PUBLIC EMPLOYEE COLLECTIVE BARGAINING IN FLORIDA: COLLECTIVE BARGAINING OR COLLECTIVE BEGGING?

State v. Florida Police Benevolent Ass’n, 613 So. 2d 415 (Fla. 1992).1

Article I, section 6, of the Florida Constitution created a constitutional right of collective bargaining for public sector employees.2 Following the 1968 revision of the Florida Constitution, the Florida Supreme Court has consistently reaffirmed that under article I, section 6, public employees maintain the same rights to collectively bargain as do private employees.3 Because the right to collectively bargain is a fundamental constitutional right, Florida courts review

1. State v. Florida Police Benevolent Ass’n, 613 So. 2d 415 (Fla. 1992). The list of appellants included: the State of Florida; the Honorable Robert Martinez, former Governor of the State of Florida; and the Florida Department of Administration. The list of appellees included: the Florida Police Benevolent Association, Inc.; the Florida Nurses Association; and the Florida Public Employees Council 79, American Federation of State and County Municipal Employees (AFSCME). Id. at 416.

The author recognizes that the holding in Chiles v. United Faculty of Florida, 615 So. 2d 671 (Fla. 1993), implicates the holding in State v. Florida Police Benevolent Ass’n, 613 So. 2d 415 (Fla. 1992). In Chiles, the Florida Supreme Court held that once the legislature funds a negotiated agreement, it may not unilaterally retract that funding. 615 So. 2d at 673. The court reasoned that such a legislative act would be unconstitutional and in violation of article I, §§ 6 and 10, of the Florida Constitution because a valid contract existed once the funding occurred. Id. The Chiles court distinguished the opinion in Florida Police Benevolent Ass’n stating that that court dealt with a situation in which the parties had not yet reached a final agreement. Id. at 672. The Chiles court found Florida P.B.A. distinguishable because in Chiles the legislature had already funded the agreement before unilaterally repealing the funds. Id. This Note deals with the Florida Police Benevolent Ass’n case and not with the interrelation between Florida Police Benevolent Ass’n and the Chiles case.

2. Article I, § 6 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.

FLA. CONST. art. I, § 6 (emphasis added).


3. See Hillsborough County Gov’t. Employees Ass’n v. Hillsborough County Aviation Auth., 522 So. 2d 358 (Fla. 1988); City of Tallahassee v. Public Employees Relations Comm’n, 410 So. 2d 487 (Fla. 1981); Dade County Classroom Teachers Ass’n v. Legislature of Fla., 269 So. 2d 684 (Fla. 1972).
abridgments of such a right under a strict scrutiny standard.\footnote{Hillsborough County Govtl. Employees Ass'n, 522 So. 2d at 362-63 (holding that the right to bargain collectively is part of Florida's Declaration of Rights and is therefore a fundamental right subject to abridgment only upon a showing of a compelling state interest).} However, in Florida Police Benevolent Ass'n (Florida P.B.A.), the Florida Supreme Court recently held that the legislature, through its appropriations power, can unilaterally alter the terms of any negotiated public employee agreement provided the legislature has not appropriated sufficient funds to finance the agreement.\footnote{Florida P.B.A., 613 So. 2d at 421.} This holding reflects an inherent conflict within the Florida Constitution between the legislature's appropriations power and the constitutional right to collectively bargain. Notwithstanding this apparent conflict, the Florida Supreme Court's holding raises serious questions about the sanctity of article I, section 6. Most importantly, the Florida Supreme Court's holding in Florida P.B.A. undermines the collective bargaining rights of public employees. Furthermore, the possible effects of this holding present other concerns which implicate the dynamics of the public bargaining process and which may change the concept of collective bargaining as we now understand it. Arguably, this holding transforms the collective bargaining process into an exhibition of collective begging.

**FACTS OF FLORIDA P.B.A.**

In accordance with Florida Statutes, section 447.203,\footnote{Florida Statutes § 447.203(2) defines “public employer” or “employer” as: “[The] state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. With respect to all public employees determined by the commission as properly belonging to a statewide bargaining unit composed of State Career Service System employees or Selected Professional Service employees, the Governor shall be deemed to be the public employer . . . .” Fla. Stat. § 447.203(2) (1991) (emphasis added).} a former governor of Florida entered into collective bargaining agreements with the union representatives or “bargaining agents”\footnote{Florida Statutes § 447.203(12) defines “bargaining agent” as “the employee organization which has been certified by the commission as representing the employees in the bargaining unit, as provided in s. 447.307, or its representative.” Fla. Stat. § 447.203(12) (1991).} of the Florida Police Benevolent Association, the Florida Nurses Association, and the Florida Public Employees Council 79, American Federation of
State and County Municipal Employees (AFSCME). These agreements became effective on July 1, 1987, and remained in force until June 30, 1990. The agreements incorporated by reference the provisions of chapter 22A-8 of the Florida Administrative Code governing attendance and leave of career service employees. Although all the parties had fully signed and ratified the collective bargaining agreements, their actual implementation was still subject to funding by the legislative body, as defined by the Public Employees Relations Act (PERA), pursuant to its appropriations power. The Governor, acting as the chief executive officer, requested the legislative body to provide sufficient funds to finance the collective bargaining agreements. In response to the Governor's request, the Florida Legislature, in 1988, pursuant to a proviso in section 9.3A(5) of the General Appropriations Act of 1988, underfunded the agreements and unilaterally altered several benefits contained therein. These

