FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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Editor's Note: The following case law summaries were reported for the period of January 1, 2014, through March 31, 2014.

Section. 1. Recent Decisions of the Florida Supreme Court.

None reported.

Section 2. Recent Decisions of the Florida District Courts of Appeal.

Public employees – Collective bargaining – Unfair labor practices – Unilateral change in bargaining agreement – Financial urgency – Public Employees Relations Commission (PERC) erred in dismissing unfair labor practice claim brought against city by firefighters on basis of statute that permits local governments to declare financial urgency to reopen collective bargaining agreement without addressing whether there were other reasonable alternatives available to address city's financial condition – Conflict certified – Remand with directions to PERC to apply proper standard in determining whether city engaged in unfair labor practice.

The City of Hollywood declared financial urgency for both FY2011 and FY2012 when it was unable to cover budget shortfalls. The city and Fire Fighters Local 1375 (the union) declared an impasse over the impact of the financial urgency. The union filed an unfair labor practice charge as to both FY2011 and FY2012.

The union alleged the city committed unfair labor practices by (1) declaring a financial urgency when none existed; (2) failing to participate in impasse proceedings before declaring financial urgency; and (3) bargaining in bad faith. The union also argued Section 447.4095, Florida Statutes, (the financial urgency statute) was unconstitutional. The union primarily argued the financial urgency statute, as interpreted by PERC, is unconstitutional as it violates the right to collectively bargain and the right to contract because the statute impermissibly allows for unilateral changes to collective bargaining agreements.

The court held that neither the statute, nor any other provision of Chapter 447, Florida Statutes, defines the term "financial urgency." The court agreed with PERC's definition of financial urgency: "a dire financial condition requiring immediate attention and demanding prompt and decisive action, but not necessarily a financial emergency or bankruptcy." Citing the Chiles test (615 So.2d at 673), the court concluded the Chiles standard was not properly applied by PERC to determine if a government has the authority to impair a contract violating the union's ability to collectively bargain. The court reversed and directed PERC to apply the Chiles standard in determining whether the city engaged in unfair labor practice. *Hollywood Firefighters, Local 1375 v. City of Hollywood,* 39 Fla. L. Weekly D107 (Fla 4th DCA January 17, 2014).

Municipal corporations – Development orders – Error to enter declaratory judgment interpreting 2012 amendment to Section 163.3167(8), Florida Statutes, as requiring city to submit development order to public referenda.

The City of Boca Raton approved an ordinance amending a previously approved development order allowing additional development. A group of Boca Raton residents filed a petition seeking to repeal the ordinance by referendum. The citizens' petition was filed pursuant to the city's general charter provision relating to the repeal of ordinances by referenda. The city's charter did not have a provision allowing for the approval of development orders by referenda. The city filed a complaint with the trial court asking for a declaration that it did not have to process the petition because such referenda were prohibited under Florida law. The trial court disagreed with the city and entered a final judgment ordering the city to process the petition. The trial court based its decision on a 2012 amendment to Section 163.3167(8), Florida Statutes. The Fourth District Court of Appeal, however, held that the

trial court was incorrect. The 2012 amendment did not require the City of Boca Raton to submit a development order to public referendum. The court held that the 2012 amendment served as a local government prohibition on referenda for development orders, allowing three grandfathered cities that had specific referenda and initiatives provisions prior to June 1, 2011 (The Towns of Yankeetown and Longboat Key and the City of Key West). *Archstone Palmetto Park, LLC. and City of Boca v. Kathleen Kennedy, et al.,* 39 Fla. L. Weekly D230 (Fla 4th DCA February 7, 2014).

Municipal corporations – Code enforcement – Unauthorized removal of mangrove trees – Jurisdiction – State preemption – Mangrove Act expressly preempts local regulation of mangroves and enforcement unless local government receives delegation from the Department of Environmental Protection.

The Town of Jupiter received a complaint that mangrove trees had been removed from a property and the area filled with sand. After investigation, the town concluded the Byrd Family Trust had removed 109 mangroves on its property and filled the area with sand. The work was done without a permit. The town's code enforcement special magistrate, after finding it had jurisdiction, issued an order finding that the trust had violated the town's Code of Ordinances. The trust was fined in the amount of $15,000 for each mangrove removed for a total fine of $1,635,000. The special magistrate also fined the trust $15,000 for placement of sand on the property without a permit. The court concluded the town had not been delegated the authority by the state to regulate and enforce mangrove trimming and removal. Therefore, the town had no authority to fine the trust for the removal of 109 mangroves. Florida's Mangrove Trimming and Preservation Act expressly preempts local regulation of mangroves and enforcement unless the local government receives a delegation of such authority from the state. *Town of Jupiter v. Byrd Family Trust,* 39 Fla. L. Weekly D237 (Fla 4th DCA February 7, 2014).

Traffic Infractions – Failure to stop at red light – Red light camera – Constitutionality of statute – Section 316.0083(1) does not violate equal protection or due process by providing that, in a case of a jointly owned vehicle, traffic citation shall be mailed only to the person whose name appears first on registration.

