

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

4050 Esplanade Way
Tallahassee, Florida 32399-0950
(850) 488-8641

DO NOT WRITE IN THIS BOX

CASE NUMBER

CA-

DATE FILED

CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

Submit an original and one (1) copy of this charge to the Public Employees Relations Commission along with proof of simultaneous service upon the other parties. (NOTE: Pursuant to Florida Administrative Code Rule 60CC-5.001(5), the charge must be accompanied by sworn statement(s) setting forth facts of which the affiant has personal knowledge, and where applicable, documentary evidence sufficient to support a prima facie violation of the applicable unfair labor practice provision(s). Such supporting evidence is not to be attached to the charge and is to be furnished only to the Commission.)

The Charging Party alleges that the public employer or its agents named below have engaged in (an) unfair labor practice(s). Charging Party requests the Public Employees Relations Commission to process this charge under its proper authority.

1. NAME OF CHARGING PARTY: Teamsters Local Union No. 2011

Phone No. 855-428-2011

Facsimile (Fax) No. 813-349-1327

Address 5818 E. M.L. King, Jr., Blvd., Tampa, FL 33619

2. CHARGING PARTY REPRESENTATIVE: Mark Richard, Holly Van Horsten

Title: Attorneys, Phillips, Richard & Rind, P.A.

Phone No. 305-412-8322

Facsimile (Fax) No. 305-412-8299

Address 9360 SW 72 Street, Suite 283, Miami, FL 33173

3. NAME OF EMPLOYER: State of Florida, Governor Rick Scott

Address 400 S. Monroe St., Tallahassee, FL 32399-0001

4. EMPLOYER REPRESENTATIVE: Michael Mattimore

Title: Attorney, Allen, Norton & Blue

Phone No. 850-561-3503

Facsimile (Fax) No. 850-561-0332

Address 906 N. Monroe Street, Tallahassee, FL, 32303

5. The above-named employer or its agents has (have) engaged in (an) unfair labor practice(s) within the meaning of Section 447.501(1)(a) and (c) _____, Florida Statutes.

(list sections)

6. Basis of Charge

1. Teamsters Local Union No. 2011 (hereinafter the “Union” or “Teamsters”) is the certified bargaining representative for the statewide Security Services Bargaining Unit (“SSU”) which includes all Correctional Officers (including employee class codes 8003, 3005, 8011, and 8013) and Correctional Probation Officers (including employee class codes 8036, 8037, 8039, 8040, 8041, 8045, 8046, and 8047) (hereinafter collectively referred to as “Officers”) employed by the State of Florida (hereinafter “the State”) who work in the Florida Department of Corrections (hereinafter “DOC”), and all Institutional Security Specialists (including employee class codes 8236, 8237, 8238, and 8240) employed by the State who work in the Florida Department of Children and Families (“DCF”) and the Florida Agency for Persons with Disabilities (“APD”). All employees in the bargaining unit are career service employees.
2. With respect to all public employees belonging to a statewide bargaining unit composed of career service employees, such as the SSU, the Governor of the State of Florida (hereinafter the “Governor”) is deemed to be the public employer. Section 447.203(2), Florida Statutes. The Governor is also a public employer within the meaning of Florida Statutes, Section 447.403(2).
3. Pursuant to Section 20.22, Florida Statutes, the duties of the Chief Labor Negotiator are determined by the Secretary of the Department of Management Services (“DMS”), and must include, but need not be limited to, the representation of the Governor as the public employer in collective bargaining negotiations pursuant to the provisions of chapter 447.
4. The Union and the State are signatories to a collective bargaining agreement that expires on July 1, 2013 (hereinafter the “2012-2013 CBA”). The 2012-2013 CBA is signed on behalf of the State by the Governor, the Secretary of the Department of Management Services, and the State’s Chief Labor Negotiator. (*See* attached Exhibit A).
5. On or about November 8, 2012, the parties began negotiations for a successor agreement.
6. Thereafter, on December 4, 2012, the Teamsters and the State had a negotiation session during which the Teamsters provided the State with its proposal on Article 23 – Hours of Work/Overtime. Therein included the Teamsters’ proposal on Section 6 “Special Compensatory Leave.”

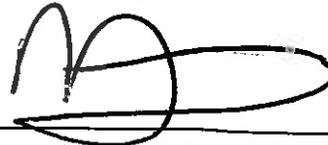
Section 6 – Special Compensatory Leave

...

(C) Special Compensatory Leave Earned On or After July 1, 2013:

(1) Special compensatory leave credits earned, as described in subsection (A)(1), on or after July 1, 2012~~3~~, must be ~~which are not~~ used each year by the April 30 or

6. **BASIS OF CHARGE:** (Specify facts, names, places, dates, etc. If more space is needed, attach additional pages.)
See attached.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Signature of Charging Party or Charging Party's Representative

**FALSE STATEMENTS MAY RESULT IN FINE AND IMPRISONMENT
PURSUANT TO CHAPTER 837, FLORIDA STATUTES**

October 31 that immediately succeeds the work period in which the leave is credited, whichever date occurs earlier., ~~shall be forfeited~~

(2) Special compensatory leave credits earned, as described in subsection (A)(2), on or after July 1, 2012~~3~~, ~~must be which are not~~ used within 120 calendar days from the end of the work period in which the leave is credited ~~shall be forfeited~~.

