

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

INTERNATIONAL UNION OF
POLICE ASSOCIATIONS, AFL-CIO,

Charging Party,

v.

SHERIFF OF BROWARD COUNTY,

Respondent.

Case No. CA-2016-040

FINAL ORDER

Order Number: 17U-155

Date Issued: June 14, 2017

Holly E. Van Horsten, Sarasota, attorney for charging party.

David L. Ferguson and Seth D. Haimovitch, Fort Lauderdale, attorneys for respondent.

On September 16, 2016, the International Union of Police Associations, AFL-CIO (Union), filed an unfair labor practice charge with the Public Employees Relations Commission (Commission) alleging that the Sheriff of Broward County (Sheriff) violated Section 447.501(1)(a) and (c), Florida Statutes (2016).¹ The Commission's General Counsel found the charge sufficient, a hearing officer was appointed, and an evidentiary hearing was conducted by telephone. Both parties requested an award of attorney's fees and costs.

On March 21, 2017, the hearing officer issued a recommended order finding that the Sheriff had both a firearms loaner agreement and a firearms loaner policy.² The hearing officer concluded that the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes, as to the firearms loaner policy but not the firearms loaner agreement.

¹All statutory citations are to the 2016 edition of the Florida Statutes.

²The recommended order refers to the loaning of firearms as a "program." The use of the term "program" merged these two concepts.

On April 5, the Sheriff filed one exception to the recommended order. The Sheriff does not except to any of the factual findings or to the hearing officer's conclusion that it violated Section 447.501(1)(a) and (c), Florida Statutes. Rather, the Sheriff excepts to the hearing officer requiring it to bargain in good faith and to bargain with the Union over the unilateral change to the firearms loaner policy in accordance with the Union's request to bargain. The Union did not file any exceptions or a response.

A transcript of the hearing was not filed. In the absence of a transcript, we accept the hearing officer's findings of fact and that the proceeding satisfied the essential requirements of law. § 120.57(1)(l), Fla. Stat.

We first consider the alleged unilateral alteration of the firearms loaner agreement. The loaner agreement states in pertinent part: "I understand this loan agreement may be nullified at any time by the Sheriff or designee." The hearing officer concluded that on April 12, 2016, the Sheriff did not violate Section 447.501(1)(a) and (c), Florida Statutes, by rescinding the deputies' firearms loaner agreements, and he awarded the Sheriff's attorney's fees and costs. To the extent that the Union alleged an unlawful unilateral alteration to the loaner agreements, we agree with the hearing officer that the Sheriff had the right to rescind those agreements, and pursuant to those agreements, the Sheriff is not compelled to return the loaner firearms to the deputies. However, for the reasons set forth later in this order, we do not agree that the Sheriff is entitled to an award of attorney's fees and costs.

We next consider the alleged unilateral change to the firearms loaner policy. We disagree with the hearing officer's analysis of the unilateral change to the firearms loaner

policy as a failure to bargain charge instead of a unilateral change charge. We find that our substituted analysis below regarding the firearms loaner policy and our conclusion of law regarding attorney's fees are more reasonable than those of the hearing officer; therefore, we substitute our analysis and conclusions of law on these issues.

§ 120.57(1)(l), Fla. Stat.

The hearing officer found that on the same day that the firearms loaner agreements were rescinded, April 12, 2016, the Sheriff issued a memorandum unilaterally changing the firearms loaner policy. This unilateral change of the firearms loaner policy occurred while negotiations were on-going between the Union and the Sheriff for an initial collective bargaining agreement. The Union's president contacted the Sheriff's representatives, objected to the change, and demanded bargaining. The Sheriff refused to bargain over the changes to the firearms loaner policy. The hearing officer concluded that the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes, by failing or refusing to bargain in good faith over the changes to the firearms loaner policy. The hearing officer awarded the Union its attorney's fees and costs.

The Union alleged an unlawful unilateral change in the firearms loaner policy and demanded a return to the status quo ante; therefore, we reject the hearing officer's use of a refusal to bargain analysis instead of a unilateral change analysis. In our analysis that follows, we have relied solely on the hearing officer's factual findings. Although we have changed the legal analysis, we ultimately reach the same result: the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes.

