

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

IN RE

PETITION OF UNITED FACULTY  
OF FLORIDA, TO AMEND  
CERTIFICATION NO. 218.

Case No. AC-2005-003

UNITED FACULTY OF FLORIDA,

Petitioner,

Case No. RC-2002-073

v.

UNIVERSITY OF FLORIDA  
BOARD OF TRUSTEES,

Respondent.

ORDER AMENDING  
CERTIFICATION

Order Number: 05E-195

Date Issued: September 9, 2005

Thomas W. Brooks, Tallahassee, attorney for petitioner.

Jeffrey Mandel, Orlando, and Charles Deal, Gainesville, attorneys for respondent.

On May 20, 2005, the United Faculty of Florida (UFF) filed a petition to amend certification 218 to reflect that the University of Florida Board of Trustees (UFBOT) is the successor employer of faculty, librarians, counselors, and certain other administrative and professional employees covered by this certification (faculty unit) employed at the University of Florida (UF). This certification was issued to the UFF in 1976 and covered a statewide unit of these employees at all ten universities and one college in the State University System (SUS). Up until January 7, 2003, when the SUS was reorganized, the employees covered by certification 218 were employees of the Florida Board of Education (FBOE).

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The Commission appointed a hearing officer to this case who, on July 14, issued an order recommending that the Commission approve the petition. On July 29, the UFBOT filed three exceptions to the recommended order and a request for oral argument.<sup>1</sup> The UFF's response to the exceptions was filed on August 8.

As reflected in the style of this order, we have consolidated the instant petition with an earlier filed representation-certification petition filed by the UFF in Case No. RC-2002-073, because they address the same bargaining unit and our decision to grant the amendment to certification petition relies upon certain elements of that case. The Commission stayed that case until the First District Court of Appeal's opinion in UFF and Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO v. PERC, Florida State University Board of Trustees (FSUBOT) and University of West Florida Board of Trustees (UWFBOT), 898 So. 2d 96 (Fla. 1st DCA 2005) became final. Inasmuch as the Florida Supreme Court has declined to review that opinion, we vacate the stay in RC-2002-073.

Our decision today relies heavily upon the First District Court of Appeal's opinion that the UFBOT's two sister boards of trustees at Florida State University and the University of West Florida are successor employers to the FBOE. There, with respect to the 2003 reorganization of the SUS by devolution of its administration from one statewide

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<sup>1</sup>Oral argument would not assist us in resolving the issues raised by the UFF's petition. Therefore, the UFBOT's request is denied.

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employer, the FBOE, to the boards of trustees at each of the eleven institutions of higher learning comprising the SUS, the court stated that:

State government cannot, consistently with article I, section 6 of the Florida Constitution ("The right of employees . . . to bargain collectively shall not be . . . abridged."), unilaterally terminate its obligations under a collective bargaining agreement simply by reorganizing the Executive Branch, where the employees affected perform the same work, in the same jobs, under the same supervisors, by operating the same facilities, carrying on the same enterprise, providing the same service.

Id. at 99. As successor employers, the FSUBOT and the UWFBOT were bound by the collective bargaining agreements they inherited from the FBOE, pending amendment of the UFF's existing certifications or the outcome of representation elections. Id. at 99. It is the former procedure that the UFF now pursues in order to gain a new faculty unit certification at the UF.

In exception two to the hearing officer's recommendation in AC-2005-003, the UFBOT argues that it is not a successor employer to the FBOE because the First District Court of Appeal's holding only applied to the FSUBOT and UWFBOT. The UFBOT argues that the court did not have before it for consideration any of the unique facts related to the UFBOT's operations and organizational structure that bear upon the issue of whether the historical bargaining unit remains appropriate for the purpose of collective bargaining, and did not even address the issue of whether the bargaining units at FSU and UWF remained appropriate.

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In view of the court's awareness that successorship depends, not only upon substantial continuity in the employing enterprise, but also in the bargaining unit remaining appropriate, we believe that in determining successorship the court implicitly determined that the bargaining units in those cases remained appropriate. See id. at 101. By relying upon facts showing that members of certification 218 remained employed doing the same work in the same jobs, at the same locations, under the same immediate supervision, and under essentially the same working conditions as before the change in employers, the court's successorship ruling can reasonably be read as concluding that the bargaining units remained appropriate under the successor employers. Even though the court did not opine upon the successorship of the UFBOT, there is no real distinction to be made between it and the two universities that were parties to that case because all were part of the same scheme to transfer statewide authority over the universities from the FBOE to the boards of trustees at each institution in the SUS. Therefore, UFBOT's exception two is denied.

In exceptions one and three, the UFBOT argues that it was denied the opportunity for an evidentiary hearing in the instant amendment to certification case at which it could demonstrate the inappropriateness of the historical bargaining unit certified in 1976. As a consequence, the UFBOT also disputes the hearing officer's conclusion that it has not demonstrated that the previously defined faculty unit is no longer appropriate.