(3) Each agency shall schedule employees earning special compensatory leave credits in a manner that allows all such leave credits earned on or after July 1, 2012, to be used within the time limits specified in subsections 1 and 2. However, if scheduling such leave within such time limits would prevent the agency from meeting minimum staffing requirements needed to ensure public safety, the agency head may extend the time limits specified in subsections 1 and 2 ~~for up to an additional~~ 180 calendar days. Extensions will not be allowed for any other reason.

(4) If scheduling such leave within the 180 calendar day extension would prevent the agency from meeting minimum staffing requirements needed to ensure public safety, the agency must compensate the employee for the leave, at the expiration of the 180 days, at the employee's current rate of pay.

~~(4) No agency may make a payout of unused special compensatory leave earned on or after July 1, 2012.~~

~~(D) Unless otherwise prohibited by law or rule, all requests for use of approved leave, other than administrative leave, shall first be charged to any special compensatory leave credits the employee has accrued.~~

(Proposal attached as "Exhibit B").

7. The Union was clear in its 12.04.12 proposal on Article 23 that it was unwilling to waive its members' statutory right to a "paid holiday," pursuant to Section 110.117, Florida Statutes, which members receive in the form of "special compensatory leave" time, by permitting a forfeiture of said time.

Background on Paid Holidays and Special Compensatory Leave Time

8. By way of background, Part I of Chapter 110, Florida Statutes, provides "general state employment provisions." Therein, Section 110.117 "Paid holidays," provides as follows:

(1) The following holidays shall be paid holidays observed by all state branches and agencies:

- (a) New Year's Day.
- (b) Birthday of Martin Luther King, Jr., third Monday in January.
- (c) Memorial Day.
- (d) Independence Day.
- (e) Labor Day.
- (f) Veterans' Day, November 11.
- (g) Thanksgiving Day.
- (h) Friday after Thanksgiving.
- (i) Christmas Day.

(j) If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

9. Section 110.117, Florida Statutes, requires that the nine (9) aforementioned holidays "...shall be paid holidays observed by all state branches and agencies." *Id.*
10. For the purpose of Chapter 110, "state agency" is "...any official, officer, commission, board, authority, council, committee, or department of the executive branch...." Section 110.107, Florida Statutes.
11. Accordingly, the DMS, DOC, DCF, and APD are bound by the "paid holiday" provisions in Section 110.117, Florida Statutes. Section 110.107, Florida Statutes; Sections 20.19, 20.197, 20.22, and 20.315, Florida Statutes.
12. Pursuant to its authority under Section 110.1055, Florida Statutes, DMS has created a way for agencies with facilities/institutions that must remain open and operational on the holidays declared in §110.117 to comply with §110.117 by providing the career service employees who must work with the equivalent of a "paid holiday." 60L-34.0032-2, F.A.C.
13. Those employees who are required to work on one of more of the holidays designated in Section 110.117, Florida Statutes are compensated with a day of "special compensatory leave" equivalent to the number of hours worked on the holiday, not to exceed the number of hours in the employee's established workday. 60L-34.0032-2, F.A.C.
14. Thus, the "special compensatory leave" day provided to the employee constitutes his "paid holiday" that he can, for example, use to have a paid day off at a later date.
15. Furthermore, the Florida Administrative Code provides that all hours of unused special compensatory leave time shall be paid out to an employee upon the employee's separation from the agency. 60L-34.0044, F.A.C.

The State's Proposal on Article 23, Section 6 "Special Compensatory Leave" Time

16. On January 25, 2013, the State provided the Teamsters with its counterproposal on Article 23, which included the following language on special compensatory leave time:
 - (1) Special compensatory leave credits earned, as described in subsection (A)(1), on or after July 1, 2012, which are not used each year by the April 30 or October 31 that immediately succeeds the work period in which the leave is credited, whichever date occurs earlier, *shall be forfeited.*

(2) Special compensatory leave credits earned, as described in subsection (A)(2), on or after July 1, 2012, which are not used within 120 calendar days from the end of the work period in which the leave is credited *shall be forfeited*.

(The State's January 25, 2013 proposal is attached hereto as "Exhibit C").

