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# the Checkoff

SPECIAL TRIBUTE ISSUE HONORING BILL SIZEMORE

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The Labor & Employment Law Section

## INSIDE:





# Firm Remembers Past Chair Bill Sizemore

### (1945-2004)

On behalf of the firm of Thompson, Sizemore & Gonzalez, please allow us this opportunity to share with the Section the news of the death of one of our founding partners, Bill Sizemore. Bill passed away on Monday, June 21, 2004, at the age of 58. Bill attended and graduated from Florida State University (to him, THE university of Florida) in 1966. He attended Stetson University's College of Law, from which he received his juris doctorate degree in 1969. Bill was admitted to The Florida Bar in that same year, after receiving the highest score in the state on the Bar examination. In 1970, he joined the firm of Shackleford, Farrior, Stallings & Evans, where he began practicing management-side labor law and formed many enduring friendships. While in that role, Bill served as Chair of what was then the Labor Law Committee of The Florida Bar in 1975/76. Bill became a partner in that firm and later served as its president. In 1983, wanting his own firm, Bill left Shackleford, Farrior, Stallings & Evans to

*See "Bill Sizemore" page 12*

# A Tribute from a Client, a Neighbor & a Friend

I met Bill Sizemore in 1976 when he was one of the bright, young attorneys from Shackleford Farrior who assisted the University of South Florida with regard to the United Faculty of Florida and AFSME unionization campaigns. During the four years I was Associate General Counsel, I had a bird's eye view of the competence of most of the Tampa management and labor attorneys as we were involved in nine certifications and one decertification campaign. In 1980, when I became Labor Counsel for GTE Florida, it was my role to select outside counsel with respect to a dispute between the IBEW and GTE Automatic Electric. Based upon my recommendation, and Bill's extraordinary performance in this case, a 24 year relationship developed between Bill and GTE, now Verizon. Bill and his partners and associates learned our business and made our problems *their* problems. They worked with us to manage cases within our budget, educated us so that we could handle many of our own problems and were always responsive to our needs. They became not only our colleagues but our friends.

As Bill and his family moved two doors away from me in the 1980's, I knew him as a neighbor and father. In these roles, he rescued our basset hound from his cat, played ball with the kids, including our son Michael, invited us to some of his famous parties and waved to me in the morning as he barreled out of his driveway or walked with his grandchildren.

I recently became Vice President & General Counsel of Special Data Processing Corporation. Be assured, I will miss Bill and the advice he would have given me.

*Leslie Reicin Stein*
*Vice President & General Counsel*
*Special Data Processing Corporation*

# Chair's Report

As labor and employment lawyers, we often find ourselves int he quandary of appearing before courts with little or no experience int his area of the law. Unfortunately, unlike some other countries, the United States does not have labor courts and therefore those brave souls among us who choose to become judges are often called upon to make rulings on significant but esoteric points which they otherwise would have no reason to know. Yet employers, employees and labor unions must routinely rely on these courts to dispense justice in this area.

Judges are unquestionaly busy people, and they have been made even busier by the state legislative cut-backs of judicial funding. While the Bar must recognize that judges may in a perfect world wish to immerse themselves in every legal arena in which they are called upon to rule, this presents an impossibly daunting task which no judge can or should be expected to undertake. It is therefore incumbent upon the practitioners in the Bar who regularly work in this field to aid the Bench in facilitating considered rulings and judicial actions even in territory which may be unfamiliar.

To that end, I have, as Chair of the Labor and Employment Section, tasked the Special Projects Committee to work closely with the Judicial Education Subcommittee in conveying to the Bench our members' desire to aid them in familiarizing themselves with this often thorny field, whether through Bench-Bar conferences, seminars taught at the regularly scheduled judicial colleges, or the like. Labor and employment law brings some unique and difficult issues to the table. It is our job as regular practitioners in this area to facilitate judicial expertise so that such issues are capable of just resolution.

Welcome to the Home Page of the Florida Bar's Labor and Employment Law Section. In this website we have endeavored to present a wealth of information relative tot he practice of labor and employment law in our State. We have not only included information about the Florida Bar members who practice in this field, but also about the law itself which we hope you find to be useful. All of this information was designed to be user-friendly to lawyers and non-lawyers alike, with easily accessible links and uncomplicated navigation. We hope that you will find it as informative as we have intended it to be.

*— Susan L. Dolin, Chair*

# Department of Labor Issues New Notice Requirements Under COBRA

**by Michelle L. Fontaine**

On May 26, 2004, the Department of Labor, Employee Benefits Security Administration, issued its final rules implementing the notice requirements of COBRA. While the new regulations take effect on July 26, 2004, they only apply to COBRA notices required by plans with a beginning plan year of on or after November 26, 2004. In general, the regulations provide for minimum standards for the timing and content of COBRA notices, and provide plan administrators with standards for the administration of the COBRA process. This article provides a summary of the specific requirements under the new regulations, organized by the four sections of the rules, each of which covers a different type of required notice under the COBRA rules.

A. **Section 2590.606-1** covers the **General Notice Requirement,** which is the initial notification that must be sent by the plan administrator to its covered employees and their spouses outlining their rights and responsibilities to continuing coverage under any plan subject to COBRA continuing coverage requirements. The general notice must be sent by the earlier of the first date on which the plan administrator is required to furnish the notice under the plan, or within 90 days of the date on which coverage under the plan commences or, if later, then within 90 days after the plan first becomes subject to continuing coverage requirements. The notice must be written in a manner calculated to be understood by the average plan participant, and must include:

(i) the name of the plan, as well as the name, address and phone number of a party from whom additional information about the plan is available;

(ii) a general description of the continuation coverage available under the plan, including the classes of individuals who may be qualified beneficiaries, the types of qualifying events giving rise to the right to continuation coverage, the obligation of the employer to notify the plan administrator of qualifying events, the maximum period for which continuation coverage is available, when and under what circumstances coverage may be extended, and the plan's requirements regarding payment of premiums;

(iii) an explanation of the responsibility of a qualified beneficiary to notify the plan administrator

*see "COBRA," page 13*

# Preventing Employee Internet Abuse

**by Latesa Bailey, Esq.**

Internet-related misuse can result in civil litigation against both employees and employers under a number of legal theories, including defamation, sexual harassment, discrimination, fraud, and trademark and copyright infringement. Other claims may include constitutional violations, invasion of privacy and negligence. *See United States v. American Library Association, Inc.,* 123 S. Ct. 2297; 156 L. Ed. 2d 221; No. 02-361, 2003 U.S. LEXIS 4799 (Mar. 5, 2003) (a library's use of filtering software to block obscene and pornographic images and to prevent minors from accessing this material was not a restraint on private speech); *Knox v. State of Indiana,* 93 F.3d 1327 (7th Cir. 1996) (use of state computers to engage in sexual harassment via e-mail messages to victim); *Greenslade v. Chicago Sun Times, Inc.* 112 F.3d 853 (7th Cir. 1997) (use of computers to engage in sexual harassment via e-mail).