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We agree with the hearing officer that the convening of an evidentiary hearing for the purpose of litigating the composition of the faculty bargaining unit is unnecessary. The precise definition of that unit was the subject of litigation by the parties in RC-2002-073 for over two years. There, the UFF sought, with minor modifications, to certify the historical unit while the UFBOT sought to add additional faculty groups to the historical unit. However, neither party contended that the generic description of the unit as one composed of faculty and other administrative and professional employees is no longer appropriate. (See UFF's exceptions to the hearing officer's recommended order and supplemental recommended order filed March 5, 2004; UFBOT's exceptions to the supplemental recommended order filed March 5, 2004; and UFBOT's response to the UFF's exceptions filed March 17, 2004.)

The hearing officer's recommendation in RC-2002-073 to add and subtract employees from the historical unit to reflect personnel changes resulting from twenty-five years of growth does not make the historical unit inappropriate. Were this not so, evolutionary changes in a historical unit due to the passage of time would gut the doctrine of successorship because bargaining unit composition inevitably changes in any dynamic organization.

As the UFF points out in its response to the exceptions, the organizational structure of the administration of the UFF remained the same on January 7, 2003, as it

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had been on January 1.<sup>2</sup> Thus, the faculty unit that was appropriate on January 1, 2003, did not become inappropriate six days later simply because of a change in the employing entity. Reorganization of the SUS in January 2003 to transfer authority to the UFBOT did not change the community of interest among employees in that bargaining unit.

The Commission is also disinclined to disturb the existing faculty bargaining unit in amending the UFF's certification to reflect the UFBOT as the successor employer given the statutory requirement that, in defining a bargaining unit, the Commission shall take into consideration any bargaining history and the interests of the employees and employer in the continuation of a workable and accepted negotiation relationship. See §447.307(4)(f)5, Fla. Stat. (2005). In District 2A, Transportation, Technical, Warehouse, Industrial and Service Employees v. Port Everglades Authority and Board of County Commissioners of Broward County, 21 FPER ¶ 26141 (1995), the Commission stated:

The policy espoused in section 447.307(4)(f)5., has also been applied by the Commission to support the continuation of a long standing negotiation relationship involving successor employers. See, e.g., Amalgamated Transit Union, Local 1579 v. City of Gainesville, 8 FPER ¶ 13064 (1982) and Hillsborough County Government Employees Association v. Hillsborough County Board of County Commissioners, 7 FPER ¶ 12350 (1981). In both Gainesville and Hillsborough County, the Commission declined to expand established bargaining units after reorganization simply because the same units might not be found appropriate if they were being defined for the first time. As appears to be the situation here, and critical to the Commission's decisions in the foregoing cases, the change in public employers in the Gainesville case and the

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<sup>2</sup>Finding of fact eleven from the hearing officer's recommended order of June 11, 2003 in RC-2002-073. This fact is supported by competent substantial evidence.

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employer's reorganization in Hillsborough County had no substantial effect on the day-to-day activities of employees in the units at issue.

Id. at 259. For this reason as well, we conclude that the historical unit remains appropriate for collective bargaining.

Finally, in concluding that the historical unit remains appropriate at UF, the Commission takes notice of its orders defining faculty bargaining units at all of the other state institutions of higher learning. Even though these units were certified in representation proceedings that permitted modifications to be made to the historical unit to reflect changes that have occurred since unit 218 was certified in 1976, the new units remain consistent with the prior statewide unit. See United Faculty of Florida v. University of West Florida Board of Trustees, 29 FPER ¶ 100 (2003); United Faculty of Florida v. University of Central Florida Board of Trustees, 29 FPER ¶ 105 (2003); United Faculty of Florida v. Florida Gulf Coast University, 29 FPER ¶ 120 (2003); United Faculty of Florida v. University of North Florida Board of Trustees, 29 FPER ¶ 124 (2003); United Faculty of Florida v. University of South Florida Board of Trustees, 29 FPER ¶ 146 (2003); United Faculty of Florida v. Florida State University Board of Trustees, 29 FPER ¶ 158 (2003); United Faculty of Florida v. New College of Florida Board of Trustees, 29 FPER ¶ 165 (2003); United Faculty of Florida v. Florida A&M University Board of Trustees, 29 FPER ¶ 189 (2003); United Faculty of Florida v. Florida International University Board of Trustees, 29 FPER ¶ 229 (2003); and United Faculty of Florida v.

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Florida Atlantic University Board of Trustees, 29 FPER ¶ 286 (2003). Similarly, as the record in case RC-2002-073 reflects, the parties disagree only upon the inclusion and exclusion of certain faculty and administrative employees that reflect changes in UFF's organizational structure since the historical unit was defined; they do not contend that a unit of faculty and other administrative and professional employees is no longer appropriate.

