

# Public Employees Relations Commission: Current Issues, Cases, & Policy



Presented by -  
Kerey Carpenter, Chair  
Gregg R. Morton, General Counsel

# Standard Disclaimers

- **The views set forth in these materials and any spoken remarks do not necessarily represent the views of the Commission.**
- **We are unable to answer questions on issues or cases that are before the Commission or that may come before the Commission.**
- **We are unable to express views on any pending litigation.**



**Chair Kerey Carpenter**



**Commissioner Jeff Aaron**



**Commissioner Mike Sasso**

# THE COMMISSION

# Internal Changes

## Registrations Division

- Temporarily reassigned two hearing officers from legal staff to develop a new framework for handling registrations
- Hired an additional Registrations Clerk
- Created Registrations Division

## Clerk's Office

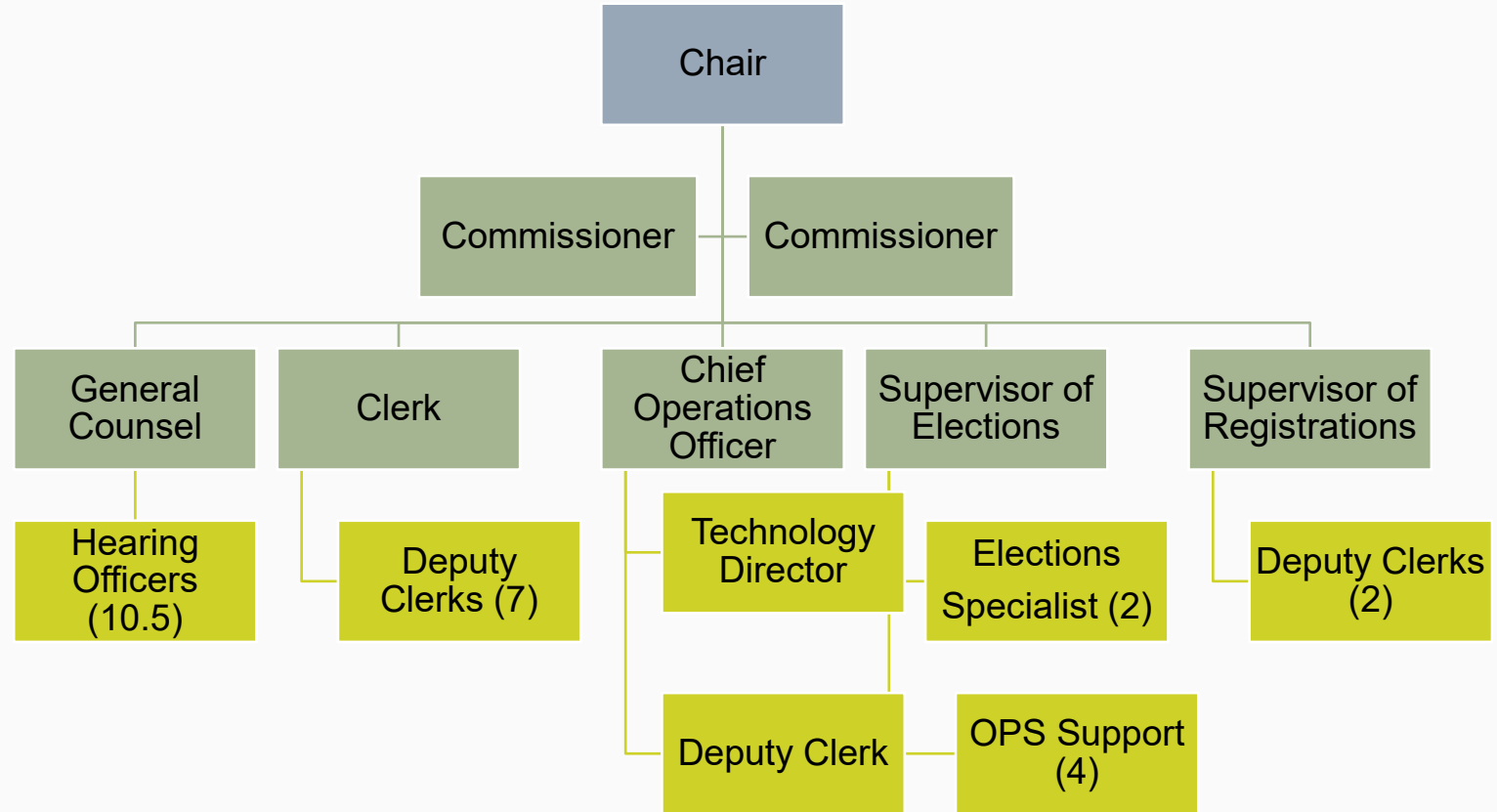
- Hired an additional Deputy Clerk and Barry Dunn's successor, Richard Shoop
- Streamlined overall processes