8. *Florida P.B.A.*, 613 So. 2d at 416.
9. Chapter 22A-8 entitles employees to 17.333 hours per month of annual leave and 4 hours and 20 minutes per month of sick leave. Fla. Admin. Code Ann. r. 22A-8 (1988). At the end of the year, employees have the option of converting any remaining leave hours into either sick leave or cash payments for one-half of the excess leave hours. *Id.* Finally, chapter 22A-8 provides for sick leave only if the employee verifies his or her illness by documentation from a physician. *Id.*
10. Florida Statutes § 447.203(10) defines “legislative body” as:

    [The State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit.

11. The Public Employees Relations Act is codified at Florida Statutes §§ 447.201-609 (1975).
12. Florida Statutes § 447.309(2) states:

    Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.

13. *Florida P.B.A.*, 613 So. 2d at 416. Under § 9.3A(5)'s proviso, “annual leave was decreased from 17.333 hours per month to 13 hours per month.” *Id.* The proviso increased sick leave from “4 hours and 20 minutes per month to 8 hours per month,” and canceled any accumulated sick leave in excess of 240 hours, thus removing the cash payment and sick leave conversion options that the employees bargained for as part of the collective bargaining agreements. *Id.* In addition, the legislature eliminated “the requirement of
benefits were conditions of employment subject to mandatory collective bargaining between the public employer and the public employee representatives. In response to the legislature's unilateral modification, the Florida Police Benevolent Association, the Florida Nurses Association, and the Florida Public Employees Council 79, AFSCME, filed suit in the circuit court for Leon County alleging that the legislature's actions violated article I, section 6 of the Florida Constitution.

**PROCEDURAL HISTORY**

The circuit court granted summary judgment in favor of the public employees, holding that section 9.3A(5) of the General Appropriations Act of 1988 unconstitutionally violates the right to collectively bargain mandated by article I, section 6 of the Florida Constitution. The First District Court of Appeal affirmed the circuit court's decision in a per curiam opinion. Subsequently, the
State of Florida sought, and was granted, review by the Florida Supreme Court.\textsuperscript{18}

\textbf{THE MAJORITY OPINION}

Implementation of the Sufficient/Insufficient Funding Test

The Florida Supreme Court adopted a solution to the inherent conflict between the appropriations power of the legislature and the constitutional right of public employees to collectively bargain by following an approach set out by the New Jersey Supreme Court.\textsuperscript{19} HELD: If the legislature (or legislative body) did not appropriate sufficient funds to finance the collectively bargained agreements, then any conditions it imposed on the use of the funds would prevail, even if the conditions completely contradicted the collective bargaining agreements.\textsuperscript{20} However, if the legislature appropriated sufficient funds to implement the collective bargaining agreements, then any unilateral alteration of the negotiated agreements by the legislature would be void and the agreements would prevail.\textsuperscript{21} The supreme court reversed the district court's holding,\textsuperscript{22} and quashed the circuit court's order granting summary judgment in favor of the public employees. The supreme court also remanded the case to the trial court to determine whether the collective bargaining agreements could be fully funded by the money already appropriated by the legislature.\textsuperscript{23}

\begin{itemize}
\item \textsuperscript{18} The Florida Supreme Court has jurisdiction over this matter pursuant to article V, \$ 3(b)(1) of the Florida Constitution.
\item \textsuperscript{19} Florida P.B.A., 613 So. 2d at 420 (citing State v. State Troopers Fraternal Ass'n, 453 A.2d 176 (N.J. 1982)).
\item \textsuperscript{20} Id. at 421.
\item \textsuperscript{21} Id. The supreme court noted that there was no "record evidence on the issue of whether the negotiated benefits could be fully funded by the money already allocated by the legislature." Id. As a result, the supreme court ordered the trial court to determine "whether the legislative appropriation was sufficient to fund the annual and sick leave provisions of the collective bargaining agreement." Id.
\item \textsuperscript{22} Id. The First District Court of Appeal held that \$ 9.3.A(5) of the General Appropriations Act of 1988 was unconstitutional because it violated the collective bargaining rights guaranteed to public employees by article I, \$ 6 of the Florida Constitution. Florida P.B.A., 580 So. 2d at 620.
\item \textsuperscript{23} Florida P.B.A., 613 So. 2d at 421.
\end{itemize}
Florida P.B.A. is significant and its ramifications must be closely scrutinized for several reasons. First, this decision contradicts several previous holdings by the Florida Supreme Court which had established a framework for analyzing the constitutional right of public employees to collectively bargain. Second, this decision weakens the effect of the collective bargaining process in the public sector. Consequently, this decision undermines the force of article I, section 6 and renders this constitutional provision less effective as a safeguard for the rights of public employees in the State of Florida. Finally, taken together with the current framework of PERA, the holding in Florida P.B.A. restricts the means by which union representatives and labor law practitioners can protect the interests of public employees at the bargaining tables or within the judicial system.

