

to those employees in the State Career Service System. However, the faculty, administrative, and professional employees had the option of electing not to participate in collective bargaining.

In 1985, the Board of Regents was designated the public employer for all public employees in the State University System. Several labor organizations sought to represent the various employees of the State University System through separate bargaining units made necessary by the change in employer from the Governor to the Board of Regents. The Board of Regents voluntarily recognized the appropriateness of the various bargaining units and the representative labor organizations. PERC approved the appropriateness of the bargaining units. Accordingly, the Board of Regents negotiated and entered into various collective bargaining agreements with the respective labor organizations.

On July 1, 2001, the Board of Regents was dissolved. All existing contracts of the Board of Regents were transferred by a type two transfer to the Florida Board of Education. The Florida Board of Education was specifically designated the successor employer for all collective bargaining agreements currently in effect with the Board of Regents. (s. 10, ch. 2001-170).

The 2002 Legislature repealed the successor employer designation and designated the university board of trustees as the public employer with respect to all public employees of a state university. (s. 440.203(2), F.S.).

Many of the collective bargaining agreements originally entered into by the Board of Regents have expired. The labor organizations have filed petitions with PERC seeking to be certified to represent the various bargaining units at the local institutional level. Several state universities have refused to negotiate with the labor organizations until they are certified. These institutions have alleged that the labor organizations should not be properly certified until the unions conduct elections. The institutions, relying on the fact that the original elections votes were never conducted at the institutional level but at the State University System level, believe that the labor organizations have not demonstrated that they possess sufficient votes to represent the employees in the collective bargaining process. In particular, Florida Gulf Coast University did not even exist at the time of the original vote. In addition, the previous successor employer situation involving the Board of Regents had two additional elements not present in the current successor employer issue: (1) the transfer from the Governor to the Board of Regents involved a change in the executive bargaining unit from one central executive to another and (2) the Board of Regents voluntarily recognized the labor organizations. The labor organizations do not want to incur the additional expense of conducting elections. The petitions are currently pending.

The Successor Doctrine

Even though s. 447.203, F.S., designates a university board of trustees as the public employer for all public employees of its constituent state university, the change in public employer raises a question concerning the continued representation of the labor organization. In order to determine the continued viability of the collective bargaining agreement and provide certainty in labor issues, the courts, borrowing from federal law, created the successor doctrine. When an employer changes, the successor doctrine is applied to determine whether the bargaining unit remains appropriate. Application of the successor doctrine would require the successor employer to commence negotiations with the certified labor organization and would relieve that labor organization from the necessity of reestablishing majority support from the employees through

an election petition. The central question of the successor doctrine is whether the change in the employer affects the nature of the enterprise as measured by the retention of the predecessor's employees in the same jobs, operation of the same facilities, use of the same supervisors, and manufacture of the same type of product. Jacksonville Employees Together v. Jacksonville Electric Authority, 25 FPER ¶ 30180, 374 (1999). The appropriateness of the bargaining unit depends on the totality of the circumstances. In re Central Florida Regional Transportation Authority, 25 FPER ¶ 30084, 193 (1999). Essentially, if there is no change in the basic operations, the successor employer must bargain with the prior union. Jacksonville Employees Together v. Jacksonville Electric Authority, 25 FPER ¶ 30180 at 374. However, the successor employer's obligation to bargain does not commence until PERC certifies the employee organization as the exclusive bargaining unit. In re City of Lake Worth, 11 FPER ¶ 16024, 87 (1984). The labor organization would need to file a petition to amend its prior certification to reflect the new public employer and the composition of the bargaining unit. Once the labor organization is properly certified, the successor employer must bargain with the labor organization until the certification is revoked or otherwise removed by PERC. Id. Finally, an employer's reduction in size does not, in of itself, vitiate a presumption of majority support for the incumbent union. See Jacksonville Employees Together v. Jacksonville Electric Authority, 25 FPER ¶ 30180 at 374.

III. Effect of Proposed Changes:

Section 1

The bill would designate the university boards of trustees as the successor public employers to the Florida Board of Education for all public employees of the respective state universities. This would require the university boards of trustees to honor the terms of the existing contracts with the bargaining units notwithstanding whether the composition of the bargaining units has changed or the agreement has expired. In addition, in combination with section two of the bill, the university boards of trustees would be required to honor conditions of employment not subject to collective bargaining. Section two requires the public employer to honor the terms and conditions of employment including the terms of the collective bargaining agreement; rather than requiring the public employer to honor the terms and conditions of the collective bargaining agreement.

Section 2

The bill provides that if there is a material change in the identity or structure of a public employer, the successor public employer shall maintain the existing wages, hours, terms, and conditions of employment, including the terms of the collective bargaining agreement, which are in effect at the time of the change for all public employees represented by a certified bargaining unit.

This provision appears to be drawn to revise the successor doctrine. If there is a material change in the identity or structure of a public employer, the new entity may not be the successor employer. Under current law, if the new employer is not the successor employer or does not voluntarily recognize the appropriateness of the bargaining unit, the labor organization would be required to conduct elections to determine if they possess majority support of the employees, and the union would be required to file a certification petition with PERC to be recognized as the certified bargaining agent. If the new employer is a successor employer, the new employer

would be required to conduct negotiations with the labor organization. However, the bill acts to create a presumption that the new employer is the successor employer until PERC decides otherwise. Moreover, the bill expands the successor employer's obligations to require the successor employer to honor the terms of the agreement beyond the contract expiration date.

The bill requires the successor employer to continue to bargain, upon proper request, with the certified bargaining unit over any changes in the terms and conditions until PERC determines that the new employer is not a successor employer. This provision appears to be drawn to shift the certification burden onto the public employer. This provision may need clarification. The bill requires the new entity to continue to bargain with the certified union; however, it defines the new entity as the successor employer, a legal conclusion that PERC determines. Therefore, the new employer would not be required to negotiate or honor the outstanding employment conditions until PERC determines that the new employer is the successor employer. If read in this manner, the provision would not change current law. The provision could be clarified to indicate that the new employer is required to honor existing employment conditions until PERC determines that the new employer is not the successor employer.

In any event, the state universities would be required to negotiate with the current labor organizations and honor all existing employment conditions because the bill designates them as the successor employers.

Section 3

The bill takes effect July 1, 2003. Accordingly, the bill may be interpreted as affecting petitions currently pending before PERC.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be challenged for an alleged violation of the contracts clause, s. 10, Art. I of the State Constitution, because the bill requires a successor employer to honor the terms of the collective bargaining agreement notwithstanding the expiration of the contract. The contract may provide otherwise.

The bill could be construed as requiring the new employer to negotiate with a labor organization that no longer wishes to represent the employees. An argument could be

made that forcing the new employer to negotiate with a union that no longer represents the will of the majority of the employees would violate s. 6, Art. I of the State Constitution, an abridgement of the rights of employees to bargain collectively.

Section 21, Art. I of the State Constitution provides the right of access to the courts for redress of any injury. The bill's effective date would encompass those certification petitions that have been filed and pending before PERC or the courts. Accordingly, the bill would foreclose the rights of those individuals operating under the previous law in potential derogation of their due process rights and right to access to the courts.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the interpretation of the bill, labor organizations may not be required to conduct elections.

C. Government Sector Impact:

Depending on the interpretation of the bill, the public employers may be required to honor existing employment conditions including the terms of the collective bargaining agreement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On page 2, lines 13 and 18, consideration may be given to substituting the term "successor" with the term "new." This may give the bill its intended effect.

VIII. Amendments:

None.