17. The Union indicated its opposition to the language requiring forfeiture and waiver of the statutory right to holiday pay and refused to accept the State's proposal on Article 23. Furthermore, during negotiations, the Teamsters informed the State of its position that it was illegal and improper to force its members to forfeit their earned special compensatory time which the members accrue as a "paid holiday," pursuant to Section 110.117, Florida Statutes.
18. The State did not propose any changes to its Article 23, Section 6 proposal, nor did it withdraw the offending language in the days leading up to the Governor issuing his proposed budget, at which time the parties are declared to be at impasse pursuant to Florida Statute Section 216.163. The Governor issued his proposed budget on January 31, 2013, thus causing the impasse. (*See Exhibit D* in regard to the date the Governor issued his proposed budget). Pursuant to 447.403(5)(a), the parties then have five (5) days to notify the President of the Senate and the Speaker of the House of Representatives of the unresolved issues.
19. The parties continued to negotiate and on February 4, 2013, the parties were able to come to an agreement on Articles 1, 2, 8, 11, 12, 15, 16, 17, 19, 20, 21, 22, 24, 29, 31, and 33. Despite negotiations and the opportunity to withdraw the offending language, the State continued to insist on its Article 23, Section 6 proposal on special compensatory leave time. (*Exhibit E*).
20. On February 5, 2013, the President of the Senate and the Speaker of the House of Representatives were notified of the unresolved issued between the Teamsters and the State. Therein the Chief Negotiator for the State notified the President and Speaker that the parties had not resolved Article 23. (*Exhibit D*).
21. On February 7, 2013, the Teamsters received a letter from the Co-Chairs of the Joint Select Committee on Collective Bargaining ("JSCCB") providing notice of a public hearing on the issues at impasse on February 18, 2013. The letter also requested a copy of the Teamsters last proposals, as well as any rationale supporting said proposals, to be provided by February 13, 2013. (*Exhibit F*).
22. Both the Teamsters and the State provided their proposals on Articles 3, 4, 6, 7, 9, 10, 13, 18, 23, 25, 26, 27, 28, 30, and 32 to the JSCCB prior to the public hearing. The State's proposal on Article 23 included the "paid holiday" forfeiture language indicated in Paragraph 16, *supra*. The Teamsters submitted their proposal of December 4, 2012 on

Article 23, as referenced in Paragraph 6, *supra*, and included the rationale for said proposal. (Exhibit G).

23. On February 13, 2013, the Union agreed to the State's February 5, 2013 proposal on Article 5. (Exhibit H).
24. Both the Teamsters and the State participated in the public hearing before the JSCCB on February 18, 2013.
25. The Legislature does not resolve the issues between the parties until the end of the legislative session; thus, the parties continued to negotiate and agree to proposals on Articles not yet resolved.
26. After multiple telephone conference calls between the parties' negotiators over the span of several weeks, on April 12, 2013, the State provided the Union with its final proposals on Articles 3, 4, 6, 7, 9, 10, 13, 18, 23, 26, 27, 28, 30, and 32. These proposals were provided to the legislature as the States' updated and/or final proposals on articles at impasse. (Exhibit I; Exhibit J).
27. The State's April 12, 2013 proposals contained no changes to its January 25, 2013 proposal on Article 23, Section 6. The State did not remove the offending language in regard to forfeiture. (*See* Exhibit I).
28. After additional negotiation, and a subsequent change that the State agreed to make to its promotions procedure incorporated by reference in Article 10 (*See* Exhibit K), on April 29, 2013, the Union agreed to the State's April 12, 2013 proposals on Article 3, 4, 6, 7, 9, 10, 13, 18, 26, 27, 28, 30, and 32. Again the Union expressed that it could not agree to the offending language in regard to forfeiture of special compensatory leave time in Article 23, Section 6. (Exhibit L).
29. Consequently, as of April 29, 2013, the legislature had before it two (2) articles to resolve, Article 23, which included the State's offending proposal on the forfeiture of special compensatory leave time, and Article 25, "Wages."
30. On May 3, 2013, the legislature resolved the impasse on Article 23 when it passed Senate Bill 1504 "State Employees," as amended by Conference Committee Report. (Exhibit M).
31. On May 10, 2013, SB 1504 was signed by the Officers and presented to the Governor. (Exhibit M).
32. On May 20, 2013, the Governor signed SB 1504 into law. (Exhibit M).
33. As detailed above, the State unlawfully took to impasse an impermissive waiver and impairment of SSU state employees' statutory right to a paid holiday pursuant to Section

110.117, Florida Statutes. Despite numerous opportunities to remove Article 23 from the articles to be resolved by the legislature – up to and including its April 12, 2013 that were provided to the legislature as the State’s final proposals on the unresolved articles, *and* the State’s notice to the legislature that the Union had agreed to Article 3, 4, 6, 7, 9, 10, 13, 18, 26, 27, 28, 30, and 32 on April 29, 2013 and that said proposals were to be removed from the legislature’s consideration – the State continued to insist on its proposal in Article 23, Section 6 in regard to special compensatory leave time.

34. In doing so, the State has committed an unfair labor practice pursuant to Section 447.501(1)(a) and (c), F.S.

35. In the alternative, on May 20, 2013, the State committed an unfair labor practice in violation of Section 447.501(1)(a) and (c), when the Governor signed SB 1504 into law, effectively implementing the unlawful waiver of the SSU state employees’ statutory right pursuant to Section 110.117, F.S.