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NEGOTIATING SAFETY

I. FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION (PERC) & THE COURTS CASE LAW

- Safety is considered a term and condition of employment and thus a mandatory subject of bargaining. City of Cocoa, 14 FPER ¶ 19311 (1988) (citing § 447.309(1) for the proposition that safety is one of the subjects over which the city must bargain)
- Safety must be work-related. City of Lake Worth, 28 FPER ¶ 33242 (2002) (safety in transit to and from work is not a term or condition of employment when employees' work does not involve travel such as with police and firefighters)
- PERC looks to federal precedent on whether a certain subject is considered a "term and condition of employment" because the Florida statute is patterned after the federal statute. City of Orlando v. FPERC, 435 So.2d 275 (Fla. 5th DCA 1983)
- Holyoke Water Powers Company, 273 NLRB 1369 (1985)
(health and safety conditions are a term and condition

of employment about which an employer is obligated to bargain on request); NLRB v. Gulf Power Company, 384 F.2d 822 (5th Cir. 1967) ("the phrase 'other terms and conditions of employment' contained in Section 8(d) of the Act is sufficiently broad to include safety rules and practices which are undoubtedly conditions of employment")

- Impact on workplace safety arising from decisions on non-mandatory subjects of bargaining is negotiable.
 - Although manning level decision is a management prerogative, where the decision affects employees' safety, the impact was negotiable. City of Cocoa, 14 FPER ¶ 19311 (1988)
 - Impact on safety may be apparent for firefighters in certain decisions such as manning levels. State of Florida and Governor Lawton Chiles, 21 FPER ¶ 26215 (G.C. Summary Dismissal 1995) (distinguishing layoff decision within highway safety department from manning decision for police or fire stations)
- An employer may not impose contract language that contradict employees' constitutional or statutory rights
 - Communications Workers of America, Local 3170 v. City of Gainesville, 697 So.2d 167 (Fla. 1st DCA

1997) (PERC has jurisdiction to determine whether the city committed an unfair labor practice by using the impasse procedure to impose resolutions that contradicted constitutional and statutory law)

II. FLORIDA FIREFIGHTERS OCCUPATIONAL SAFETY AND HEALTH ACT, §§ 633.801-633.821, FLORIDA STATUTES

A. Workplace Safety Committees and Safety Coordinators, § 633.810

- Requires workplace safety committees for:
 - (1) employers of 20 or more firefighters; and
 - (2) employers of fewer than 20 firefighters identified as having high frequency or high severity of work-related injuries.¹
- Requires the Division of State Fire Marshal to adopt rules in three areas:
 - (1) membership (employer and employees must have equal representation)
- "If a collective bargaining agreement provides for the establishment of a safety committee, the establishment of a safety committee pursuant to this section shall be in accordance with the collective bargaining agreement." 69 F.A.C. 69A-62.042(1)(b)

¹ Employers of fewer than 20 firefighters may designate a safety coordinator in lieu of a committee.

(2) record-keeping; and

(3) duties and functions of a safety committee

- A safety committee has a limited purpose and is not a substitute for a collective bargaining representative. 69 F.A.C 69A-62.043(3)

- Makes the composition, selection, and function of workplace safety committees a mandatory topic of negotiations

B. Safety; firefighter employer responsibilities, § 633.807

- Requires every firefighter employer to "furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the lives, health, and safety of such firefighter employees."

C. Workplace Safety, § 633.821

- Authorizes the division to adopt rules to ensure workplace safety, specifically, certain standards adopted by the Occupational Safety and Health Administration (OSHA), in 29 C.F.R. Part 1910, and the National Fire Protection Association, Inc.

- Requires each county, municipality and special district to implement standards in 29 C.F.R. s 1910.134(g)(4).

- Codified by force of state law OSHA procedures for interior structural firefighting, commonly known

as the "two-in, two-out rule." See also 60 F.A.C.
69A-62.003 (adopting the rule)