## Legal Staff

- Hired two new full-time hearing officers, and one part-time

## Elections Division

- Hired an additional Elections Specialist and several OPS staff
- Streamlined overall processes, to include outsourcing large mailings and electronic posting



**SB 256 / SB 1746  
Implementation  
Update**

# RECAP: Senate Bills 256 (2023) & 1746 (2024)

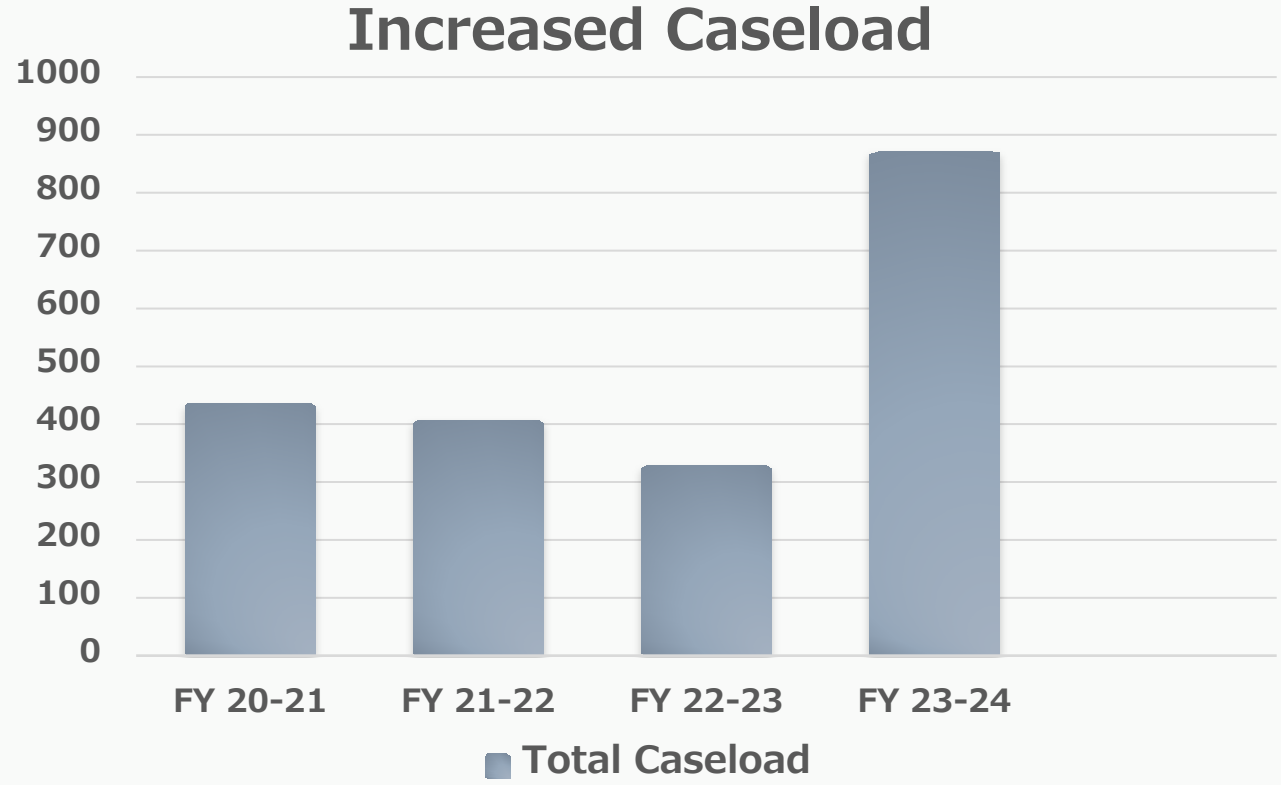
## SB 256

- Ended dues deduction, effective July 1, 2023
- Modified requirements for employee organizations to register with the Commission and provided consequences for failure to renew, effective October 1, 2023
- Required audited financial statements
- Required a recertification election for those below 60% dues-paying membership
- Gave PERC investigatory powers
- Exempted certain employee organizations from compliance
- Permitted PERC to grant waivers to bargaining units of mass transit workers