Employers can prevent internet and computer abuse by (1) blocking employee access to websites or (2) employer monitoring. Blocking employee access to websites may consist of installing software to simply prevent access to different problem sites or restrict computer access. Some companies have specifically restricted access to adult-oriented sites and job-search sites.

Another common method of preventing internet and computer abuse is through employer monitoring. Employers may monitor stored or transmitted information in the employer's computers. There are precautionary measures the employer must take prior to monitoring employee computer usage: First, notify employees that you will review and access E-mail and computer workstations. Second, provide clear guidelines, obtain signed consent forms and confirm employer access to personal computers and e-mail. Finally, confirm that employees have zero expectation of privacy in their computer files and messages. Employers can accomplish the above by creating and distributing effective internet/computer usage policies. The following is a checklist of items to include in the policy:

- Clearly communicate that there is no employee right to privacy on the company computer or in e-mail. Inform employees that the employer may require employees to disclose their passwords to facilitate access. Emphasize that passwords are used only for security purposes, not for privacy reasons. Disclose to employees that the employer may monitor their computer usage.
- Confirm that employees knowingly and voluntarily consent to monitoring and acknowledge the employer's right to monitor. The employer may request a signed acknowledgment and consent from each employee.
- Communicate to employees that their computer usage is limited to work purposes only.
- Identify and prohibit misconduct or offensive communications, including accessing, receiving, sending, creating, or storing pornography, gambling, chat rooms, computer games and contests, harassing or discriminating materials or other illegal activity.
- Prohibit the exchange of company trade secrets and confidential or proprietary information.
- Inform employees of the potential discovery of stored e-mail communications, including the use of such messages for litigation against the company.
- Explain that employees would be subject to discipline up to and including termination for violations of this policy.

***Latesa Bailey*** *is an associate with Fowler White Boggs Banker P.A. where she represents employers in all areas of employment law.*



The CHECKOFF

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# National Labor Relations Board Sounds the Retreat: Non-Unionized Employees No Longer Have Right to Bring a Coworker to Investigatory Interviews

**by Robert W. Edmund and Marc L. Fleischauer**

In a victory for non-union employers, the National Labor Relations Board recently reversed its position on a key issue affecting workplace investigations. The sharply divided 3-2 decision in *IBM Corp.*[1] holds that non-union employees no longer have the right to have a coworker present during investigatory interviews that the employees reasonably believe might result in discipline against them. The case marks the fourth time in 23 years that the Board has reversed itself on this issue, and the end of the Board's second short-lived experiment with extending interview representation rights to the non-union setting.

## Historical Background

Since the U.S. Supreme Court's 1975 decision in *N.L.R.B. v. Weingarten*, 420 U.S. 251 (1975), unionized employees have had the right to have a union representative sit in on investigatory interviews that employees reasonably believe might result in discipline against them. The Court's decision was silent, however, on whether these so-called *Weingarten* rights extended to non-union employees.

The Board first took this issue up in the early 1980s. In *Materials Research Corp.*, 262 N.L.R.B. 1010 (1982), the Board held that such rights do, in fact, extend to non-union workers. Just three years later, however, the Board turned around in its tracks. In *Sears, Roebuck & Co.*, 274 N.L.R.B. 230 (1985), the Board held that *Weingarten* rights should not be extended beyond unionized companies. For the next fifteen years, the Board adhered to this position. *See, e.g., E.I. DuPont & Co.*, 289 N.L.R.B. 627 (1988).

But in 2000, the Board began its second incursion into non-union *Weingarten* rights. In *Epilepsy Foundation of Northeast Ohio*, 331 N.L.R.B. 676 (2000), *enf'd in rel. part*, 268 F.3d 1095 (D.C. 2001), *cert. denied*, 536 U.S. 904 (2002), two Epilepsy Foundation specialists claimed the Foundation committed an unfair labor practice by discharging them after they sent a memorandum to management critical of their supervisor's involvement in a project. Each employee had been instructed by their employer to meet face-to-face, but separately from each other, with both the supervisor they had criticized and with a higher level manager. The first employee initially refused to meet with his supervisors alone, asking instead that his coworker be permitted to join him. Although he eventually abandoned this demand and attended the mandatory meeting, he was told that his initial refusal had constituted "gross insubordination," and he was discharged. The second employee was initially given a written warning, but he was likewise terminated shortly thereafter, in part due to "gross insubordination" for his role in drafting the critical memorandum.

In a 3-2 opinion, the Board ordered both employees reinstated with back pay. Among other things, the Board found that Epilepsy Foundation had violated national labor law when it denied the first employee's request to have a coworker present for his investigatory interview – thereby extending, for the second time, *Weingarten* rights to "protected concerted activity" by non-union employees.

## *IBM Corp.*

The Board's holding in *IBM Corp.* renders its second foray into non-union *Weingarten* rights as short-lived as its first. The case involved a harassment investigation by IBM. Three employees that IBM interviewed in connection with the investigation asked to have a coworker present, but IBM denied their requests. The employees were later terminated and filed unfair labor practice charges with the Board.

Relying on *Epilepsy Foundation*, an administrative law judge found in the employees' favor. IBM appealed, however, and the Board, acknowledging that its constant flip-flops had led to unpredictable law over the years, reversed the judge's determination.

The Board's decision begins by noting that its contradictory positions on this subject over the years each represented *permissible* interpretations of the Act. But for a variety of old and new policy reasons, the Board decided to return to its pre-*Epilepsy Foundation* position of the late 1980s and 1990s and held that non-union employees once again have no right to insist on the presence of a coworker during investigatory interviews.

