the employee organization of breaching its duty of fair representation. When an unfair labor practice is filed, it is initially reviewed by the general counsel who determines whether it is sufficient to proceed to hearing. If sufficient, the Commission will appoint a hearing officer to hold an evidentiary hearing to determine if an unfair labor practice was committed. The labor decisions of the Commission and dismissals by the general counsel are reported in the Florida Public Employee Reporter, which also includes important state and federal cases.

Employment Cases

The main type of employment case that PERC hears involves appeals of employees that have career service rights pursuant to section 110.227, Florida Statutes. The right to appeal to the Commission is triggered when a public employee with career service rights has his or her pay reduced or is suspended, demoted, involuntarily transferred more than fifty miles, or dismissed. After receiving notice of one of these actions, the employee has twenty-one calendar days to file an appeal with the Commission.

Upon receipt of a timely appeal, the Commission appoints a hearing officer to hold an evidentiary hearing to determine if there was cause for the discipline and, in certain cases, whether the discipline should be mitigated. The career service decisions of the Commission are reported in the Florida Career Service Reporter.

In addition to career service appeals, PERC exercises jurisdiction over a number of other employment cases. When veterans feel aggrieved under chapter 295, Florida Statutes, they are entitled to file a written complaint to the Department of Veterans' Affairs (DVA), which in turn issues an opinion to PERC on the merit or lack of merit in each complaint. After the DVA renders its decision, the veteran may file a complaint with PERC seeking a hearing. The Commission's jurisdiction also includes appeals by public employees who are disciplined under the Drug-Free Workplace Act; age discrimination appeals pursuant to section 112.044, Florida Statutes; Whistle-Blower's Act appeals; and appeals regarding the termination or transfer of employees aged 65 or older pursuant to section 110.124, Florida Statutes.

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