## SB 1746

- Replaced audit requirement with a CPA-prepared financial statement
- Required reporting of disbursements on financial statements and authorized PERC to prescribe reporting categories
- Revised exemption language by codifying PERC's bargaining unit-specific interpretation; adding majority standard for exemption to apply; and expanding exemptions to include 911 operators, paramedics, and EMTs
- Added a minimum 60% membership authorization forms as an additional condition to avoid recertification
- Clarified some verbiage without a policy change

# Aftereffects of the New Laws



- 4 Rule Challenges
- 4 Federal Lawsuits
- 3 State Lawsuits
- 4 State Appeals

**\*\*Over 6,000 orders have been issued since Oct. 1, 2023.\*\***

# 2025 Legislative Session

- Senate Bills 1764, 1766 & 1328
- House Bills 1387, 1389, & 1217
- Mostly statutory “clean up” efforts
- Proposed changes to Public Records Exemptions
- Proposed change to access for rival unions to employer’s facilities
- Also proposed changes to election participation requirements and leave time





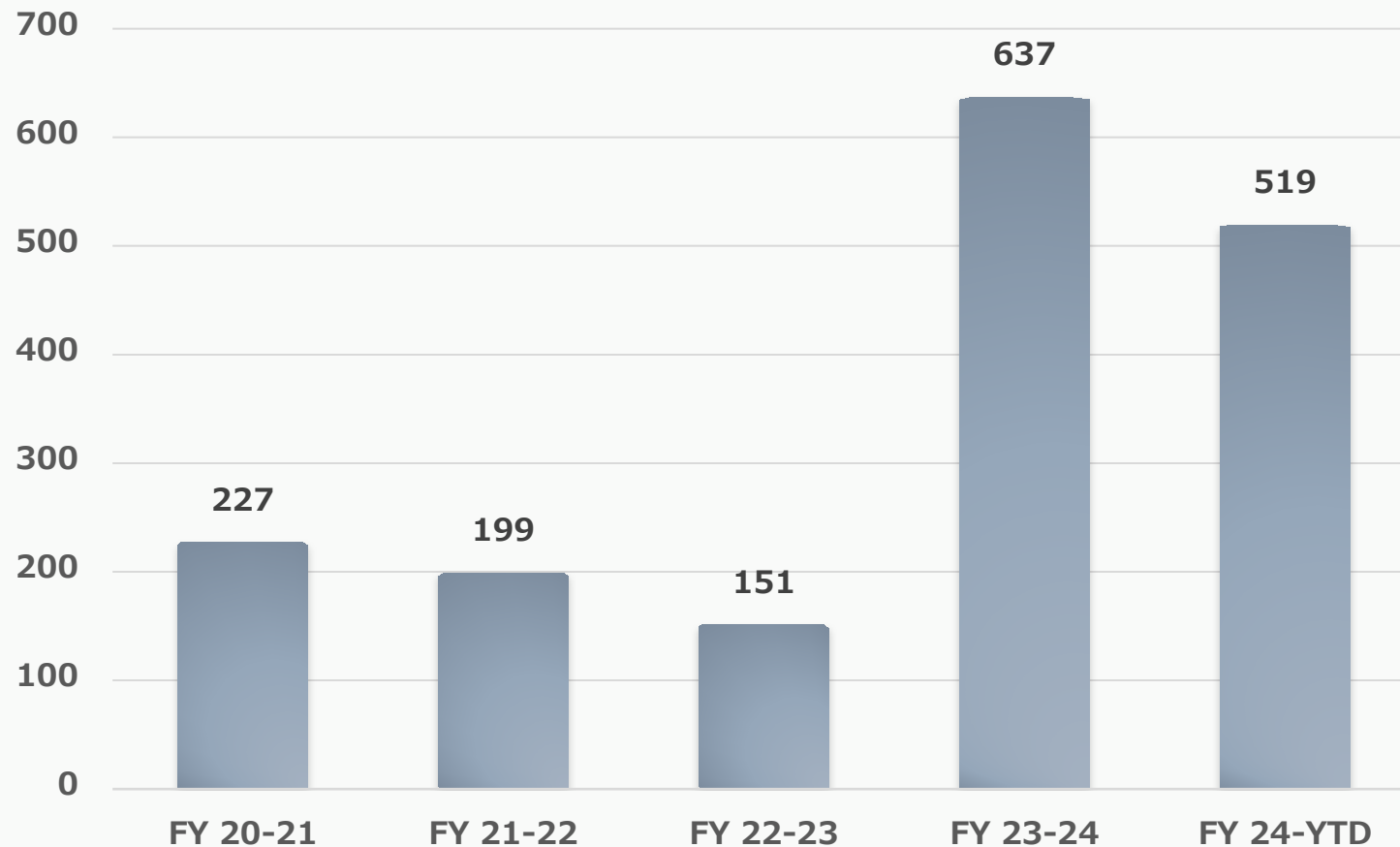


# Registration Renewal Applications - Post-SB 256

## Common Deficiencies:

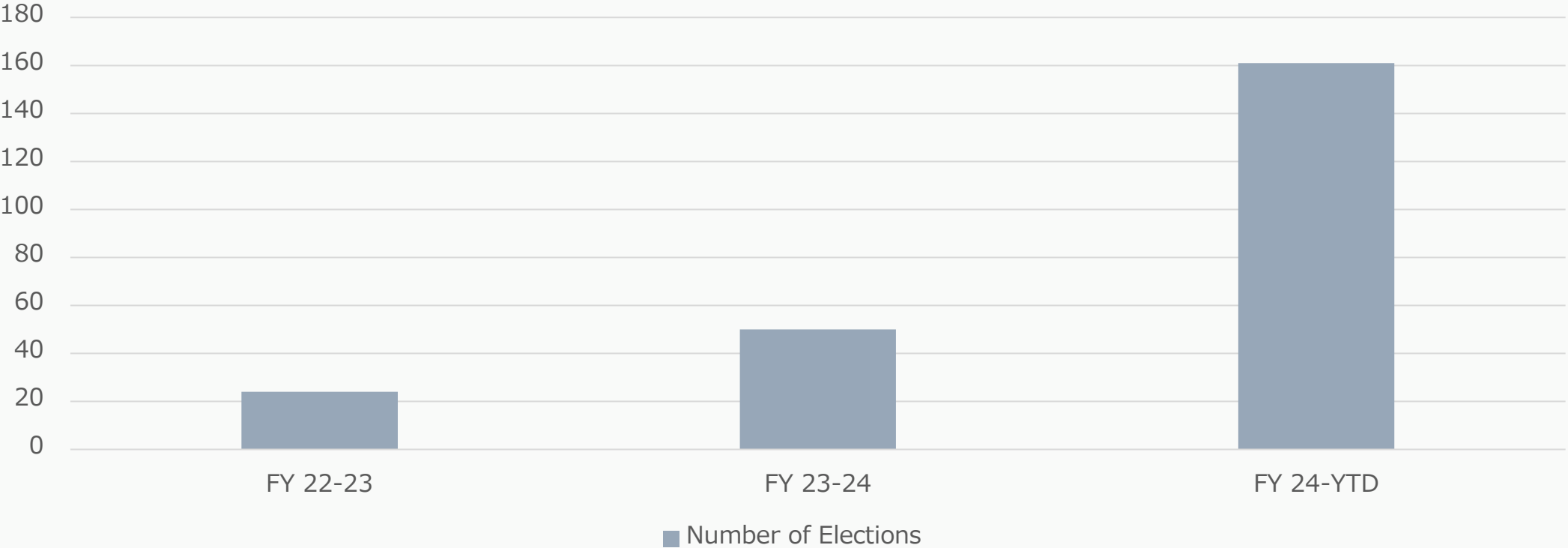
- Incomplete or inconsistent employee organization name
- Blanks/incomplete information
- Missing FEIN
- Unclear dues collection methods/amounts
- Not properly notarized
- Missing items, e.g.:
  - constitution and bylaws
  - registration fee
- “Attachment A” issues (re: certified bargaining units)
- Issues with the Financial Statement