The City of Fort Lauderdale appealed a county court order dismissing a traffic citation and declaring the owner notification provision of Florida's red light camera law to be unconstitutional. A vehicle jointly owned by Rhadames and Nuris Gonzalez was photographed by an automated traffic camera running a red light. The city mailed a traffic infraction for running the red light to the shared address of Rhadames and Nuris. The notice was addressed only to Rhadames, the first listed owner on the vehicle registration. Because Mr. Gonzalez failed to pay the violation within 30 days, a Florida Uniform Traffic Citation was issued to him as the first registered owner of the vehicle. Mr. Gonzalez filed a motion to dismiss the citation arguing that the owner notification provision of the Florida red light camera law violated equal protection and due process because the citation was only mailed to the first named owner of the vehicle. The trial court found the notification provision to be unconstitutional on due process and equal protection grounds. The 4th District Court of Appeal reversed and held that Section 316.00831(1)(c)1.c., Florida Statutes (2011), does not violate equal protection or due process by providing that, in the case of a jointly owned vehicle, the traffic citation shall be mailed only to the person whose name appears first on the registration. The statute's distinction between a vehicle's first listed owner and its subsequent owners is rationally related to the state's legitimate interest in administrative efficiency. *City of Fort Lauderdale v. Rhadames Gonzalez,* 39 Fla. L. Weekly D286 (Fla 4th DCA February 14, 2014).

Real property – Bert J. Harris, Jr. Private Property Rights Protection Act – Limitation of action – Trial court erred in granting county's motion to dismiss Harris Act claim on grounds that it was untimely under one-year period contained in statute, which commences when law or regulation is "first applied" by government entity to property at issue.

P.I.E., LLC purchased property in DeSoto County and intended to use the land initially as a borrow pit, excavating sand and shell material and later as a portion of a development. P.I.E. submitted an application for an excavation permit. The county's development department recommended approval of the application subject to conditions. Subsequently, the County Commission voted unanimously on February 27, 2007, to deny the permit citing concerns about health, dust, noise and increased traffic. This oral vote was not reduced to a written decision until March 28, 2007. P.I.E. filed a claim under the Bert J. Harris, Jr. Private Property Rights Protection Act. The county moved to dismiss, arguing more than one year had elapsed since the law or regulation was first applied by the county to the property in question, a requirement under the act. The trial court granted the county's motion to dismiss. The 2nd District Court of Appeal reversed and remanded, concluding the action was not subject to dismissal as a matter of law based only on the content of the complaint. The court held the questions regarding on what date the county's denial of the permit took effect are matters of fact and not law. *P.I.E., LLC v. DeSoto County,* 39 Fla. L. Weekly D405 (Fla 2nd DCA February 28, 2014).

Declaratory judgments – Municipal corporations – Intergovernmental conflict – Error to dismiss suit filed by city against county after county commissioners failed to attend two meetings scheduled by city pursuant to Florida Governmental Conflict Resolution Act, to address distribution of funds allocated to county following oil spill in Gulf of Mexico.

The City of Apalachicola appealed a final order dismissing, with prejudice, its complaint for failure to state a cause of action. The city filed a cause of action after members of the Franklin County Board of Commissioners failed to attend two meetings scheduled by the city pursuant to the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes, to address the distribution of funds allocated to the county following the oil spill in the Gulf of Mexico. The circuit court dismissed the complaint with prejudice, because it ruled the act does not create a cause of action. The 1st District Court of Appeal found Chapter 164, Florida Statutes, is intended to enhance intergovernmental coordination by creating a governmental conflict resolution procedure to provide a method for resolving conflicts between and among local and regional governmental entities. The district court held the circuit court erred in dismissing the complaint, finding the complaint seeks declaratory relief, and adequately states a cause of action for such relief. The court concluded that the city may avail itself of any otherwise available legal right, such as declaratory relief. *City of Apalachicola v. Franklin County*, 39 Fla. L. Weekly D439 (Fla. 1st DCA March 7, 2014).

Public Records – Attorney's fees – Where transit authority delayed in producing requested public records, trial court erred in denying award of attorney's fees and costs to requesting party on basis that authority's failure to furnish records before suit was filed was not willful.

Stewart Lilker filed suit to compel the Suwannee Valley Transit Authority and its records custodian to provide public records he requested. The authority admitted that the records were subject to disclosure, and after an evidentiary hearing, the trial court ordered the authority to provide them to Lilker within 48 hours. The trial court declined, however, to award Lilker his attorney's fees and costs under Section 119.12, Florida Statutes (2012), because it determined that the authority's failure to furnish the records before Lilker filed suit was not an unlawful and willful refusal to comply with Chapter 119, Florida Statutes. The 1st District Court of Appeal found when delay is at issue, as in this case, the court must determine whether the delay was justified under the facts of the particular case. If not, the delay constitutes unlawful refusal. The court held the trial court did not apply the proper legal standard, because it failed to make sufficient findings to indicate whether the authority's failure to produce the records constituted an unlawful refusal. The case was reversed and remanded for the trial court to weigh the pertinent evidence and apply the proper legal standard. *Stewart Lilker v. Suwannee Valley Transit Authority*, 39 Fla. L. Weekly D569 (Fla. 1st DCA March 21, 2014).

Section 3. Recent Decisions of the U.S. Supreme Court.

None Reported.

Section 4. Recent Decisions of the U.S. Court of Appeals, Eleventh Circuit.

None Reported.

Section 5. Recent Decisions of the U.S. District Courts for Florida.

None reported.

Section 6. Announcements.

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