The decision cites four major "policy considerations" to justify the Board's latest about-face. First, the Board observed that, unlike union representatives, non-union coworkers who are asked to sit in on investigatory interviews do not represent the interests of the entire work force. Rather, such coworkers could be present only as witnesses and to lend support to the employee being interviewed. The non-union coworkers selected to attend interviews would typically be selected on an ad hoc basis. Accordingly, while the same union representative might be involved in several different investigatory interviews and thus serve the function of protecting and monitoring discipline precedent on behalf of all employees, a non-union coworker representative may change from one interview to the next. In the Board's view, "it is speculative to find that a [non-union] coworker would think beyond the immediate situation . . . and look to set precedent."

Second, the Board noted that non-union coworkers cannot effectively redress the imbalance of power be-

*See "Interviews," page 9*

# University Boards of Trustees Are Not Successors to Florida Board of Education

**by John G. Showalter, Hearing Officer**

In *Florida Public Employees Council 79, AFSCME and United Faculty of Florida v. Florida State University Board of Trustees* and *Florida Public Employees Council 79, AFSCME v. University of West Florida Board of Trustees*, 29 FPER ¶ 281 (2003), a majority of the Commission determined that individual university boards of trustees are not successor employers to the Florida Board of Education. In early 2003, AFSCME and the United Faculty of Florida (UFF) filed unfair labor practice charges against Florida State University Board of Trustees (FSU), University of West Florida Board of Trustees (UWF), and the Board of Governors (BOG) alleging that they unlawfully ceased dues deductions and failed to process grievances. The BOG was subsequently dismissed as a party. The hearing officers assigned to the cases determined that FSU and UWF were not successor employers. In the *FSU* case, the hearing officer concluded that FSU did not commit an unfair labor practice by ceasing dues deductions and failing to process grievances. Likewise, in the *UWF* case, the hearing officer determined that UWF did not unlawfully cease the collection of union dues for AFSCME. Once exceptions were filed, all three cases were consolidated before the Commission.

The Commission majority began its analysis by reiterating the Commission's decision in *In re Florida Public Employees Council 79, AFSCME*, 29 FPER ¶75 (2003), *appeal filed, sub nom*, *Florida Public Employees Council 79, AFSCME v. Public Employees Relations Commission and Florida Board of Governors*, Case No. 1D03-1190 (Fla. 1st DCA Mar. 25, 2003), wherein it held that each board of trustees is the public employer of the employees at its university pursuant to Section 447.203 (2), Florida Statutes. Given that FSU and UWF are the public employers of the employees at their universities, the issue became whether FSU and UWF are "successor" employers to the Florida Board of Education (BOE).

Pursuant to *IBEW, Local 323 v. Lake Worth Utilities Authority and City of Lake Worth*, 11 FPER ¶ 16024 (1984), the successorship inquiry focuses upon the continuity of the enterprise after the change in ownership. Although the determination is based on the totality of the circumstances and is highly fact specific, certain factors are usually considered indicative of successorship. For example, retention of the predecessor's employees in the same jobs, operation of the same facilities, use of the same supervisors, and manufacture of the same type of product.

In both *FSU* and *UWF*, the hearing officers applied *Lake Worth* to the facts of their respective cases and determined that there was not substantial continuity between the BOE and the boards of trustees at FSU and UWF. For example, each board of trustees only received a fraction of the BOE's work force, each board of trustees only operated a fraction of the facilities previously operated by the BOE, and each only used a fraction of the supervisors employed by the BOE. Similarly, even though both boards of trustees were created to "produce" education, the differences in the scope and purpose of those activities reflects a discontinuity between the employers. The BOE is involved in producing an assorted variety of education from kindergarten through advanced graduate degrees. Moreover, the BOE's governance of post-secondary institutions involved managing institutions ranging from very small colleges to huge universities. The individual boards of trustees are exclusively focused on the particular educational goals and missions of their institution, which will vary dependent on the size and location of the university. Given these factors, the hearing officers determined that the boards of trustees were not successor employers to the BOE.

Based upon its review of the facts and the applicable case law, the majority agreed with the hearing officers and concluded that the boards of trustees are not successor employers for their employees who are included in certifications 218 and 730-33, the statewide university system bargaining units. The majority noted that in reaching this conclusion it did not overlook UFF's contention that federal precedent required that the issue of continuity be viewed from the perspective of the affected employees. *See, e.g.*, *Fall River Dyeing and Finishing Corp. v. NLRB*, 107 U.S. 27 (1987); *International Union of Electrical, Radio and Machine Workers,* 604 F. 2d 689 (D.C. Cir. 1979); *Zim's Food Liner v. NLRB*, 485 F. 2d 1131 (7th Cir. 1976). The majority indicated that the Commission has not adopted that approach used by the NLRB and specifically determined that it was inappropriate to analyze the issue of continuity principally from the perspective of the affected employees at one of the new employers because of the differences between the private and public sectors.

The majority explained that successorship issues in the public sector generally occur as a result of statutory changes. For example, the change in employer from the BOE to the boards of trustees resulted from an amendment to Section 447.203(2), Florida Statutes. Public sector transfers, mergers, and consolidations rarely involve concerns unique to the private sector, such as rehabilitating a failing business or increasing profits. Instead, factors unique to the public sector drive such changes. By virtue of the legislature's determination that the individual boards of trustees were the public employers of the employees at their institutions, and other recent legislation affecting public education, it was evident that the intent was to decentralize the administration of the state university system to one accountable on an individual university level. This radical change in the method by which Florida administers educational ser-

*See "Board of Education," page 15*

# Severance Pay Provisions in Employment Contracts

In *Paladyne Corp. v. Weindruch*, __ So. 2d __, 29 Fla. L. Weekly D635 (5th DCA 2004), a former corporate president sued his corporate employer for breach of an employment contract. The employment contract had a term of one year, commencing February 1, 2000, and ending on January 31, 2001, with subsequent roll-over terms of one year if no party provided a notice of "non-renewal" within thirty days of expiration of the then current term. The contract also provided that if the employee was terminated without cause, he would be entitled to severance pay for the remainder of the contract term, and for one additional year.

After the contract had rolled over once into a renewal term, on December 27, 2001, the employer gave notice of non-renewal, and refused to provide any severance pay. The employee then sued, contending that he had been effectively terminated from his employment without cause, and that he was entitled to his severance pay. The trial court awarded severance pay. However, the Fifth DCA disagreed, reversing the trial court's award. The court reasoned that an employment separation resulting from "non-renewal" or expiration of an employment contract under a term provision is different conceptually from termination of an employee without cause, and accordingly held that the employee was not entitled to severance pay.

Attorneys who prepare employment contracts as part of their practice may wish to review this case and give some consideration as to how it might impact the drafting of severance pay provisions.