There are few things more fundamental to the relationship between the Sheriff and its deputies than whether the Sheriff will provide deputies with access to a duty firearm and whether a deputy must spend his or her own money to purchase a fundamentally necessary piece of equipment for performance of required duties. The hearing officer's facts support the Union's contention that the Sheriff had an unequivocal policy of loaning firearms to deputies that had existed substantially unvaried for a significant period of time (since 2002), and in April 2016, the deputies could reasonably have expected the practice to continue unchanged. See, e.g., *Communications Workers of America, AFL-CIO, CLC v. City of Gainesville*, 65 So. 3d 1070, 1075 (Fla. 1st DCA 2011) (reiterating the Commission's standard for establishing a past practice: (1) the practice must be unequivocal; (2) in existence substantially unvaried for a significant period of time; and (3) the bargaining unit employees could reasonably have expected the practice to continue unchanged). Thus, we agree with the hearing officer that the Sheriff's firearms loaner policy, that is, loaning a firearm to the deputies for official duties, constituted the status quo. Consequently, the Sheriff violated Section 447.501(1)(a) and (c), Florida Statutes, on April 12, when it unilaterally changed the firearms loaner policy by restricting the circumstances under which it would loan a firearm.

In its sole exception, the Sheriff does not except to the hearing officer's conclusion that it violated Section 447.501(1)(a) and (c), Florida Statutes, on April 12, when it unilaterally changed the firearms loaner policy. Rather, the exception is to the hearing officer's recommended remedy to require the Sheriff to utilize the statutory bargaining process including the impasse procedure if the parties failed to reach agreement in

negotiations. This is the remedy for a refusal to bargain charge. The remedy in a unilateral change case is to return the parties to the status quo ante immediately preceding the unlawful unilateral change. *See, e.g., Polk Education Association, Inc. v. School District of Polk County, Florida*, 36 FPER ¶ 260 (2010). Thus, the Sheriff's exception is granted in part and denied in part. The Sheriff is directed to re-establish the firearms loaner policy in effect immediately prior to the unilateral change to that policy on April 12, 2016.

The final issue to resolve is whether either party is entitled to an award of attorney's fees and costs of litigation. The hearing officer ruled that the Sheriff is entitled to attorney's fees and costs for the portion of the charge pertaining to the firearms loaner agreements and the Union is entitled to attorney's fees and costs for the portion of the charge pertaining to the firearms loaner policy. The Sheriff's lawful rescission of the firearms loaner agreements was implemented in conjunction with its unlawful unilateral change in the firearms loaner policy. Under these circumstances, we do not believe that it would promote a harmonious and a cooperative relationship between the parties, as required by Section 447.201, Florida Statutes, to continue litigating a pro rata award of attorney's fees and costs to both parties. Accordingly, we exercise our discretion and reject the hearing officer's partial awards of fees and costs to both parties. *See* § 447.503(6)(c), Fla. Stat.

Like the hearing officer, we conclude that the Sheriff engaged in an unfair labor practice in violation of Section 447.501(1)(a) and (c), Florida Statutes, when it unilaterally changed the firearms loaner policy, and the Commission orders that the Sheriff shall:

1. Cease and desist from:
 - (a) Unilaterally changing the firearms loaner policy for employees represented by the International Union of Police Associations, AFL-CIO; and
 - (b) In any like or related manner interfering with, restraining, or coercing bargaining unit members in the exercise of any rights guaranteed them under Chapter 447, Part II, Florida Statutes.

