



supporting his motion for summary judgment for which there is no question of material fact.

4. In 1978, the Florida legislature adopted Part VII of Chapter 112 which has the short title the "Florida Protection of Public Employee Retirement Benefits Act"<sup>1</sup>. It contains Section 112.66(5); Fla. Stat., which provides:

A civil action may be brought by a member or beneficiary of a retirement system or plan to recover benefits due to him or her under the terms of his or her retirement system or plan, to enforce the member's or beneficiary's rights, or to clarify his or her rights to future benefits under the terms of the retirement system or plan.

5. Brett Sandlin is a firefighter employed by Alachua County, Florida. He currently is, and has been, a special risk member of the Florida Retirement System since 1997. He is a member of Local 3852 of the International Association of Fire Fighters, AFL-CIO. He is also the president of Local 3852. Sandlin is a beneficiary of a collective bargaining agreement (CBA) between Alachua County, Florida, and Local 3852, covering the period October 1, 2010, through September 30, 2013.

6. The CBA for the period October 1, 2010, through September 30, 2013, provides that the pension plan covering Sandlin is the Florida Retirement System, which was entirely employer contributory on October 1, 2010.

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<sup>1</sup> §112.60, Fla. Stat.

7. SB 2100 changed the Florida Retirement System from being entirely employer contributory to being partially employee contributory

8. There was no collective bargaining concerning this change in Sandlin's pension plan, the Florida Retirement System, which is the pension plan provided for in the CBA covering October 1, 2010, through September 30, 2013

9. There has been no change in the CBA covering Sandlin's employment with Alachua County from October 1, 2010, through September 30, 2013.

10. On July 1, 2011, Alachua County began deducting 3% of Sandlin's payroll which is now required by SB 1200 as his contribution to the Florida Retirement System.

11. Article I, Section 6, of the Florida Constitution provides:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

12. The Supreme Court of Florida decided in *Ryan I*<sup>2</sup> that under Article I, Section 6, Fla. Const., public employees had the same constitutional right to bargain collectively as did private employees, except the right to strike, and that this constitutional right required legislative implementation. Thereafter, the Florida legislature stumbled for three sessions on this such

that the Supreme Court of Florida decided in *Ryan II*<sup>3</sup> that the legislature must implement this constitutional right or the Supreme Court would do it for them. *Ryan II*, at 688. In 1974, the Florida legislature adopted the Florida Public Employee Relations Act (§447.201 et seq., Fla. Stat.). When they did so, the Florida legislature prohibited public employers and public employees from collective bargaining over pensions. This statute was declared unconstitutional for violating Article I, Section 6, of the Florida Constitution which allowed for no such exception. *City of Tallahassee v. P.E.R.C.*, 410 So. 2d 487 (Fla. 1981). Since this case became final in 1982, pensions have been a mandatory subject of collective bargaining. The Supreme Court of Florida decided in *Florida Sheriffs Association v. Dept. of Administration*, 408 So. 2d 1033 (Fla. 1981), that the legislature could reduce prospectively the service credit for special risk members from 3% to 2%. However, this case did not involve collective bargaining. At the time this case was decided, *City of Tallahassee v. P.E.R.C.*, supra, was not yet final and would not be final until the following year, 1982.

13. While *City of Tallahassee v. P.E.R.C.*, supra, may have used a rational basis test, later cases have treated the right of public employees to bargain collectively to be a fundamental right,<sup>4</sup> subject to strict scrutiny.<sup>5</sup>

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<sup>2</sup> *Dade County Classroom Teachers' Association v. Ryan*, 225 So. 2nd 903 (Fla. 1969).

<sup>3</sup> *Dade County Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684 (Fla. 1972).

<sup>4</sup> *Dade County School Administrators Ass'n, Local 77 AFSA, AFL-CIO v. School Board of Miami-Dade County*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

14. There is another (actually two) state statute involving public employee pensions. Chapter 175 and Chapter 185 of the Florida Statutes mirror each other. Chapter 175 applies to city firefighters and Chapter 185 applies to city law enforcement officers. In the case of firefighters there is a tax on fire insurance written within the city which is collected by the insurance company as part of the premium from the policy holder. It is then sent to the state of Florida which will rebate the money to the city where the tax was collected if the city's pension plan meets the minimum standards of Chapter 175. See *City of Orlando v. State Dept. of Ins.*, 528 So. 2d 468 (Fla. 1st DCA 1988); review denied, 537 So. 2d 568 (Fla. 1988).

15. The 2011 Florida legislature amended Chapter 175 and 185 to reduce the minimum standard for some of the required benefits. This is SB 1128 which was passed prior to SB 1200. SB 1128 recognizes that the changes in the minimum standard for a city to obtain the rebate is subject to collective bargaining and that these changes would not apply to any existing collective bargaining agreement. The changes in SB 1128 are not effective until the first of July following the expiration of any existing collective bargaining agreements. In other words the city and the public employees' union would have the opportunity to engage in collective bargaining concerning the change in the minimum standard of benefits which would entitle the city to a rebate of the tax money.

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<sup>5</sup> *State Employees Attorneys Guild FPD, NUHHCE, AFSME, AFL-CIO v. State*, 653 So. 2d 487 (Fla. 1st DCA 1995); *Coastal Florida Police Benevolent Ass'n Inc. v. Williams*,

16. When the legislature passed SB 1200, it did not make any provision for collective bargaining. The effective date of the change from a completely employer contributory plan to a partially employee contributory plan (for Sandlin, a special risk member, it is 3% of payroll) was July 1, 2011. No provision was made in SB 2100 to delay the effective date until after the expiration of existing collective bargaining agreements.