*This case summary was provided by* ***Leslie Schultz-Kin, Esq.*** *with Carlton Fields, P.A.*

# Fee Awards to Defendants Under Florida's Private Whistle-Blower Law

Florida's Second District Court of Appeal has ruled that the standard to be applied for awarding fees to a prevailing party under Florida's private whistle-blower law should not differ because the prevailing party is the defendant rather than the plaintiff.

In *New World Communications of Tampa, Inc. v. Akre*, __ So. 2d __, 28 Fla. L. Weekly D460 (2d DCA 2003), an employee sued her television station employer claiming she was dismissed for threatening to inform the Federal Communications Commission (FCC) of the station's purported violation of FCC policy. The employee prevailed under the whistle-blower's statute, §448.102, Fla. Stat., but the Second DCA reversed, concluding the employee had failed to state a whistle-blower's claim.

The television station was awarded appellate attorney's fees under §448.104, which states, "[a] court may award reasonable attorney's fees, court costs, and expenses to the prevailing party." On rehearing, the employee argued that the standard for an award of attorney's fees under Title VII as articulated in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), should apply to an action brought under Florida's whistle-blower statute. The *Christiansburg* Court applied different standards based on whether the prevailing party was a plaintiff or defendant, with a much narrower standard applicable to prevailing defendants. However, the Second DCA disagreed that different standards for plaintiffs and defendants are appropriate under Florida's whistle-blower statute.

Although the court reversed itself and declined to award appellate fees to the television station based on the facts of this case, it remanded the case to the trial court to decide if fees would be appropriate for defendant's trial court work. Ultimately, it seems *New World* could have a chilling effect on private whistle-blower litigation in Florida, given the availability of defense fees under a prevailing party standard.

*This case summary was provided by* ***Leslie Schultz-Kin, Esq.*** *with Carlton Fields, P.A.*

# The U.S. Supreme Court Defines "Age" Under the ADEA

**by Scott K. Hewitt, Esq.**

Employers favoring older employees over younger ones can rest easy after a recent U.S. Supreme Court Decision interpreting the statutory provisions of the Age Discrimination in Employment Act.[1]

In a 6 to 3 decision the Court reversed the Sixth Circuit,[2] and held that the Plaintiffs, aged 41 through 50,[3] did not have a claim under the ADEA against their employer, General Dynamics Land Systems, Inc. General Dynamics eliminated the Plaintiffs post-retirement health benefits as part of a collective-bargaining agreement, yet retained the same benefits for those employees over 50. Justice Souter, writing for the majority,[4] explained that "[w]e see the text, structure, purpose, and history of the ADEA, along with its substantial relationship to other federal statutes, as showing that the statute does not mean to stop an employer from favoring an older employee over a younger one."[5]

Section 623 (a) (1) of the ADEA states that it covers discrimination against "any individual . . . because of such individual's age."[6] The Majority dissected the ADEA's reference to "age," but found obvious conflicting meanings and usage of "age" in the statutory language.[7] Justice Souter then looked to Congress's "interpretive clues," referencing a study conducted by the Department of Labor and noting testimony from the House and Senate hearings.[8] The Majority concluded that the Congressional intent was to protect those employees over 40 years of age. "If Congress had been worrying about protecting the younger against the older, it would not likely have ignored everyone under 40."[9]

Justice Scalia dissented solely because the EEOC's interpretation "is neither foreclosed by the statute nor unreasonable."[10] The EEOC had adopted a regulation directly on point, contrary to the Majority opinion.[11] Justice Thomas, with whom Justice Kennedy joined in a separate dissenting opinion, wrote that the Majority "resort[ed] in interpretive slight of hand" and had indeed created a "new approach to interpreting anti-discrimination statutes."[12] Essentially, Thomas' dissent claimed that the Majority first failed to address the "plain language" of the ADEA, and then failed to defer to the EEOC guidance.[13] The Majority fired back pointing out that [i]n *Edelman v. Lynchburg College,*[14]. . . we found no need to . . . defer, because the EEOC was clearly right; today, we neither defer nor settle on any degree of deference because the Commission is clearly wrong."[15]

Despite the Court's disagreement on the proper statutory interpretation of the ADEA, it stands that this decision has defined "age" under the ADEA to mean "older age."

***Scott K. Hewitt*** *is a shareholder with the law firm of Mandelbaum & Fitzsimmons, P.A., in Tampa, Florida. Mr. Hewitt concentrates his practice on labor and employment issues, representing both employers and employees throughout Florida and the United States.*

**Endnotes:**

[1] *General Dynamics Land Systems, Inc. v. Cline*, __ U.S. __, 124 S. Ct. 1236, 157 L. Ed. 2d 1094, 2004 U.S. Lexis 1623 (2004)

[2] 296 F.3d 466 (6th Cir. 2002). The Sixth Circuit decision conflicted with the First Circuit in *Shuler v. Polaroid Corp.,* 848 F.2d 276 (1st Cir. 1988) and with the Seventh Circuit in *Hamilton v. Caterpillar,* 966 F.2d 1226 (7th Cir. 1992).

[3] 29 U.S.C. § 631(a) ("The prohibitions in this Act shall be limited to those individuals who are at least 40 years of age.") Accordingly, all the Plaintiffs in *Cline* were in the ADEA's protected group. *Cline* at 124 S. Ct. at 1239.

[4] Chief Justice Rehnquist, J. Stevens, J. O'Connor, J. Ginsberg, and J. Breyer joined in the majority opinion with J. Souter.

[5] *Cline,* 124 S. Ct. at 1248-49.

[6] 29 U.S.C. 623 (a )(1).

[7] *Cline,* 124 S. Ct. at 1240, 1242.

[8] *Id.* at 1240-1243.

[9] *Id.* at 1243.

[10] *Id*. at 1249 (J. Scalia dissenting).

[11] *See* C.F.R. § 1625.2(a) (2003)("It is unlawful in situations where the Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the bais of age, but must make such decision on the basis of some other factor.")

[12] *Cline,* 124 S. Ct. at 1250, 1256.

[13] Other U.S. Supreme Court cases discussing the deference afforded to a government agency's interpretation include, *Chevron U.S.A. Inc. v. Nat'l Resources Defense Council, Inc.,* 467 U.S. 837 (1984); *United States v. Mead Corp.,* 533 U.S. 218 (2001); *Christensen v. Harris County,* 529 U.S. 576 (2000).

[14] 535 U.S. 106 (2002).

[15] *Cline,* 124 S. Ct. at 1249.