This Note briefly surveys the law impacting the right of public employees to collectively bargain prior to and following the enactment of article I, section 6 of the Florida Constitution. This Note then analyzes the majority's decision in Florida P.B.A., in light of PERA, and determines what collective bargaining rights, if any, have been preserved for public sector employees. Finally, this Note demonstrates the effect the majority decision in Florida P.B.A. will have on the ability of public employees to engage in “meaningful” collective bargaining.

HISTORICAL OVERVIEW

Development of the Right of Public Employees to Collectively Bargain Prior to
State v. Florida Police Benevolent Ass’n
Prior to the Passage of Article I, Section 6

Florida is a “right to work” state. The “right to work” movement swept through the southern states following the enactment of


the National Labor Relations Act in 1935. This movement served to protect the rights of those employees who wanted to work without being required to join unions. In response to the “right to work” movement, the Florida Legislature, in 1943, amended the 1885 Florida Constitution’s Declaration of Rights, adding a “right to work” provision. However, the Florida Supreme Court has held that the 1943 amendment did not create any new collective bargaining rights for public employees. Therefore, in the absence of any statutory or constitutional right to bargain, Florida continued to follow the common law rule for public employee collective bargaining until the 1968 constitutional revision. Florida common law did not require public employers to bargain with their employees. In addition, Florida also prevented public employees from participating in labor strikes.

There are two primary doctrines for denying the right to collectively bargain in the public sector. The first focuses on the sovereign power of the government and maintains that public employees are bound to support this notion of sovereignty. This theory envisions collective bargaining as an attempt by public employees to obstruct the operation of government by imposing individual, private demands on the fiscal state. However, critics recognize this sovereign


27. See 1943 Fla. Laws ch. 21968. Section 12 of the Declaration of Rights of the 1885 Florida Constitution reads in part:

   The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.

   FLA. CONST. of 1885, Declaration of Rights, § 12.

28. Miami Water Works Local No. 654 v. City of Miami, 26 So. 2d 194, 198 (Fla. 1946); see also Pinellas County Classroom Teachers Ass’n v. Board of Pub. Instruction of Pinellas County, 214 So. 2d 34 (Fla. 1968).

29. See McGuire, supra note 24, at 34.

30. Id.

31. Id. See Local 532 of Am. Fed’n of State, County & Mun. Employees v. City of Fort Lauderdale, 294 So. 2d 104 (Fla. 4th DCA 1974).

power theory as a demonstration of anti-union hostility. Opponents of private sector collective bargaining similarly used a sovereignty argument to criticize the private sector collective bargaining movement, but that argument failed. The second doctrine opposing public sector bargaining relies on the premise that such bargaining transgresses upon the prohibition against delegation of powers by the legislature at either the state or local level. This doctrine was a driving force in limiting the inception of public sector bargaining and is still a barrier to the public sector collective bargaining process.

These doctrines fueled the opposition to public sector bargaining in Florida prior to the 1968 constitutional revision. Despite these doctrinal obstacles, and the Florida Supreme Court decisions stating that public employees were not entitled to collective bargaining, change was imminent. Public sector hostility continued to grow because of the lack of bargaining power on behalf of public employees. This dissatisfaction within the public sector led to twenty-five strikes between 1960 and 1969 and culminated in a state-wide strike by public school teachers aimed at creating a right for public employees to collectively bargain. As a result of this upheaval, the Florida Legislature, in 1968, revised the Florida Constitution to

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33. Wellington & Winter, supra note 32, at 1107-09.
34. Id.
35. Known as the illegal delegation of power doctrine, this doctrine has as its central tenet the theory that certain governmental duties cannot be delegated to other branches of government for fear of upsetting the balance created by the separation of powers. Id. Because the process of collective bargaining involves a process of "shared control" by the branches of government, the illegal delegation doctrine operates as an obstacle to public sector bargaining. Id.
36. See Florida P.B.A., 613 So. 2d at 416-18 (stating that the legislative power to appropriate funds acts as an inherent limitation on the process of public sector collective bargaining and therefore prevents public sector bargaining from operating in the same manner as does its private sector counterpart). See also Wellington & Winter, supra note 32, at 1109-11.
37. See supra note 28 and accompanying text.
38. See McGuire, supra note 24, at 28 n.2.
guarantee public employee collective bargaining.\textsuperscript{39}

\textit{After the Passage of Article I, Section 6}\textsuperscript{40}

The first decision by the Florida Supreme Court interpreting article I, section 6 of the Florida Constitution unanimously held that, with the exception of the right to strike, public employees have the same rights of collective bargaining as do private employees.\textsuperscript{41} The court, in \textit{Dade County Classroom Teachers' Ass'n v. Ryan}, also elaborated on the necessity of the legislature to promulgate standards and guidelines securing the constitutional right of collective bargaining within the public sector.\textsuperscript{42} \textit{Ryan} was the first decision after the passage of article I, section 6 in which the judiciary demonstrated a commitment to the protection of the public sector's collective bargaining rights.

