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IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO.: 1D12-2116
L.T. CASE NO.: CA-2010-119

WALTER E. HEADLEY, JR., MIAMI
LODGE #20, FRATERNAL ORDER OF
POLICE, INC.,

Appellants,

vs.

CITY OF MIAMI,

Appellee.

_____ /

**CITY OF MIAMI'S MOTION FOR REMAND TO
PUBLIC EMPLOYEES RELATIONS COMMISSION**

The Appellee, City of Miami, by and through undersigned counsel, files its Motion for Remand to Public Employees Relations Commission, and states the following in support:

BACKGROUND

This case involves the City of Miami's declaration of a financial urgency pursuant to section 447.4095, Florida Statutes, requiring modification of a collective bargaining agreement with the Fraternal Order of Police (FOP). The

FOP filed an Unfair Labor Practice Charge (ULP) with the Public Employees Relations Commission (PERC).

PERC dismissed the ULP on the merits finding that the City was facing a financial urgency and that the City was permitted to modify the labor contract before completion of the impasse procedures under Chapter 447.

On appeal, this Court affirmed. Regarding the test for financial urgency, this Court considered whether the decision in Chiles v. United Faculty of Florida, 615 So. 2d 671 (Fla. 1993) applied to the determination of financial urgency pursuant to Section 447.4095. This Court adopted a test similar to Chiles, but found that the entirety of the Chiles test, which predated the enactment of Section 447.4095, was not the standard for determination the existence of a financial urgency. Regarding the timing of modification of the labor contract, this Court held that the labor contract could be modified prior to completion of the impasse resolution proceedings.

In Hollywood Firefighters, Local 1375, IAFF, Inc. v. City of Hollywood, 133 So. 3d 1042 (Fla. 4th DCA 2014), the Fourth District Court of Appeal certified conflict with this Court's opinion regarding the test for financial urgency. The Fourth District held that the entirety of the Chiles test governed the determination of whether the government was faced with a financial urgency under Section 447.4095.

The Florida Supreme Court accepted review based upon the conflict between the Fourth District and this case. On March 2, 2017, the Supreme Court quashed the decision of this Court and “remand[ed] the case for proceedings that are consistent with this decision.” The Supreme Court clarified that Section 447.4095 incorporated the entire test in Chiles that the government demonstrate no other reasonable alternative means of preserving the contract either in whole or in part. Further, the Court held that Section 447.4095 permits the unilateral implementation of changes to the contract only after the parties have completed the impasse resolution proceedings and failed to ratify the agreement.

ARGUMENT

The City has maintained in these proceedings that the financial situation faced by the City complied with the Chiles standard in any event. However, PERC did not reach this because it found that Chiles did not apply to Section 447.4095 which was enacted after Chiles. The Supreme Court clarified this issue by holding that Chiles applies.

The Florida Supreme Court in this case remanded “for proceedings that are consistent with this decision.” Since PERC has not applied the Chiles standard, this Court should remand to PERC for disposition or further remand to the hearing officer for consideration of the ULP consistent with the ruling of the Supreme

Court, and for consideration of any other issues that will need to be determined by PERC in any event.

Typically, when a case is reversed due to an erroneous interpretation of the law, the case is remanded to the agency for further proceedings. Section 120.68(7), Florida Statutes, governing judicial review, provides that the “Court shall remand a case to the agency for further proceedings consistent with the court’s decision or set aside agency action, as appropriate, when it finds that ...(d) the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action[.]”

When a case is remanded for proceedings consistent with an appellate mandate, the case is generally returned to the fact-finder. “When an order or judgment is reversed by an appellate court and the case is remanded, the lower tribunal has the authority to conduct further proceedings in accordance with the decision of the appellate court.” Padavano, Florida Appellate Practice, § 20:11 (2016 Ed.).

A decision to remand a case for reconsideration in light of a legal principal addressed in the decision of the appellate court also vests broad discretion in the lower tribunal. In this situation, the lower tribunal is generally permitted to consider not only the evidence previously submitted, but any additional evidence that may be presented by the parties following the remand. Unless a contrary intention is indicated in the opinion of the appellate court, a remand for reconsideration in light of a legal principal opens the case, once again, for the

consideration of evidence relevant and material to the point in question.

Id.

In Tampa Elec. Co. v. Crosby, 168 So. 2d 70, 73 (Fla. 1964), the Supreme Court stated that when a cause was remanded for further proceedings consistent with its opinion, “A remand of this type does not preclude a deputy from exercising a quasi-judicial discretion to receive additional testimony if he deems it necessary to enable him to comply with the mandate.” Further, the Court stated: “[W]hen the judgment of the reviewing court or commission merely remands for further consideration, without expressly restricting the trier of the facts, then the latter may, in his discretion, receive additional evidence.” Id.

The conflict case, Hollywood Firefighters, Local 1375, IAFF, Inc. v. City of Hollywood, 133 So. 3d 1042 (Fla. 4th DCA 2014), which was approved by the Supreme Court in this case, demonstrates this point. In Hollywood Firefighters, the Fourth District reversed and directed PERC to apply the Chiles standard in determining whether the City of Hollywood engaged in an unfair labor practice. Since Hollywood Firefighters was approved, this Court should follow the procedure of the Fourth District and remand to PERC for further proceedings consistent with the Supreme Court’s opinion.

Furthermore, separate from the application of the Chiles standard, there remain issues for PERC’s determination regarding the completion of the impasse

process. Hence, this case will need to be remanded to PERC for determination of those issues in any event. Accordingly, given that the Supreme Court has clarified the interpretation of Section 447.4095, the task of applying the Chiles standard, directing the hearing officer to conduct any additional proceedings, and determining remedies, if any, falls on PERC. This case should thus be remanded to PERC.

If this Court decides to make any determination on the application of the Chiles standard to the facts of this case, the City submits, as it has all along, that the financial crisis faced by the City complied with all aspects of the Chiles test. If this Court intends to consider this issue, or any other issues, the City respectfully requests an opportunity to present supplemental briefing on any issues to be considered by the Court, as well as an opportunity for oral argument.

CONCLUSION

WHEREFORE, the Appellee, City of Miami, respectfully requests that this Court grant the City of Miami's Motion to Remand to Public Employees Relations Commission, and enter an Order remanding this case to the Public Employees Relations Commission. If this Court intends to consider any issues on remand, the City requests an opportunity for supplemental briefing and oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been emailed on this 24th day of March, 2017 to:

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