## WANTED: ARTICLES

The Section needs articles for the *Checkoff* and The Florida Bar *Journal*. If you are interested in submitting an article for the Checkoff, contact either Ray Poole (904/356-8900) (*rpoole@ constangy.com*); or Scott Fisher (813/229-8313) (*sfisher@ fowlerwhite.com*). If you are interested in submitting an article for the *Florida Bar Journal,* contact Frank Brown (813/224-9004) (*brown@zmlaw.com*) to confirm that your topic is available.

## REWARD: $150*

[*For each published article, a $150 scholarship to any section CLE will be awarded.]

**Article deadline for next *Checkoff* is November 30, 2004.**

# Chesnut II: The Back Pay Proceedings

**by John G. Showalter, Hearing Officer**

In *Department of Corrections v. Chesnut*, 847 So. 2d 579 (Fla. 1st DCA 2003), the First District Court of Appeal dismissed the Agency's appeal of the Commission's order reinstating Chesnut to his position of assistant warden on the ground that the Commission's order was not final until the amount of back pay due Chesnut was determined. The Commission reassumed jurisdiction and conducted a back pay proceeding. The hearing officer applied the Commission's longstanding policy of requiring an improperly dismissed employee to make a good faith effort to find alternative employment to mitigate his damages. However, because of the unique nature of Chesnut's case, especially since he had been told he had no right to appeal to the Commission, the hearing officer applied a lenient interpretation to that policy. She allowed Chesnut nine months of back pay despite his having made only minimal efforts to find other work during that time. Thereafter, she denied any further back pay because Chesnut's evidence of a work search was vague and "fuzzy." Moreover, the hearing officer disallowed compensation for time Chesnut spent in a training class and time he spent caring for his mother rather than looking for work. In addition, the hearing officer ruled that the Agency was entitled to set-off the unemployment compensation Chesnut had received against any back pay award.

The hearing officer also concluded that once Chesnut found alternative employment at a significantly lower rate of pay, he still had an obligation to actively search for a better paying job. Since he did not do so, Chesnut was not entitled to be compensated for the difference between his old and new salaries. Finally, the hearing officer concluded that the period of back pay liability terminated when Chesnut, who had not been reinstated by the Agency at the time of the back pay proceeding, failed to timely petition the circuit court to enforce the Commission's order of reinstatement. This lack of due diligence caused the expiration of the liability period.

The Commission rejected an attempt by Chesnut to re-open the record for more evidence, denied Chesnut's request for compensation for room and board that Chesnut sought due to his loss of low-rent housing on the prison grounds, and adopted the hearing officer's recommended order with one minor modification regarding Chesnut's age. Under the statute in effect at the time of Chesnut's dismissal, the Commission was authorized to award attorney's fees to an employee if the employee is sustained. Noting that Chesnut demanded $211,000.00 plus interest yet was awarded less than $41,000.00 plus interest, and that the Agency prevailed on the issue of lack of work search and other issues litigated, the Commission joined in the hearing officer's conclusion that Chesnut did not prevail on the issues litigated at hearing. Hence, the Commission did not award Chesnut fees or costs for litigating the amount of back pay. *Chesnut v. Department of Corrections*, 18 FCSR 315b (2003). The Agency has now appealed the Commission's order reversing Chesnut's dismissal to the First District Court of Appeal, Case No. 1D03-4525.

tween employers and employees. A union representative "puts both parties on a level playing field inasmuch as the union representative has the full collective force of the bargaining unit behind him." The union representative also enjoys a greater status than a mere coworker: he or she "is accustomed to dealing with the employer on a regular basis concerning matters other than those prompting the interview" and often can contribute to "a speedier and more efficient resolution of the problem requiring the investigation." The same is not true in a non-union setting. In the Board's view, non-union coworkers do not generally have a union representative's knowledge of the workplace and its politics, have no "official status," and have no contractual authority, all of which suggest futility in mandating their presence.

Third, non-union coworkers do not typically have the same skills set as union representatives. Because union representatives are "repeat players," they are familiar with (and bear some responsibility for enforcing) the "law of the shop." Their experience allows them to "propose solutions to workplace issues and thus try to avoid the filing of a grievance by an aggrieved employee." Non-union coworkers, however, are unlikely to bring such skills to an interview, "primarily because [the coworker] has no experience as the statutory representative of a group of employees."

Fourth, and perhaps most importantly, the Board noted that, "[i]n recent years, there have been many changes in the workplace environment, including ever-increasing requirements to conduct workplace investigations, as well as new security concerns raised by incidents of national and workplace violence." In the Board's view, the presence of a coworker may actually compromise the confidentiality and integrity of the investigation. Sensitive investigations such as those involving harassment, allegations of drug use, or workplace violence require discretion; a guarantee of confidentiality "helps an employer resolve challenging issues of credibility involving these sensitive, often personal, subjects." Indeed, the "effectiveness of a fact-finding interview in sensitive situations often depends on whether an employee involved could suffer serious embarrassment and damage to his reputation and/or personal relationships and the employer's investigation could be compromised by inability to get the truth about workplace incidents." By virtue of their legal duty of fair representation, union representatives may not reveal or misuse information revealed in an investigatory interview in bad faith. Non-union coworkers, however, have no such duty.

After balancing these factors against those that earlier led it to extend *Weingarten* rights to non-union employees, the Board held that "the right of an employee to a coworker's presence in the absence of a union is outweighed by an employer's right to conduct prompt, efficient, thorough, and confidential workplace investigations."

Two members of the Board issued a passionate dissenting opinion. In their view, the Board has now stripped "the overwhelming majority of employees . . . of a right integral to workplace democracy." They took issue with what they believed was an assumption by the majority that "nonunion workers are not capable of representing each other effectively," noting that there was "no evidence before the Board that coworker representatives have interfered with a single investigation" following the Board's *Epilepsy Foundation* decision. Decrying what they perceived to be the Board's attempt to make the "American workplace . . . a new front in the war on terrorism," the dissenters argued that Section 7 of the National Labor Relations Act protects non-union employees' requests for coworker representation, as such requests constituted "protected concerted activity . . . in its most basic and obvious form."

## What the Decision Means For Employers

Significantly, the Board's opinion in *IBM Corp.* continues to hold, consistent with earlier Board precedent, that non-unionized employees have the right to ask for a coworker to be present during investigatory interviews. It also remains illegal for employers to discipline employees simply for making such a request.