In 1972, public employees attempted to require the legislature to enact a statute establishing guidelines regulating the right of public employees to collectively bargain.\textsuperscript{43} In \textit{Dade County Classroom Teachers Ass'n v. Legislature of Florida}, the plaintiffs filed a petition for a constitutional writ of mandamus.\textsuperscript{44} In their petition, the plaintiffs maintained that three legislative sessions had elapsed

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\bibitem{39} See Fla. Const. art. I, § 6. See supra note 2 for the language in article I, § 6. Although article I, § 6 does not actually state that it guarantees public employees the right to collectively bargain, the Florida House and Senate Committee notes reflect that public employees were included in the term "employee" as it appears in article I, § 6. See McGuire, supra note 24, at 42 n.64 for a listing of the corresponding Florida Senate and House Committee reports.
\bibitem{40} For a detailed history of the development of public sector collective bargaining subsequent to the passage of article I, § 6, see McGuire, supra note 24, at 40-59.
\bibitem{41} Dade County Classroom Teachers' Ass'n v. Ryan, 225 So. 2d 903, 905 (Fla. 1969). In finding that public employees have the same rights of collective bargaining as do private employees, the supreme court delved into the legislative records and noted that the legislature intended both public and private employees to be included in the word "employees" as it appears in article I, § 6 of the Florida Constitution. \textit{Id.} at 905 n.1.
\bibitem{42} \textit{Id.} at 906. The Florida Supreme Court stated:
A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers without, however, in any way trenching upon the prohibition against public employees striking either directly or indirectly or using coercive or intimidating tactics in the collective bargaining process. \textit{Id.}
\bibitem{43} Dade County Classroom Teachers Ass'n v. Legislature of Fla., 269 So. 2d 684, 685 (Fla. 1972).
\bibitem{44} \textit{Id.} The petition for the constitutional writ of mandamus was filed as a class action on behalf of 7500 classroom teachers employed by the District School Board of Dade County and on behalf of all the public employees of the State of Florida. \textit{Id.}
\end{thebibliography}
since the creation of article I, section 6, throughout which no legislative action had been taken to create enabling legislation to ensure enforcement of the new constitutional right. However, Chief Justice Roberts did remark that one of the exceptions to the separation of powers doctrine is the protection of constitutionally guaranteed rights. Speaking for the court, Chief Justice Roberts denied the petition for the writ, reasoning that the judiciary could not compel the legislature to act on a purely legislative matter. However, the court reiterated that article I, section 6 created a right of collective bargaining for public employees. The court reaffirmed that the judiciary's role has always been, and will always be, to guard against the invasion of constitutionally protected rights, including the right to bargain collectively as exemplified in article I, section 6. Consequently, the supreme court indicated that if the legislature did not respond by enacting enabling legislation for article I, section 6, the court itself would fashion guidelines by judicial decree to ensure that public employees would have the right to collectively bargain. After this decision, it was evident that the Florida Supreme Court supported the efforts of the public sector to codify the rights guaranteed by article I, section 6.

The opinion in *Dade County Classroom Teachers Ass'n* v. *Legislature of Florida*, coupled with strong support from public sector unions, eventually led to the enactment of PERA in 1974. PERA's stated purpose is to provide statutory implementation of article I, section 6 for public employees. Despite PERA's purpose, PERA

45. *Id.*
46. *Id.* at 686. However, Chief Justice Roberts did remark that one of the exceptions to the separation of powers doctrine is the protection of constitutionally guaranteed rights. *Id.*
47. *Dade County Classroom Teachers Ass'n*, 269 So. 2d at 687.
48. *Id.*
49. *Id.* In upholding article I, § 6, the majority stated: The question of the right of public employees to bargain collectively is no longer open to debate. It is a constitutionally protected right which may be enforced by the courts, if not protected by other agencies of government. It is a right which should be exercised in accordance with appropriate guidelines in order to make sure that there may be no denial of the right . . . .
51. 1974 Fla. Laws ch. 74-100, § 3, 135 (codified as amended at FLA. STAT. §§ 447.201-609 (1991)).
52. Florida Statutes § 447.201, titled “Statement of Policy,” states:
limits the right to collectively bargain by denying public employees the right to strike.\textsuperscript{53} PERA further limits this right by denying public employees binding interest arbitration during impasse procedures, while leaving final, unilateral decisionmaking power with the legislative body.\textsuperscript{54}

