

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

GEORGE WILLIAMS, MEGAN ALLEN,  
KEVIN DOYLE, LORI GOODWIN,  
ADAM TEICHNER, BRIAN ENGLAND,  
MARTHA BAKER, MAGALIE VANCOL PENA,  
ROLANDO TABARES, ALLEN JONES,  
and JUAN BASO, individually and  
on behalf of all other individually similarly situated,

Plaintiffs,

Case No. 2011-CA-1584

JOHN PARK; RANDALL HAIRE;  
CHARLES E. BROOKFIELD LODGE #86,  
FRATERNAL ORDER OF POLICE; BRETT SANDLIN;  
RODNEY DURBIN; the GOVERNMENT SUPERVISORS  
ASSOCIATION OF FLORIDA, OFFICE AND  
PROFESSIONAL EMPLOYEES INTERNATIONAL  
UNION, LOCAL 100; GREGORY L. BLACKMAN;  
the FLORIDA NURSES ASSOCIATION,  
DEBORAH HOGAN, INTERNATIONAL UNION  
OF POLICE ASSOCIATIONS, AFL-CIO,  
JASON CANON, JOSEPH PADUANO,  
GARY PENNY, STEVEN HEMLER,  
MICHAEL AGOSTINIS, FREDRICK McCRONE,  
and MARK TARVER,

Intervenors/Plaintiffs,

vs.

RICK SCOTT, JEFF ATWATER, and  
PAM BONDI, in their capacities as  
the STATE BOARD OF ADMINISTRATION,  
JEFF ATWATER, as Chief Financial Officer  
of Florida, and JOHN P. MILES, Secretary  
of the Department of Management Services and  
Administrator of the Florida Retirement  
System,

Defendants.

\_\_\_\_\_ /

**INTERVENING PLAINTIFF DURBIN'S SUPPLEMENT TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

FILED  
11 SEP 20 PM 1:26  
CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

IN COMPUTER  
D.B.

Intervening Plaintiff Rodney Durbin (“Durbin”) submits the following Supplement to the Motion for Summary and Incorporated Memorandum of Law on Behalf of Plaintiffs and Intervening Plaintiffs Park and Haire<sup>1</sup>.

### **UNDISPUTED FACTS**

1. Prior to July 1, 2009, through at least August 30, 2011, Durbin has been an employee of the State of Florida. (Defendants’ Responses to Durbin’s First Request for Admissions).

2. The State of Florida and the Florida State Fire Service Association (“FSFSA”) are parties to a contract dated July 1, 2009 through June 30, 2012. (Exhibit “A”; hereinafter the “contract”<sup>2</sup>)

3. By its terms, the contract is a collective bargaining agreement negotiated pursuant to “Part II, Chapter 447, Florida Statutes, which provide[s] statutory implementation of Section 6, Article I of the Constitution of the State of Florida”. (Exhibit “A” at p. 4 (“Preamble”)) (underscoring supplied).

4. From July 1, 2009, through at least August 30, 2011, Durbin has been an “employee” within the meaning of Article 1 of the contract<sup>3</sup>. (Defendants’ Response to Durbin’s First Request for Admissions). The contract governed Durbin’s employment with the State of Florida as of July 1, 2011. (Durbin’s Answers to Defendants’ Second Request for Admissions).

---

<sup>1</sup> Durbin has simultaneously herewith filed his Notice of Adoption of the Motion for Summary Judgment and Incorporated Memorandum of Law on Behalf of Plaintiffs and Intervening Plaintiffs Park and Haire.

<sup>2</sup> Exhibit “A” is attached hereto and is not in dispute as the contract governing Durbin’s employment. (Durbin’s Answers to Defendants’ Second Request for Admissions).

<sup>3</sup> Article 1 is the contract’s “Recognition” clause, which provides that the State “recognizes FSFSA as the exclusive representative for the purposes of collective bargaining with respect to wages, hours and terms and conditions of employment for all employees [including Durbin] included in the Florida State Fire Service Association Bargaining Unit.” (Exhibit “A” at p. 4).

5. Article 16 of the contract provides that “[a]ll bargaining unit members shall continue to participate in the Florida Retirement System (FRS) at no cost to the employee.” (Exhibit “A”, Article 16 at p. 23).