17. In *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993), the teachers had a collective bargaining agreement for three years [just like *Sandlin's*]. In the second year of the contract, the teachers were to get a raise. The legislature had a \$700 million short fall and decided not to give the raise. The teachers brought suit against the governor. Ultimately, the Supreme Court decided that a collective bargaining contract is just the same as any other contract and must be honored during the period of its duration. The court found no separation of powers problem in requiring the legislature to fund the agreed upon raise because this was a contract like any other contract with the state. The Supreme Court of Florida did say in dicta that the only way that the legislature could change the terms of a collective bargaining agreement during the period of time covered by the agreement was what will be immediately recognized as the strict scrutiny test. The legislature would have to demonstrate a compelling state interest. The legislature would have to demonstrate that changing the terms of the wages and conditions of employment in a collective bargaining agreement during

the period of time covered by the agreement is the only way to fulfill this compelling state interest. In *Chiles v. United Faculty of Florida*, supra, a \$700 million shortfall was insufficient. Indeed, this would mean that the legislature would have to demonstrate that it could not raise any taxes, it could not borrow any money, it could not reduce any non-contractual spending, and it could not re-negotiate any other existing contracts.

18. Article I, Section 10, of the Florida Constitution provides:

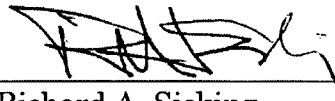
No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

19. There is no question of fact that there was no collective bargaining concerning SB 1200, which changed the Florida Retirement System from being completely employer contributory to partially employee contributory. This violates Article I, Section 6, of the Florida Constitution. It also violates Article I, Section 10, of the Florida Constitution with respect to Sandlin since his pension plan referred to in the Alachua County/IAFF CBA of October 1, 2010, through September 30, 2013, is the Florida Retirement System which was entirely employer contributory on October 1, 2010. This cannot be changed during the duration of the contract. *Chiles v. United Faculty of Florida*, supra. To do so would violate Article I, Section 10, of the Florida Constitution by impairing the obligation of a contract. *Chiles v. United Faculty of Florida*, supra.

20. SB 1200 also reduced the COLA benefit in FRS. This violates Article I, Section 6, of the Florida Constitution and Article I, Section 10, of the Florida Constitution for the same reasons.

WHEREFORE, Brett Sandlin requests the Court to declare SB 1200 to be invalid insofar as it provides for employee contributions and reduces the COLA benefit, without collective bargaining in violation of Article I, Section 6, of the Florida Constitution. Brett Sandlin further requests the Court to declare SB 1200 to be invalid insofar as it provides for employee contributions and reduces the COLA benefit without regard to existing collective bargaining agreements in violation of Article I, Section 6, and Article I, Section 10, of the Florida Constitution.

RICHARD A. SICKING, ESQ.  
Attorney for Intervenor, Sandlin  
1313 Ponce de Leon Blvd., #300  
Coral Gables, Florida 33134  
Telephone (305) 446-3700  
Fla. Bar No. 073747  
Email: sickingpa@aol.com

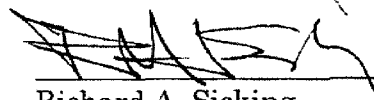


Richard A. Sicking

#### Certificate of Service

I certify that a copy of the foregoing has been furnished by mail this 20<sup>th</sup> day of September, 2011, to: **Ronald G. Meyer, Esquire, Jennifer S.**

**Blohm**, Esquire, and **Lynn C. Hearn**, Esquire, Meyer, Brooks, Demma and Blohm, P.A., 131 North Gadsden St., Tallahassee, FL 32301; **Pamela L. Cooper**, Esquire, Florida Education Association, 300 East Park Ave., Tallahassee, FL 32301; **Alice O'Brien**, Esquire, National Education Association, 1201 16th St., N.W., Washington, D.C. 20036; **Pamela Jo Bondi**, Esquire, **Blaine H. Winship**, Esquire, and **Timothy D. Osterhaus**, Esquire, Office of the Attorney General, State of Florida, The Capitol, PL-01, Tallahassee, FL 32399-1050; **G. Hal Johnson**, Esquire, 300 East Brevard St., Tallahassee, FL 32301; **Gary D. Wilson**, Esquire, **Jill S. Schwartz**, Esquire, Jill S. Schwartz & Associates, P.A., 180 North Park Ave., Suite 200, Winter Park, FL 32789; **Donald D. Slesnick**, Esquire, **James C. Casey**, Esquire, Slesnick and Casey, LLP, 2701 Ponce De Leon Blvd., Suite 200, Coral Gables, FL 33134; **Aaron Nisenson**, Esquire, International Union of Police Associations, 1549 Ringling Blvd., Suite 600, Sarasota, FL 34236; **Richard Siwica**, Esquire, Egan Lev & Siwica, P.A., P.O. Box 2231, Orlando, FL 32802; **Osnat K. Rind**, Esquire, **Holly E. Van Horsten**, Esquire, Phillips, Richard & Rind, P.A., 9360 S.W. 72 St., Suite 283, Miami, FL 33173; and **Jonathan G. Rose**, Esquire, **David R. Godofsky**, Esquire, **Doug Hinson**, Esquire, **Richard Siegel**, Esquire, Alston & Bird LLP, 950 "F" Street, N.W., Washington, D.C. 20004.



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Richard A. Sicking