To compensate for the absence of the right to strike, PERA established intricate third-party dispute resolution procedures designed to resolve impasses.\textsuperscript{55} These mechanisms act as a substitute for much of the bargaining power public employees lack as a result of their inability to strike against their employer.\textsuperscript{56} They include procedures for mediation,\textsuperscript{57} special masters proceedings,\textsuperscript{58} and final decisionmaking power by the legislative body following a public hearing in which both parties are allowed to present their respective
positions to the legislative body.\textsuperscript{59} In addition, PERA provides a mandatory grievance procedure for settling disputes which involve the interpretation or application of a collective bargaining agreement.\textsuperscript{60}

These dispute resolution mechanisms have given public employees certain leverage in the work place — much more than they had before the adoption of article I, section 6, or the enactment of PERA. Even though public employees are now in a stronger bargaining position than they were before the enactment of PERA, many employee organizations have expressed strong disfavor with the impasse procedures.\textsuperscript{61} Certain commentators have noted that the essence of this dissatisfaction lies in the disparity in bargaining power within the statutory impasse procedures, which favor the public employer over the public employee.\textsuperscript{62} A public employee’s inability to strike,\textsuperscript{63} coupled with the legislature’s decision to leave ultimate impasse determinations with the legislative body,\textsuperscript{64} have been the primary factors causing this disparity in bargaining power. As a result of this statutory scheme, many public employees feel that they lack sufficient power to effectively bargain for the benefits which they desire.\textsuperscript{65}

\textsuperscript{59} Florida Statutes § 447.403(4) provides in pertinent part:

In the event that either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special master: . . . (c) The legislative body . . . shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the rejected recommendations of the special master; (d) Thereafter the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues; and (e) Following the resolution of the disputed impasse issues by the legislative body, the parties shall reduce to writing an agreement . . . . If such agreement is not ratified by all parties . . . the legislative body’s action taken pursuant to the provisions of paragraph (d) shall take effect as of the date of such legislative body’s action for the remainder of the first fiscal year which was the subject of negotiations . . . .

\textsuperscript{60} See FLA. STAT. § 447.401 (1991).

\textsuperscript{61} See generally VAUSE, supra note 54, for support for this proposition.

\textsuperscript{62} See generally id., for more on this theory of the dissatisfaction of public employees with PERA.

\textsuperscript{63} See supra note 56.

\textsuperscript{64} FLA. STAT. § 447.403(4)(d) (1991). See supra note 59 for a recitation of the pertinent subsections of this statute.

\textsuperscript{65} See Alaine S. Williams, Alternatives to the Right to Strike for Public Employees: Do They Adequately Implement Florida’s Constitutional Right to Collectively Bargain?, 7 FLA. ST. U. L. REV. 475 (1979). Williams argues that PERA’s statutory scheme undermines the constitutional right to bargain by denying public employees access to meaningful bargaining. Id. at 494-95. Williams additionally asserts that the main reason that PERA pre-
In 1979, the First District Court of Appeal in *United Faculty of Florida v. Board of Regents* delineated a constitutional limitation upon the right to collectively bargain.\(^66\) The court noted that a collective bargaining agreement, in which the state legislature is the legislative body, is subject to required funding by the legislature through its appropriations power.\(^67\) This decision recognized a Florida constitutional rule dictating that the legislature is the only governmental branch which can appropriate state funds.\(^68\) Despite these concerns over the separation of powers doctrine, the Florida Supreme Court has consistently reaffirmed the judiciary’s right to review legislative action which impinges on a constitutional right. For instance, decisions such as *Department of Education v. Lewis*,\(^69\) *Murray v. Lewis*,\(^70\) and *Holley v. Adams*,\(^71\) reflect a commitment by the Florida judiciary to strike down questionable legislative action when it unjustifiably interferes with the practice of a constitutional right. Furthermore, the opinion in *Department of Education v. Lewis* recognized that article III, section 12 of the Florida Constitution mandates that an appropriations bill must not change or amend existing law on any subject other than the appropriation.\(^72\) As a corollary to this rule, a provision attached to a legislative appropriation must deal solely with the subject matter of the appropriation and must directly and rationally relate to the purpose of the appro-
priation. Thus, although the court in United Faculty states that public employees may not require the legislature to appropriate funds, the legislature is limited in its actions because it may not impinge on a constitutional right or change or amend existing law on any subject other than the appropriation.