But the decision retreats from prior Board precedent and restores employer control over investigations by once again giving non-union employers the right to say "no" to employee requests to have coworkers sit in on investigatory interviews. Employees who then refuse to go forward with such interviews do so at their own peril.

Of course, the Board's retreat can be expected to draw rallying cries from organized labor; as cumbersome as *Epilepsy Foundation* was for employers, it was a useful management tool in union organizing campaigns: union promises to ensure *Weingarten* rights for dues-paying workers were temporarily undermined by the Board's more broad-based protectionism. To the extent that unions will now seize on the language of the dissent in *IBM Corp*., employers can expect to face renewed calls for workers to organize, predicated on this perceived stripping of a "right integral to workplace democracy."

Given the narrowness of the Board's split and its demonstrated willingness to ignore precedent from one decade to the next, future reversals of fortune for both sides are surely imminent.

***Rob Edmund*** *and* ***Marc Fleischauer*** *are Florida and Ohio licensed attorneys in Porter Wright Morris & Arthur LLP's labor and employment department. Porter Wright has offices in Naples, Florida, Washington D.C., and throughout Ohio.*

**Endnote:**

[1] Case Nos. 11-CA-19324, 11-CA-19329, & 11-CA-19334 (decided June 9, 2004 and released June 15, 2004).

THE FLORIDA BAR CLE

**The Florida Bar Continuing Legal Education Committee and the Labor and Employment Law Section present**

# Employment Litigation – Treading the Path to Trial

**COURSE CLASSIFICATION: INTERMEDIATE LEVEL**

**One Location: December 9-10, 2004 • Marriott West Palm Beach**
**1001 Okeechobee Boulevard • West Palm Beach, FL 33401 • 561/833-1234**

**Course No. 0243R**

## Thursday, December 9, 2004

5:00 p.m. – 6:00 p.m.
**Labor and Employment Law Executive Council Meeting (all invited)**

6:00 p.m. – 7:00 p.m.
**Reception (included in registration fee)**

## Friday, December 10, 2004

8:15 a.m. – 8:45 a.m.
**Late Registration**

8:45 a.m. – 9:00 a.m.
**Introduction and Welcome**
*Deborah C. Brown, Tampa*
*Stanley Kiszkiel, Pembroke Pines*

9:00 a.m. – 9:50 a.m.
**Starting the Process: Agency Practice with the EEOC and FCHR**
*Moderator: Stanley Kiszkiel*
*Cecil Howard, Florida Commission on Human Relations, Tallahassee*
*Delner Franklin-Thomas, EEO Commission, Miami*

9:50 a.m. – 10:50 a.m.
**But Can You Get to Trial? Enforcement, Defenses, and Litigation Issues in Mandatory Arbitration**
*David Block, Miami*

10:50 a.m. – 11:05 a.m. **Break**

11:05 a.m. – 12:00 p.m.
**So Who To Sue? Practical Considerations in Naming Individual Defendants**
*Erika Deutsch Rotbart, Boca Raton*

12:00 p.m. – 1:15 p.m.
**Lunch** (included in registration fee)
**Ethical Considerations as You Tread the Path**
*David Linesch, Palm Harbor*

1:30 p.m. – 2:30 p.m.
**But Will Your Evidence Come In? Evidentiary Battles in Employment Litigation**
*Frank Brown, Tampa*

2:30 p.m. – 2:45 p.m. **Break**

2:45 p.m. – 3:45 p.m.
**So What Will the Burden Be? Pretext Issues, *Suders* Impact and Mixed Motive Analysis After *Desert Palace***
*Erin Jackson, Tampa*

3:35 p.m. – 4:25 p.m.
**And If The Supremes Speak? How Recent Decisions and Pending Cases Could Affect Employment Law Practice**
*Angelo Filippi, Ft. Lauderdale*

4:25 p.m. – 4:30 p.m.
**Closing Remarks**



## CLE CREDITS

**CLER PROGRAM**
(Max. Credit: 8.0 hours)

General: 8.0 hours
Ethics: 1.0 hour

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(Max. Credit: 6.0 hours)

Civil Trial: 4.0 hours
Labor & Employment Law: 6.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

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|---|---|---|---|---|

**REFUND POLICY:** Requests for refund or credit toward the purchase of the course book/tapes of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A $15 service fee applies to refund requests. Registrants who do not notify The Florida Bar by 5:00 p.m., December 3, 2004 that they will be unable to attend the seminar, will have an additional $80 retained. Persons attending under the policy of fee waivers will be required to pay $100.

**HOTEL RESERVATIONS:** A block of rooms has been reserved at the Marriott West Palm Beach Hotel, at the rate of $79 single occupancy and double occupancy. To make reservations, call the Marriott West Palm Beach direct at (561) 833-1234. Reservations must be made by 11/19/04 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

## Register me for the "Employment Litigation–Treading The Path To Trial" Seminar

**ONE LOCATION: (272) MARRIOTT WEST PALM BEACH, WEST PALM BEACH (DECEMBER 9-10, 2004)**

TO REGISTER OR ORDER COURSE BOOK/TAPES, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON SITE REGISTRATION, ADD $15.00. **On-site registration is by check only.**

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- ❑ Non-section member: $250
- ❑ Full-time law college faculty or full-time law student: $175
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❑ Enclosed is my separate check in the amount of $25 to join the Labor and Employment Law Section. Membership expires June 30, 2005.

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Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after December 10, 2004. TO ORDER AUDIOTAPES OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

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**BILL SIZEMORE**
*from page 1*

co-found the firm of Thompson, Sizemore & Gonzalez, where he practiced for the remainder of his life. The hallmarks of Bill's practice were his intellect and his ability, but above all, his passion for and dedication to his clients. His efforts were rewarded by the opportunity to represent clients in virtually every sector of industry and government. His knowledge and skill in the area of traditional labor relations were second to none.

Bill was also recognized by his fellow lawyers, who elected him to the Board and presidency of the Hillsborough County Bar Association as well as the Young Lawyers Board and the Board of Governors of The Florida Bar. He was recognized by the publication *Best Lawyers in America* in the 1987 edition and in every edition thereafter. He also served as an adjunct professor of labor law at Stetson University. But above all of this, he treasured the confidence and loyalty of his clients. He was a great partner, a wonderful mentor and a superb lawyer. He leaves his partners, associates and other co-workers with a profound sense of loss and deep appreciation for his heart, his loyalty, and his compassion.