# Increase in Representation Cases



**Includes initial and recertifications (RA & RC), de-certifications (RD & CQ), unit clarifications (UC), amendments to certifications (AC), elections (EL), disclaimers of interest (MS), and declaratory statements (DS).**

# Elections Statistics



# Practice Pointers: **Recertification Petitions**

- Remember the 30-day filing window. *s. 447.305(6), Fla. Stat.*
- Know your registration status. *s. 447.305(1), Fla. Stat.*
- “Clean up” old bargaining unit definitions. UC petition not required.
- Beware of including employees’ names in the unit definition (e.g., managerial and confidential employees).
- Generic v. Specific unit definitions
- For recertification elections:
  - Seek consensus on on-site versus mail ballot
  - Provide eligibility list in a user-friendly manner
  - Timely posting Notices of Elections

# Rulemaking

- PERC's rulemaking plan is posted on its website, but can be subject to changes
- PERC is in the process of repealing Rule 60CC-3.001 on Notice of Negotiations filings
- PERC held a workshop in December regarding changes to Rule 60CC-1.001 regarding Showing of Interest statements and will likely move forward with proposed rule soon
- PERC is looking to adopt its forms and rules related to registration applications
- PERC is examining all of its rules and forms for updates and efficiency

# PERC Case Update

# Current SB 256-related Lawsuits - Federal

## *Alachua County Education Association v. Carpenter, Aaron, Sasso of the Florida Public Employees Relations Commission, 1:23-cv-00111-MW-HTC*

- Plaintiffs argue that SB 256 violates the 1st Amendment and 14th Amendments. The court denied plaintiffs' first motion for preliminary injunction for failure to demonstrate standing. Subsequently, the court denied plaintiffs' second motion for preliminary injunction. The parties then filed cross-motions for summary judgment. The court granted most of the relief sought by PERC but found for the union regarding the contract impairment issue at trial.

## *Communications Workers of America, AFL-CIO v. Carpenter, Aaron, Sasso, PERC, et al, 9:24-cv-80073-AMC*

- Plaintiffs filed a similar complaint to *Alachua County*. PERC's motion to dismiss was heard on September 5, 2024. The judge allowed the plaintiffs the opportunity to amend their complaint and denied PERC's motion to dismiss as moot. Still pending in Southern District of Florida

## *State of Florida v. Buttigieg, et al, 23-61890-CIV-DAMIAN*

- The Attorney General filed a federal lawsuit in the Southern District of Florida, asserting that certain federal officials are violating federal law by threatening to withhold federal grant funding if PERC did not grant public employers a waiver to various provisions of SB 256, pursuant to s. 447.207(12), Florida Statutes. The Court entered final judgment in favor of the Defendants on October 3. That decision is being appealed.



# Current SB 256-related Lawsuits - State

## *AFSCME Florida Council 79 of the American Federation of State, County and Municipal Employees, AFL-CIO v. PERC, 1D2023-2251*

- The union attempted to file its registration renewal well before the expiration date, and before the new registration requirements of SB 256 took effect. The Commission denied the registration application as prematurely filed, and the union appealed. PERC prevailed after oral argument. Court issued a per curiam affirmance.

## *UFF-FAMU, Education Association of Saint Lucie, et al v. PERC, 2024 CA 001412*

- This complaint was filed in Leon County in August 2024 for declaratory and injunctive relief against PERC related to the implementation of SB 256. The lawsuit alleges that under the Florida Constitution, PERC cannot require unions to demonstrate 60% membership to maintain their certifications and cannot compel individuals to sign PERC's union membership form to be included in that membership count.

## *North Miami Beach, Local 3293 et al v. PERC, 2024 CA 001476*

- This complaint was filed in Leon County in September 2024, for declaratory and injunctive relief against PERC related to SB 256, similar to the UFF-FAMU complaint above.

# Administrative Litigation

## *Florida Police Benevolent Association, et al v. PERC, DOAH Case No. 23-002823RP*

- Plaintiffs challenged PERC's rules related to exempt units for dues deduction, membership authorization forms, and registration requirements. DOAH ALJ upheld PERC's rules as valid. Plaintiffs appealed, but dismissed appeal after the passage of SB 1746. PERC repealed the exemption rules because they were covered by statute.