The next significant decision by the Florida Supreme Court involving article I, section 6 noted that there are several differences which distinguish the procedural aspects of the public sector bargaining process from those of the private sector collective bargaining process. In City of Tallahassee v. Public Employee Relations Commission, the supreme court affirmed that phrases in certain Florida statutes abridged the collective bargaining rights of

73. Lewis, 416 So. 2d at 460.
74. City of Tallahassee v. Public Employee Relations Comm’n, 410 So. 2d 487 (Fla. 1981).
75. The Florida Supreme Court, in City of Tallahassee, did not state the nature of any of these “differences” in its decision. However, there are several universally recognized differences between public employee bargaining and private employee bargaining. One commentator has provided several noteworthy distinctions between the private and public sector bargaining processes. See generally 1 W. Gary Vause, Labor and Employment in Florida — Law, Policy and Practice pt. 1, § 1.16 (1989). Vause noted that collective bargaining in the private sector involves minimal governmental intrusion, thus producing an even economic contest between two parties. Id. In the public sector, on the other hand, there is a great deal of governmental intrusion. Id. For instance, Florida, as well as most other states, prohibits strikes, and provides a mechanism of alternative dispute resolution. Id. In addition, because public employees often pursue their objectives through lobbying efforts at state and local political forums, public sector bargaining contains a political dimension. Id. Finally, there are numerous fiscal restraints in the public sector, unlike the private sector, where the concept of maximizing profits prevails. Id.
76. City of Tallahassee, 410 So. 2d at 491. The court noted that “[i]t would be impractical to require that collective bargaining procedures for retirement matters be identical in the public and the private sectors. We must make sure, however, that the constitutional right of all employees to bargain collectively is not abridged.” Id. (emphasis added). The supreme court seemed to retreat from its holding in Ryan by recognizing that there are differences between private and public sector bargaining. Id. In reality, this opinion reaffirmed the holding in Ryan, noting that the goal of article I, § 6 is to guarantee the same rights of collective bargaining to all employees, be they private or public. Id. at 490.
77. 410 So. 2d 487 (Fla. 1981).
78. The phrases which the district court found unconstitutional appeared in Florida Statutes §§ 447.301(2) and 447.309(5). Id. at 489.
Section 447.301(2) reads in pertinent part as follows: “Public employees shall have the right to be represented . . . in the determination of the terms and conditions of their employment, excluding any provisions of the Florida Statutes or appropriate ordinances relating to retirement.” Fla. Stat. § 447.301(2) (1991) (emphasis added).
Section 447.309(5) reads in pertinent part as follows: “Any collective bargaining agreement . . . shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided
public employees by excluding retirement provisions from the bargaining process. Although the supreme court stated that there were differences between the public and private sector with respect to procedural aspects of bargaining, it reaffirmed that the holding in Ryan remained clear. The court reemphasized the ongoing trend, set forth in Ryan, which guarantees that public employees shall have the same collective bargaining rights as do private employees under article I, section 6 of the Florida Constitution. The effect of this decision was to reinforce the supreme court's stance that, notwithstanding any distinctions between public and private sector bargaining, the constitutional rights of all employees to bargain collectively must not be abridged.

Following its decision in City of Tallahassee, the Florida Supreme Court, in Hillsborough County Governmental Employees Ass'n v. Hillsborough County Aviation Authority, recognized that the right to collectively bargain is a fundamental, constitutional right. The court encouraged the judiciary to safeguard this right by utilizing a strict scrutiny standard in confronting any abridgments of the right. The holding in Hillsborough County Governmental Employees Ass'n is significant because it ensures that the state must demonstrate a compelling state interest before engaging in any conduct which could abridge a public employee's right to collectively bargain. By equating the right to bargain collectively with a fundamental constitutional right, the Florida Supreme Court demonstrated its commitment to zealously safeguard public employees from any action which would denigrate the rights granted to them by article I, section 6 of the Florida Constitution. The effect of the Hillsborough County Governmental Employees Ass'n decision was to extend protection, coterminous to that afforded other fundamental

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for in any Florida statute or appropriate ordinances relating to retirement . . . .” FLA. STAT. § 447.301(2) (1991) (emphasis added).

79. City of Tallahassee, 410 So. 2d at 491.
80. Id. at 490.
81. Id. The court noted that both Dade County Classroom Teachers’ Ass’n and Ryan described the rights of public employees as being “commensurate with those of private employees.” Id.
82. Id. at 491.
83. 522 So. 2d 358 (Fla. 1988).
84. Id. at 363.
85. Id. at 362.
86. Id. at 362-63.
constitutional rights (such as the right of privacy), to the right of collective bargaining. Thus, the Florida Supreme Court, in *Hillsborough County Governmental Employees Ass'n*, stated that article I, section 6 requires that public employees have an effective and meaningful right to bargain collectively.87

Prior to the decision in *Florida P.B.A.*, there already existed an imbalance of power in public sector bargaining which was inherent in PERA. This imbalance resulted because, under PERA, public sector employees could not use the strike as a bargaining tool.88 In addition, although public employees did have impasse resolution procedures, the final decisionmaking authority was placed with the legislative body.89 Consequently, public employees were not on equal footing with their opponents at the bargaining tables. The courts, however, have recognized this bargaining disparity and have demonstrated a long-standing commitment to protecting the rights established under article I, section 6. When there have been injustices upsetting the balance of power in the system, public employees and their union representatives have looked to the courts to reaffirm the meaning and effectiveness of the public sector collective bargaining rights grounded in the Florida Constitution.