2. Take the following affirmative action:
 - (a) Re-establish the firearms loaner policy in effect prior to the Sheriff's unilateral change on April 12, 2016, for the employees represented by the International Union of Police Associations, AFL-CIO;³ and
 - (b) Provide immediately to bargaining unit members in the manner in which the Sheriff customarily communicates with them, the contents of the **Notice to Employees** attached to this order stating that the Sheriff shall cease and desist from its actions set forth in paragraphs 1(a) and (b), and will take the affirmative action set for in paragraph 2. The notice shall include the name of the Sheriff's authorized representative. If the notice is by posting, copies of the enclosed **Notice to Employees** will be posted immediately for sixty (60) consecutive days in conspicuous locations where notices to employees are customarily posted. The Sheriff shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by other materials. Copies of the posted notices shall be signed by the Sheriff's authorized representative prior to posting.⁴

³Pursuant to the terms of the firearms loaner agreements, the Sheriff is not compelled to return the loaner guns to the deputies.

⁴See *School District of Orange County v. Orange County Classroom Teachers Association*, 146 So. 3d 1203 (Fla. 4th DCA 2014) (questioning the practicality of requiring the actual posting of notices given the advancement in modern technology).

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 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, and the Florida Rules of Appellate Procedure.

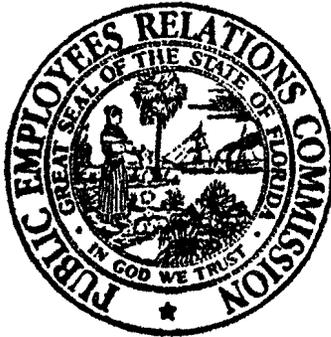
It is so ordered.

POOLE, Chair, BAX and KISER, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on June 14, 2017.

BY: Barry Edmund
Clerk

/rlb



NOTICE TO EMPLOYEES



POSTED PURSUANT TO AN ORDER OF THE
PUBLIC EMPLOYEES RELATIONS COMMISSION

AN AGENCY OF THE STATE OF FLORIDA

AFTER A HEARING IN WHICH ALL PARTIES HAD AN OPPORTUNITY TO PRESENT EVIDENCE, IT HAS BEEN DETERMINED THAT WE HAVE VIOLATED THE LAW AND WE HAVE BEEN ORDERED TO POST THIS NOTICE. WE INTEND TO CARRY OUT THE ORDER OF THE PUBLIC EMPLOYEES RELATIONS COMMISSION AND ABIDE BY THE FOLLOWING:

WE WILL NOT unilaterally change the firearms loaner policy for employees represented by the International Union of Police Associations, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce public employees in the exercise of any right guaranteed them under Chapter 447, Part II, Florida Statutes.

WE WILL re-establish the firearms loaner policy in effect prior to the Sheriff's unilateral change on April 12, 2016, for the employees represented by the International Union of Police Associations, AFL-CIO.

SHERIFF OF BROWARD COUNTY

DATE

BY

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for **60** consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission.

(ULP)

**** Transmit Conf. Report ****

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Jun 14 2017 04:20pm

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STATE OF FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION	
4708 Capital Circle Northwest, Suite 300 Tallahassee, Florida 32303 850.488.8641 Fax: 850.488.9704 www.perc.myflorida.com	
To: Holly E. Van Horsten Associate General Counsel, IUPA, AFL-CIO	From: Office of the Clerk Public Employees Relations Commission
Fax: (754)200-8802	Pages: 8
Phone: (954)960-3257	Date: 06/14/2017
Case: CA-16-040	Re: Final Order
Comments:	
NOTICE: If you have received this facsimile communication in error, please contact the Public Employees Relations Commission, Office of the Clerk, 850.488.8641.	
<h1>facsimile</h1>	

**** Transmit Conf. Report ****

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Jun 14 2017 04:23pm

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STATE OF FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION	
4708 Capital Circle Northwest, Suite 300 Tallahassee, Florida 32303 850.488.8641 Fax: 850.488.9704 www.perc.myflorida.com	
To: David L. Ferguson Seth D Haimovitch Kopelowitz Ostrow Ferguson Weiselberg Gilbert	From: Office of the Clerk Public Employees Relations Commission
Fax: (954)525-4300	Pages: 8
Phone: (954)525-4100	Date: 06/14/2017
Case: CA-16-040	Re: Final Order
Comments:	
NOTICE: If you have received this facsimile communication in error, please contact the Public Employees Relations Commission, Office of the Clerk, 850.488.8641.	
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