## *Florida Education Association, Brevard Federation of Teachers, Inc., and Walton County Education Association v. PERC, DOAH Case No. 23-004213RP*

- Plaintiffs challenged a rule related to counting membership authorization forms. PERC moved to dismiss as premature and the parties withdrew the petition. Covered by changes in SB 1746.

## *Challenges regarding postage for return ballots*

- The Commission recently received challenges related to incurring costs for return ballots. Those petitions/cases are currently in their preliminary stages.

# Calculating membership data for registration purposes

*In re Application for Renewal of Registration of Volusia United Educators, Inc. Local 1605, FEA, AFT, NEA, AFL-CIO, 51 FPER ¶ 15 (2024) (on appeal, 5D2024-1615).*

- Pursuant to a notice filed by the School Board, the Commission commenced an investigation into the accuracy of the data supplied in the Union’s registration renewal application.
- The issue presented was whether VUE calculated its dues-paying membership
  - based on a “**snapshot approach**,” i.e., as of the 30<sup>th</sup> day immediately preceding the expiration date of its registration; *or*
  - based on those who had paid dues within a “**window period**,” i.e., between the effective date of VUE’s last registration renewal and the 30<sup>th</sup> day immediately preceding the expiration date of its registration.
- **The Commission determined that, pursuant to the plain language of s. 447.305(3), Fla. Stat., a union must use the snapshot approach based on its “census date,” which is the 30<sup>th</sup> day prior to the date its registration expires.**

# Exemption of 911 dispatchers (s. 447.30, Fla. Stat.)

*International Association of Machinists and Aerospace Workers District Lodge No. 166 v. City of Coral Springs, 51 FPER ¶ 41 (2024).*

- The Union filed a representation-certification petition for dispatchers in the City of Coral Springs. The Hearing Officer recommended that the petition be dismissed because, based on Commission precedent, the unit was overly fragmented and the Union failed to demonstrate special circumstances, a unique community of interest, or a conflict of interest to justify the proposed unit.
- The Union initially filed exceptions to the recommended order but later withdrew them. Ultimately, the Commission dismissed the petition.
- The Commission noted that because 911 public safety telecommunicators now are treated like other categories of exempt personnel, such employees arguably have a greater community of interest with other exempt classifications of public safety employees and less with other municipal employees. The Commission further noted that these changes should be taken into consideration in creating new units or determining the placement of employees in existing bargaining units.

# Whether a university's actions taken in response to a new law constitutes a ULP

*United Faculty of Florida v. The University of Central Florida Board of Trustees, 50 FPER ¶ 406 (2024) (on appeal, 1D2024-1676).*

*United Faculty of Florida v. The Florida State University Board of Trustees, 51 FPER ¶ 96 (2024) (on appeal, 1D2024-1811).*

- The BOG adopted a comprehensive post-tenure review regulation in March 2023, pursuant to s. 1001.706(6)(b), Fla. Stat.
- In both cases, UFF alleged the Universities unilaterally implemented a mandatory subject of bargaining and engaged in direct dealing.
- The Commission concluded that no unfair labor practice occurred because UFF waived its right to bargain. It further concluded that the Universities were required to act immediately to comply with a legislative mandate. Attorney's fees and costs were assessed against UFF in both cases.
- Currently on appeal.

# Whether s. 447.401, Fla. Stat. requires a union to represent members in the grievance process

## *Park v. United Faculty of Florida, 50 FPER ¶ 406 (2024) (on appeal, 1D2024-0850).*

- Park was asked to attend investigatory interview, after which time he joined the Union and sought Union representation at the interview. The Union refused Park's request, citing a policy that representation is only available to individuals who were members of the Union at the time the underlying incident occurred. He ultimately was disciplined and asked the Union to represent him during the grievance process, which was denied based on the same policy.
- Park alleged that the Union violated sections 447.401 and 447.501(2)(a), Fla. Stat. for refusing his request for representation.
- The General Counsel summarily dismissed the charge, concluding that the Union's decision was not unreasonable, citing *McDonald v. Polk Education Association*, 19 FPER ¶ 24111 (1993).
- The Commission affirmed the summary dismissal upon determining that UFF did not have a statutory duty to represent Park in the grievance process and, therefore, its refusal to do so was not arbitrary, discriminatory, or in bad faith.
- The First DCA issued a per curiam affirmance on appeal.

**THANK YOU!**