**THE MAJORITY'S REASONING**

**Distinction Between Public and Private Collective Bargaining**

Writing for the *Florida P.B.A.* court, Justice Grimes began his opinion by examining previous Florida Supreme Court decisions which determine the collective bargaining rights of public employees under article I, section 6.90 The court affirmed the application of article I, section 6 to public employees91 and acknowledged the
Florida judiciary's role in protecting the right of public employees to engage in collective bargaining. The court emphasized its support for public employee collective bargaining by citing *Dade County Classroom Teachers Ass'n v. Legislature of Florida*, in which the Florida Supreme Court warned the legislature that it would administer judicial guidelines in the event the legislature did not enact enabling legislation to implement the rights set out in article I, section 6.

The court then recognized that although the judiciary has safeguarded public employee collective bargaining rights, public employee collective bargaining is not, and cannot be, equivalent to private employee bargaining. Notwithstanding the applicability of article I, section 6, the court noted several cases which acknowledged procedural variations between public and private bargaining. In substantiating that differences exist which transcend the procedural aspects of bargaining, the *Florida P.B.A.* court cited several opinions by the highest courts of other states.
Next, Justice Grimes quoted a Pennsylvania Supreme Court case\textsuperscript{98} to point out that many of the experiences found in private sector bargaining are not entirely applicable within the realm of public sector bargaining.\textsuperscript{99} In addition, the majority listed two factors which further distinguish the public and private sector bargaining processes. First, public employees need public union representatives to engage in political lobbying in order to achieve the same concessions attained by private unions at the bargaining table.\textsuperscript{100} Second, public unions must obtain approval both from the public employer and the legislative body that appropriates the funds in order to attain their negotiated benefits.\textsuperscript{101} Aside from stating these differences, the court did not delve into any explanation as to why these differences exist or what significance they may have on the implementation of article I, section 6. The majority concluded that despite its holding in \textit{Dade County Classroom Teachers' Ass'n v. Ryan},\textsuperscript{102} article I, section 6 does not require a court to disregard universally recognized differences between the public and private sector.\textsuperscript{103} Furthermore, the court asserted that these differences should be used in interpreting the application of public employee collective bargaining laws in Florida.\textsuperscript{104}

After recognizing the differences between the two bargaining sectors, the majority stated that under article VII, section 1(c) of the Florida Constitution, the legislature exercises unilateral control over the appropriation of public funds.\textsuperscript{105} As a result, unlike the private employer, the public employer cannot fully authorize expenditures

\textsuperscript{98} \textit{Florida P.B.A.}, 613 So. 2d at 417 (quoting Pennsylvania Labor Relations Bd. v. State College Area Sch. Dist., 337 A.2d 262, 264-65 (Pa. 1975) (stating that there are distinctions between the private and public sector bargaining processes which should not be minimized when dealing with unique scenarios presented by the nature of public sector bargaining)).

\textsuperscript{99} \textit{Id.}

\textsuperscript{100} \textit{Id.} (citing Antry v. Illinois Educ. Labor Relations Bd., 552 N.E.2d 313 (Ill. 1990)).

\textsuperscript{101} \textit{Id.} (quoting Antry, 552 N.E.2d at 343).

\textsuperscript{102} 225 So. 2d at 905. See \textit{supra} notes 41-42 and accompanying text for a brief analysis of the holding in \textit{Ryan}.

\textsuperscript{103} \textit{Florida P.B.A.}, 613 So. 2d at 418.

\textsuperscript{104} \textit{Id.} at 416-17.

\textsuperscript{105} \textit{Id.} at 418. Article VII, § 1(c) provides in pertinent part: “No money shall be drawn from the treasury except in pursuance of appropriation made by law.” \textit{FLA. CONST.} art. VII, § 1(c).
during a collective bargaining session. By attempting to do so, the public employer would exceed its statutory powers and encroach upon the appropriations power of the legislature. The separation of powers doctrine and the Florida Constitution prohibit such an encroachment.

In support of this proposition, the majority cited Pinellas County Police Benevolent Ass’n v. Hillsborough County Aviation Authority, which reasoned that there is an inherent limitation in public sector bargaining because the legislative body, and not the employer, is the one empowered to fund the agreement. The court also cited United Faculty of Florida v. Board of Regents to support the proposition that, under PERA, the legislative body is not required to fund the collective bargaining agreement. The majority concluded that this limitation, coupled with the statutory right of the legislative body to underfund a negotiated agreement, established a necessary difference between public and private bargaining in the funding context.
Next, the majority asserted that the right to bargain is still a meaningful process despite the fact that public employee collective bargaining agreements are subject to the legislature's appropriations power. The court reasoned that article I, section 6 could not give public employees the power to require funding of their agreements because that section only guarantees that the right to collectively bargain “may not be taken away or limited.” Justice Grimes then stated that the legislature's right to affect an agreement by its appropriations power is “not an abridgment . . . but an inherent limitation[,]” on the right to collectively bargain due to the nature of public employee collective bargaining.