Bill's contributions to the field of labor and employment law were great, and all who practiced with him and even those he litigated against would agree that his skill and professionalism were of the highest caliber. On behalf of both the firm of Thompson, Sizemore & Gonzalez and well as Bill's family, we thank the Chair and Executive Council as well as the many Section members whose words of condolence have served to reaffirm that which we already knew, which is that he will be greatly missed.

of a qualifying event, such as divorce, legal separation, or a child's ceasing to be a dependent, as well as the procedures for providing such notice;

(iv) an explanation of the responsibility of a qualified beneficiary who is receiving continuation benefits to notify the plan administrator of any determination by the Social Security Administration of disability, as well as the procedures for providing such notice;

(v) an explanation of the importance of keeping the plan administrator apprised of the qualified beneficiary's current address; and

(vi) a statement that the notice does not fully describe the continuation coverage, and that more information regarding continuation rights is available in the Summary Plan Document of the plan.

The general notice requirement may be satisfied if the information required above is provided in the Summary Plan Document, provided the document is furnished to the covered employee within the time limits for the general notice. The written notice must be sent in accordance with 29 CFR 2520.104b-1, which requires a method or methods of delivery likely to result in full distribution. In-hand delivery at the place of employment is acceptable; however, it is not acceptable to display the notice in a place where employees frequent. Notice may also be mailed or sent by electronic means if in accordance with 29 CFR 2520.104b-1(c). The requirements of the general notice may be met by providing the election notice outlined in Paragraph D below, so long as the notice is provided within the time periods listed in this section. Also, if records indicate the covered employee's spouse lives at the same address and the spouse's coverage began at the same time as or later than the covered employee, then one notice may be sent to both the covered employee and his or her spouse at the marital residence. Dependent children are not required to be sent a general notice.

B. **Section 2590.606-2** is the **Employer's Notice** section, and covers the requirements for when an employer is required to provide notice under the plan. An employer is responsible for notifying the plan administrator of the covered employee's death, termination (other than for gross misconduct), reduction in hours of employment, Medicare entitlement, or the employer's commencement of Chapter 11 bankruptcy proceedings. The notice must be provided not later than 30 days after the date the qualified beneficiary loses coverage if the plan provides commencement of continuing coverage as of the date of loss of coverage; in the case of a multi-employer plan that provides a longer period of time during which the employer may notify the plan of a qualifying event, then not later than the expiration of that period; or not later than 30 days after the occurrence of the qualifying event in all other cases.

The content of the notice must include sufficient information so as to allow the plan administrator to determine the plan, the covered employee, the qualifying event, and the date of the qualifying event.

C. **Section 2590.606-3** is the **Employee's Notice** section, and covers instances when a covered employee (or his or her spouse or representative) is required to provide notice to a plan administrator of qualifying events. Qualifying events for which the employee is responsible for giving notice include the divorce or legal separation of a covered employee from his or her spouse; a dependent child's ceasing to be eligible under a plan as a dependent; the occurrence of a second qualifying event after a qualified beneficiary has become entitled to continuation coverage with a maximum duration of 18 (or 29) months; a determination by the Social Security Administration that the qualified beneficiary was disabled at any time during the first 60 days of continuation coverage; or a subsequent determination by the Social Security Administration that the qualified beneficiary is no longer disabled.

It is important to note that it is the plan's obligation to provide reasonable procedures for furnishing the notices. Procedures are reasonable only if they: are described in the Summary Plan Document; specify the individual or entity designated to receive such notices as well as the mean by which notice may be given; describe the information the plan deems necessary to provide continuation coverage rights; and otherwise comply with the requirements for timing and content of the notice. A plan may require a qualified beneficiary to use a specific notice, so long as it is easily available without cost to the covered employee.

If no reasonable procedures have been established in the Summary Plan Document, then a covered employee may provide such notice by: written or oral communication of the qualifying event reasonably calculated to bring such event to the attention of the person or organizational unit who handles employee benefits at the employer (if a single employer plan); the board, association, committee or other such group who administers the plan, or the person or organizational unit to which claims for benefits under the plan are usually referred (if it is a multi-employer plan); or (if the plan is administered by an insurance company, insurance service or other similar organization subject to the insurance regulations), the person or organization unit that handles claims for benefits under the plan or any officer of the insurance company, insurance service of other similar organization.

*continued, next page*

***Future Florida Bar Meeting Dates***

Midyear Meeting of The Florida Bar
January 19-22, 2005
Hyatt Regency Miami

■ ■ ■

Annual Meeting of The Florida Bar
June 22-25, 2005
Orlando World Center Marriott

The plan may establish a reasonable time for furnishing the notice, so long as the period does not end before: the date that is 60 days after the latest of the date on which the qualifying event occurs; the date on which the qualified beneficiary loses coverage under the plan as a result of the qualifying event; the date on which the qualified beneficiary is provided with general notice; or, if a disability case, the date when the Social Security Administration makes its disability determination, so long as it is before the end of the first 18 months of continuation coverage (if a change of disability, then 30 days from the date the change of determination is made by the Social Security Administration). The plan may also establish reasonable requirements for the contents of the notice, so long as the plan does not consider the notice untimely filed if all the requirements are not met but the notice still provides the plan with enough information to determine the covered beneficiaries and the date of the qualifying event. If the notice is incomplete, the plan may request the covered employee to provide additional information, but may not deny continuation coverage.

D. **Section 2590.606-4** is the Plan **Administrator's Notice** section, and covers when a plan administrator must notify a qualified beneficiary of his or her rights to continuation coverage under the plan. This notice does not need to be provided until after a qualifying event occurs. Once a plan administrator has received notice of a qualifying event, The Notice of Right to Elect Coverage must be sent within 14 days of receipt of the notice of the qualifying event. If the plan administrator is also the employer, then the notice shall be provided no later than 44 days after the date of the loss of coverage (if the plan provides for continuation coverage as of that date) or, in all other cases, the date of the qualifying event. The notice must be written in a manner calculated to be understood by the average plan participant, and must include:

(i) the name of the plan, as well as the name, address and phone number of a party from whom additional information about the plan is available;

(ii) a description of the qualifying event;

(iii) identification by status or name of the qualified beneficiaries entitled to elect continuation coverage and the date on which coverage under the plan will terminate;

(iv) a statement that each identified qualified beneficiary has an independent right to elect continuation coverage, that one qualified beneficiary may elect coverage for all qualified beneficiaries, and that a parent or legal guardian may elect coverage on behalf of a dependent minor;