6. Notwithstanding the terms of the contract, on or about July 1, 2011, Durbin was no longer permitted to participate in FRS at no cost, and Durbin’s compensation was in turn reduced by 3% to permit his continued participation in FRS<sup>4</sup>. (Durbin’s Verified Response to Defendants’ First Set of Interrogatories).

### ARGUMENT

Durbin is an employee of the State of Florida, as well as an “employee” in the bargaining unit covered by the collective bargaining agreement between the State of Florida and the Florida State Fire Service Association (“FSFSA”) effective 2009 through 2011 (Exhibit “A”, hereinafter the “contract”). The contract plainly states that “[a]ll bargaining unit members [which would include Durbin] shall continue to participate in the Florida Retirement System (FRS) at no cost to the employee.” (Exhibit “A”, Article 16 at p. 23). However, solely by virtue of the adoption of Chapter 2011-68: (1) Article 16 of the contract was rendered a nullity *and* (2), without any collective bargaining<sup>5</sup>, Durbin and all other FSFSA bargaining unit members automatically lost approximately 3% of their income to continue participation in the Florida Retirement System. Hence, Chapter 2011-68 unconstitutionally abridges the right of employees under Article 1, section 6 to effectively negotiate over retirement issues.

**Dated: September 20, 2011**

---

<sup>4</sup> There is no dispute that this reduction is solely the result of Chapter 2011-68.

<sup>5</sup> It is settled that retirement issues are mandatory subjects of bargaining, and a state statute removing such subjects from the realm of collective bargaining violates article 1, section 6 of the Florida Constitution. *City of Tallahassee v. Public Employees Relations Commission*, 410 So.2d 487 (Fla. 1981).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of September, 2011, a copy of the foregoing has been furnished by electronic and U.S. mail to the following:

Jonathan G. Rose  
David R. Godofsky  
Alston & Bird LLP  
950 F Street, N.W.  
Washington, D.C. 20004  
[jonathan.rose@alston.com](mailto:jonathan.rose@alston.com)

Blaine Winship, Esq.  
The Capitol, Office of the Attorney General  
400 S Monroe St Ste PL-01  
Tallahassee, Florida 323996536  
[blaine.winship@myfloridalegal.com](mailto:blaine.winship@myfloridalegal.com)

Ronald Meyer, Esq.  
Jennifer S. Blohm, Esq.  
Lynn C. Hearn, Esq.  
Meyers, Brooks, Demma and Blohm, P.A.  
131 N. Gadsden Street  
Tallahassee, FL 32301  
[rmeyer@meyerbrookslaw.com](mailto:rmeyer@meyerbrookslaw.com)

Richard A. Sicking, Esq.  
1313 Ponce de Leon Blvd., #300  
Coral Gables, Florida 33134  
[sickingpa@aol.com](mailto:sickingpa@aol.com)

G. Hal Johnson  
300 East Brevard Street  
Tallahassee, Florida 32301  
[hal@flpba.org](mailto:hal@flpba.org)


Gary Wilson, Esq.  
Jill S. Schwartz & Associates, P.A.  
180 North Park Ave., Suite 200  
Winter Park, Florida 32789  
[gwilson@schwartzlawfirm.net](mailto:gwilson@schwartzlawfirm.net)

Donald D. Slesnick, Esq.  
Slesnick & Casey, LLP  
2701 Ponce De Leon Blvd., Suite 200  
Coral Gables, Florida 33134  
[donslesnick@sellp.com](mailto:donslesnick@sellp.com)

Aaron Nisenson, Esq.  
Int'l. Union of Police Associations  
1549 Ringling Blvd., Suite 600  
Sarasota, Florida 34236  
[anisenson@iupa.org](mailto:anisenson@iupa.org)

Osnat K. Rind  
Phillips, Richard & Rind, P.A.  
9360 SW 72<sup>nd</sup> Street, Suite 283  
Miami, Florida 33173  
[orind@phillipsrichard.com](mailto:orind@phillipsrichard.com)

Respectfully submitted by:

  
Richard Siwica, Esquire  
FL Bar No. 377341  
EGAN, LEV & SIWICA, P.A.  
Post Office Box 2231  
Orlando, FL 32802  
Telephone: (407) 422-1400  
Facsimile: (407) 422-3658  
[rsiwica@eganlev.com](mailto:rsiwica@eganlev.com)