

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

BROWARD COUNTY POLICE
BENEVOLENT ASSOCIATION,
a Florida not-for-profit corporation,

Plaintiff,

CASE NO.: 11-27723 CACE (18)

HON. MICHELE TOWBIN SINGER

vs.

CITY OF HOLLYWOOD,
a Florida municipal corporation,

Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

THIS CAUSE came before the court on City of Hollywood's ("Defendant") motion to dismiss complaint. The court having considered the briefs filed by the parties, having heard argument of counsel, and being duly advised in premises and law, finds and decides as follows:

On November 9, 2011 Broward County Police Benevolent Association ("Plaintiff") filed suit against Defendant alleging two claims for declaratory judgment and one claim for mandatory injunction. On December 8, 2011, Defendant filed its motion to dismiss Plaintiff's complaint. On January 11, 2012, Plaintiff filed its response to Defendant's motion to dismiss. This Court heard argument of counsel on April 17, 2012.

The law is well settled that "the function of a motion to dismiss a complaint is to raise a question of law as to the sufficiency of the facts alleged to state a cause of action." *Hitt v. North Broward Hospital District*, 387 So. 2d 482, 483 (Fla. 4th DCA 1980). "The motion admits as true all well pleaded facts as well as all reasonable inferences arising from those facts." *Id.* "The allegations must be construed in the light most favorable to plaintiffs and the trial court must not speculate what the true facts may be or what will be proved ultimately in trial of the cause." *Id.*

A motion to dismiss is not a substitute for a motion for summary judgment. *Baycon Industries, Inc. v. Shea*, 714 So. 2d 1094 (Fla. 2d DCA 1998). In ruling on a motion to dismiss a complaint, the trial court is confined to consideration of the allegations found in the four corners of the complaint. *Baycon, supra*.

In support of its motion to dismiss, Defendant argues that the allegations contained in Plaintiff's complaint is a matter within the exclusive jurisdiction of the Florida Public Employees Relations Commission ("PERC") which was established, "to provide an exclusive method for resolving labor disputes between public employers and public employees, with [PERC] having preemptive jurisdiction over such matters if such activities are 'arguably' covered under Chapter 447, Florida Statutes." Next, Defendant argues that Plaintiff has failed to exhaust its administrative remedies and therefore, the court lacks subject matter jurisdiction pursuant to *Dist. Bd. Of Trs. of Broward Cmty. Coll. v. Caldwell*, 959 So. 2d 767, 769-70 (Fla. 4th DCA 2007).

In response, Plaintiff argues that the complaint does not seek a determination on the constitutionality of any law or regulation. Rather, it alleges it is entitled to a declaration of its rights which are affected by the illegal and unauthorized exercise of power by Defendant in light of sections 112.61, 112.66, Florida Statutes. Next, Plaintiff argues that it is not prevented from pursuing its right to declaratory judgment when the Defendant continues to believe it has the power to circumvent sections 112.61, 112.66, Florida Statutes. Last, Plaintiff argues there is no available or adequate administrative remedy to be utilized.

The Florida Public Employees Relation Commission ("PERC") was established "to provide an exclusive method for resolving labor disputes between public employers and public employees, with [PERC] having preemptive jurisdiction over such matters if such activities are

'arguably' covered under Chapter 447, Florida Statutes." *See Maxwell v. School Board of Broward County*, 330 So. 2d 177, 179 (Fla. 4th DCA 1976).

In determining whether Plaintiff's claims are arguably covered under Chapter 447, Florida Statutes, this Court revisits each of Plaintiff's claims. Count I seeks a declaration of Plaintiff's rights and those of its members in accordance with sections 86.011, 112.66, Florida Statutes, stating that the Defendant has failed to fulfill its obligations under the collective bargaining agreement for the year 2006 and Ordinance No. 0-2007-15. Count II seeks a declaration of Plaintiff's rights and those of its members in accordance with sections 86.011 to determine whether Defendant had the power to approve an ordinance which invalidates a section of the collective bargaining agreement. Count III seeks a mandatory injunction directing the Defendant to either withdraw and hold worthless the provisions in Ordinance No. 0-2007-15 or in the alternative, declare that the contractual terms of the 2006 Broward County PBA collective bargaining agreement to be null and void. Likewise, each of Plaintiff's three claims against Defendant seek to resolve an apparent conflict between Ordinance No. 0-2007-15 and Plaintiff's collective bargaining agreement. Section 447.309(3), Florida Statutes provides:

"If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective."

Accordingly, since Plaintiff's two counts for declaratory relief and one count for mandatory injunction seek to resolve the conflict between the ordinance and collective bargaining agreement, its claims are 'arguably', if not squarely covered under chapter 447, Florida Statutes. Although not every dispute gives rise to the preemption of PERC, we find that Plaintiff's claims

are in fact, preempted. Therefore, finding no jurisdictional deferral by PERC, PERC has exclusive subject matter jurisdiction to resolve Plaintiff's claims.

Under Florida law, there are three recognized exceptions to the rule requiring the exhaustion of administrative remedies. *See Caldwell*, 959 So. 2d at 770. The first is where the party seeking to bypass the usual administrative channels can demonstrate that no adequate administrative remedy remains available under Chapter 120. *Id.* The second is where an agency acts without colorable statutory authority clearly in excess of its delegated powers. *Id.* The third applies to constitutional issues. *Id.* (citing *Fla. Dep't of Agric. & Consumer Servs. v. City of Pompano Beach*, 792 So. 2d 539, 545-47 (Fla. 4th DCA 2001)). By its own admission, Plaintiff does not satisfy one of three recognized exceptions requiring exhaustion of administrative remedies, stating, "[the] complaint does not seek a determination on the constitutionality of any law or regulation and does not seek an advisory opinion by the court." *See* Pl.'s Resp. to Mot. To Dismiss. Plaintiff has also failed to show that the usual administrative channels will not provide an adequate administrative remedy. This Court disagrees with Plaintiff's assertion that there are no available adequate administrative remedies. Plaintiff is required to exhaust its administrative remedies before bringing an action in the Florida Courts. Accordingly, it is hereby

ORDERED and ADJUDGED that Defendant's motion to dismiss is **GRANTED**. Plaintiff's complaint is **DISMISSED**.

DONE and ORDERED in Chambers, Fort Lauderdale, Florida this ~~15th~~ **MICHELE TOWBIN SINGER** 2.

MAY 16 2012

A TRUE COPY

MICHELE TOWBIN SINGER
CIRCUIT COURT JUDGE

Copies furnished to:

David C. Miller, Esq., Bryant Miller Olive, 1 S.E. 3rd Avenue, Suite 2200, Miami, Florida 33131
Rhea P. Grossman, Esq., Rhea P. Grossman, P.A., 2650 West State Road 84, Suite 103, Fort
Lauderdale, Florida 33312