(v) an explanation of the plan's procedures for electing continuing coverage, including the time period during which the election must be made and the date by which such election must be made;

(vi) an explanation of the consequences of failing to elect or waiving continuation coverage, including a an explanation of waiving or failing to elect will affect health insurance portability, guaranteed access to health coverage, and special enrollment under COBRA, as well as where more information regarding these rights may be located, and procedures for revoking any waiver;

(vii) a description of the continuation coverage which will be available, including the date it will commence;

(viii) an explanation of the maximum period for which continuation coverage is available, the termination date, and an explanation of when coverage may be terminated early;

(ix) a description of the circumstance when coverage may be extended due to a second qualifying event or a determination of disability, and the length of any such extension;

(x) a description of the amount of required premiums;

(xi) a description of the due dates for required premiums, the right to pay on a monthly basis, grace periods for payments, the address where payments should be mailed, and the consequences of late payments and non-payment;

(xii) an explanation of the importance of keeping the administrator advised of the qualified beneficiaries' current addresses; and

(xiii) a statement that the notice does not fully describe the continuation coverage, and that more information regarding continuation rights is available in the Summary Plan Document of the plan.

A notice of the unavailability of continuing coverage shall be provided in the same manner and within the same time period as described above. A notice of early termination of coverage shall be provided in the same manner, as soon as practicable after determination that early termination is necessary. The notice shall include the reason the coverage is being terminated early, the date of termination, and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage, such as a conversion right.

If the employer's records indicate the covered employee's spouse lives at the same address and the spouse's coverage began at the same time as or later than the covered employee, then one notice may be sent to both the covered employee and his or her spouse at the marital residence. This same notice may be used to notify dependent children. The written notice must be sent in accordance with 29 CFR 2520.104b-1 as outlined in the general notice section above.

The regulations, together with model notices for single employer plans, are available online at http://www.dol.gov/ebsa/regs/fedreg/final/2004011796.htm.

***Michelle L. Fontaine*** *is a recent graduate of the Florida State University College of Law. She is the recipient of the Labor & Employment Section's Outstanding Law Student award for 2003-2004.*

vices at its public universities would be ignored if the Commission were solely guided by the employees' subjective perspective.

The statutory designation of the boards of trustees as the public employers for the employees at their institutions created a factual scenario different than that presented by any other successorship case previously considered by the Commission. In previous cases, all of the employees removed from the bargaining unit at the predecessor employer were transferred into a single new employer. That new employer employed all the unit employees who were moved from the previous employer, it assumed responsibility for all facilities used by those unit employees, it used all the same supervisors, and it performed the same mission as the previous employer. In contrast, here the predecessor employer, the BOE, has been splintered into eleven new employers. As indicated by the hearing officers, only a fraction of the BOE's employees, supervisors, and facilities went to FSU and UWF. Similarly, the BOE's mission was very different from the mission of FSU and UWF. In this context, it would be illogical to conclude that there is continuity between the BOE and each individual university board of trustees.

The majority also noted that in resolving the continuity issue it was important to consider the historical way in which UFF became certified to represent the then board of regents' employees and the significant differences between the certification procedures in the National Labor Relations Act (NLRA) and Chapter 447, Part II, Florida Statutes. In Florida, an employer has no obligation to negotiate with the union until it is properly certified by the Commission. Here, an election was conducted in 1976 among the nine universities of higher learning that existed at the time and UFF was certified as the bargaining agent. However, as the unit covered the entire university system under the board of regents, the ballots were not counted by institution and there was no determination of majority status at the individual campuses.

Moreover, in evaluating the applicability of the private sector successorship doctrine, it is important to recognize that it merely created a presumption of continued majority support for the union. In the private sector, this presumption can be rebutted by objective evidence that this support has dissipated, such as by diminished dues deduction. This approach is not authorized in Florida's public sector. Given that there is no statutory mechanism for public employers to test majority status, the antiquity of the original election, that majority status was not determined at each individual institution, and that the legislature has statutorily imparted autonomy for each institution, the majority did not believe it could reasonably presume that a majority of employees supported UFF at FSU and UWF. Thus, it could not effectively certify UFF without the sanctity of representation petitions and elections.

## Dissent

Commissioner Kossuth dissented. By application of *Lake Worth*, Commissioner Kossuth believes that FSU and UWF are successor employers and have an obligation to maintain the status quo as determined by their contracts. In his opinion, to conclude otherwise would cast aside twenty-six years of labor relations history during which these employees had bargaining rights and contracts. According to Commissioner Kossuth, maintaining the status quo is even more compelling in the public sector where employees are prohibited from striking, yet are entitled to protection of the right to collectively bargain under Article I, section 6 of the Florida Constitution, and against the impairment of the right to contract under Article I, section 10 of the Florida Constitution.

The *FSU* and *UWF* cases have been appealed to the First District Court of Appeal, Case No. 1D03-4689.

## Section Bulletin Board

### 2004 - 2005 Labor & Employment Law Section Seminars & Executive Council Meetings

| SEMINARS | EXECUTIVE COUNCIL MEETINGS |
|---|---|
| **Employment Litigation** (0243R)<br>December 10, 2004<br>Marriott West Palm Beach<br>Group Rate: $79<br>Cut-off date: November 19, 2004<br>Reservation Number: 561/833-1234 | Thursday, December 9, 2004 - West Palm Beach<br>5:00 p.m. - 6:00 p.m. Meeting<br>6:00 p.m. - 7:30 p.m. Reception<br>Marriott West Palm Beach |
| **Labor Certification Review** (0202R)<br>February 24-25, 2005<br>The Rosen Plaza, Orlando<br>Group Rate: $105<br>Cut-off date: January 28, 2005<br>Reservation Number: 407/996-9700 | Thursday, February 24, 2005 - Orlando<br>5:00 p.m. - 6:00 p.m. Meeting<br>6:00 p.m. - 7:30 p.m. Reception<br>The Rosen Plaza, Orlando |
| **Advanced Labor Topics** (0223R)<br>April 29-30, 2005<br>Hawk's Cay, Duck Key<br>Group Rate: $175<br>Cut-off date: March 31, 2005<br>Reservation Number: 305/743-7000 | Friday, April 29, 2005 - Duck Key<br>5:15 p.m. - 6:15 p.m. Meeting<br>6:15 p.m. - 7:30 p.m. Reception<br>7:30 p.m. - 8:30 p.m. Dinner<br>Hawk's Cay, Duck Key |

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**Tallahassee, FL 32399-2300**