Were we to define an appropriate unit based upon the record in RC-2002-073, we would update the historical unit and direct an election, as we did in the orders cited above. However, the UFF seeks only to amend its original certification to reflect a new employer rather than to proceed on its representation-certification petition. Modifications to bargaining unit composition to reflect the UF's growth and organizational changes that have occurred since the unit was certified in 1976 may be addressed through the Commission's unit clarification process.<sup>3</sup> Therefore, UFBOT's exceptions one and three are denied.

For the reasons stated above, we conclude that the UFBOT is a successor employer to the FBOE, that there is substantial continuity in the employing enterprise, and that the bargaining unit of faculty and other professional and administrative employees remains appropriate for the purpose of collective bargaining. Therefore, we

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<sup>3</sup>The parties may wish to rely upon the record developed in RC-2002-073 in doing so.

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Incorporate the hearing officer's recommended order in AC-2005-003 as part of this order and GRANT the UFF's petition to amend certification 218 to reflect that the UFBOT is the employer of the following unit of employees at the University of Florida:

All employees in the following positions holding regular, visiting, provisional, research, affiliate, or joint appointments are included in this bargaining unit:

- 9001 – Professor
- 9002 – Associate Professor
- 9003 – Assistant Professor
- 9004 – Instructor
- 9005 – Lecturer
- 9006 – Graduate Research Professor
- 9007 – Distinguished Service Professor
- 9016 – University School Professor
- 9017 – University School Associate Professor
- 9018 – University School Assistant Professor
- 9019 – University School Instructor
- 9063 – Associate Chairperson and Professor
- 9064 – Associate Chairperson and Associate Professor
- 9065 – Associate Chairperson and Assistant Professor
- 9066 – Assistant Chairperson and Professor
- 9067 – Assistant Chairperson and Associate Professor
- 9068 – Assistant Chairperson and Assistant Professor
- 9069 – Assistant Chairperson and Instructor
- 9070 – Area Chairperson and Professor
- 9071 – Area Chairperson and Associate Professor
- 9072 – Area Chairperson and Assistant Professor
- 9115 – Coordinator
- 9116 – Coordinator and Professor
- 9117 – Coordinator and Associate Professor
- 9118 – Coordinator and Assistant Professor
- 9119 – Coordinator and Instructor
- 9120 – Associate in \_\_\_\_\_
- 9121 – Assistant in \_\_\_\_\_

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9126 – Program Director  
9127 – Program Director and Professor  
9128 – Program Director and Associate Professor  
9129 – Program Director and Assistant Professor  
9130 – Program Director and Instructor  
9144 – Athletic Head Coach  
9145 – Athletic Coach  
9147 – Assistant Athletic Coach  
9148 – Athletic Trainer  
9150 – Curator  
9151 – Associate Curator  
9152 – Assistant Curator  
9160 – Research Scholar/Scientist  
9161 – Associate Research Scholar/Scientist  
9162 – Assistant Research Scholar/Scientist  
9163 – Engineer  
9164 – Associate Engineer  
9165 – Assistant Engineer  
9166 – Research Associate  
9167 – Counselor/Advisor and Professor  
9168 – Counselor/Advisor and Associate Professor  
9169 – Counselor/Advisor and Assistant Professor  
9170 – Counselor/Advisor and Instructor  
9172 – Physician's Assistant in \_\_\_\_\_  
9173 – Counselor/Advisor  
9244 – Technical Marine Advisor  
9334 – Computer Research Specialist  
9380 – University Librarian  
9381 – Associate University Librarian  
9382 – Assistant University Librarian  
9383 – Instructor Librarian  
9394 – Cooperative Education Coordinator  
9395 – Curator  
9396 – Associate Curator  
9401 – Instructional Specialist  
9410 – Assistant Radio/Television News Director  
9419 – University Research Editor  
9420 – Research Associate  
9433 – Staff Musician  
9434 – University Counseling Psychologist

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9435 – Counselor to Students  
9460 – University Psychiatrist  
9461 – Clinical Psychologist  
9462 – University Physician  
9463 – University Veterinarian  
9464 – Physician's Assistant  
9475 – Staff Physicist  
9480 – Department Head and University Librarian  
9481 – Department Head and Associate University Librarian  
9482 – Department Head and Assistant University Librarian  
9484 – Assistant Department Head and University Librarian  
9485 – Assistant Department Head and Associate University Librarian  
9486 – Assistant Department Head and Assistant University Librarian  
9490 – University Dentist  
9495 – Student Counseling Specialist

Together with chairpersons (9060 – 9062) in the following colleges:

College of Liberal Arts and Sciences  
College of Education  
College of Business Administration  
College of Fine Arts  
College of Physical Education, Health and Recreation

All other employees of the University of Florida Board of Trustees are excluded from this bargaining unit.

Certification 1558 is issued to the UFF as the exclusive bargaining agent of these employees. Case no. RC-2002-073 is CLOSED,

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

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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 (2005), 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 September 9, 2005.

BY: James M. Faucel  
Clerk

/bjk