Power of the Legislature to Make Unilateral Changes

Sufficient/Insufficient Funding Test

After establishing that a collective bargaining agreement is subject to legislative appropriations, the majority addressed the power of the legislature to unilaterally change the benefits contained within a fully negotiated collective bargaining agreement. The majority distinguished the instant case from the situation in which the legislature refuses to fund, or underfunds, certain benefits in a negotiated agreement. The court noted that the pres


113. Florida P.B.A., 613 So. 2d at 419. In footnote four, the court disagreed with the Missouri Supreme Court's assertion in City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. 1947), that public bargaining could be nothing "more than a mere suggestion to the legislature." Id. at 419 n.4. The court stated that “[t]he fact that the governor is bound by the negotiated agreement and is required to include full funding . . . in his proposed budget . . . gives significant weight to the effectiveness of collective bargaining for public employees.” Id.

114. Id. at 419.

115. See id. at 419 n.6. The majority stated in footnote six that they reject the union's argument that the proviso language in the appropriations act had to undergo a strict scrutiny test as required by the holding in Hillsborough County Gov't Employees Ass'n v. Hillsborough County Aviation Auth., 522 So. 2d 358, 362 (Fla. 1988). Id. The majority reasoned that the holding in Hillsborough County Gov't Employees Ass'n was inapplicable in the instant case because "the exercise of legislative power over appropriations is not an abridgment . . . but an inherent limitation. [S]hould the legislatively mandated change fall outside the appropriations power, it would constitute an abridgment . . . and would therefore be subject to the compelling state interest test.” Id. (emphasis added).

116. Id. at 419.

117. Florida P.B.A., 613 So. 2d at 419-20. The majority stated that if, in the instant
ent case was unique because the legislature unilaterally imposed its own conditions upon the negotiated collective bargaining agreements. In determining whether this unilateral action by the legislature fell within the legislature's appropriations power, the majority cited State v. State Troopers Fraternal Ass'n. In State Troopers Fraternal Ass'n, like in Florida P.B.A., the New Jersey Legislature unilaterally altered a negotiated agreement when it enacted an appropriations act. The majority in Florida P.B.A. adopted the analysis utilized by the New Jersey Supreme Court and held that where the legislature provides sufficient funds to implement the benefits of a collectively bargained agreement and attempts to unilaterally alter the agreement, the changes will not prevail, and the collective bargaining agreement will be enforced. Where, however, the legislature underfunds the agreement, then it is free to unilaterally impose any conditions it wishes on the use of the funds, notwithstanding the fact that the conditions may alter the negotiated agreement.

case, the legislature had simply underfunded or refused to fund the agreement, then § 447.309(2) would have required "the governor to administer the collective bargaining agreement on the basis of the amount appropriated." Id. at 420 n.7. See supra note 12 for the language of § 447.309(2).

118. Florida P.B.A., 613 So. 2d at 420. The majority recognized the union's argument which stated that, upon underfunding the agreement, the legislature should have allowed the governor and the unions to renegotiate the benefits, instead of unilaterally imposing the changes. Id. at 420 n.8. The majority, however, stated: Although some courts have ordered renewed negotiations after a legislature fails to fund a provision, this remedy has only been imposed where the legislature itself mandated it. Such a solution would be completely without precedent . . . [and] administratively untenable. We are unwilling to eliminate the certainty of appropriations by requiring renegotiation and then a subsequent reconvening of the legislature to pass a new appropriation . . . .

Id.

119. Florida P.B.A., 613 So. 2d at 420 (citing State v. State Troopers Fraternal Ass'n, 453 A.2d 176 (N.J. 1982)).

120. 453 A.2d at 177.

121. Id. at 179 (citing N.J. State P.B.A., Local 29 v. Irvington, 403 A.2d 473 (N.J. 1979)).

122. Florida P.B.A., 613 So. 2d at 421.

123. Id.
JUSTICE KOGAN’S DISSENT\textsuperscript{124}

Abolition of Article I, Section 6

The dissent argued that the majority overruled a history of precedent, most notably the supreme court’s ruling in \textit{Ryan}\textsuperscript{125} and \textit{Hillsborough County Governmental Employees Ass’n v. Hillsborough County Aviation Authority}\textsuperscript{126}. Quoting \textit{Ryan}, the dissent proposed that, excluding the right to strike, public and private employees share the same collective bargaining rights under article I, section 6 of the Florida Constitution.\textsuperscript{127} Next, the dissent argued that the majority’s emphasis on the separation of powers doctrine was unfounded because it overruled a long-standing rule of constitutional construction.\textsuperscript{128} This rule of construction provides that constitutional provisions should be construed in harmony so that each is given effect.\textsuperscript{129} The dissent reasoned that the majority parted from this precedent because it construed the separation of powers doctrine to nullify the constitutional right to bargain.\textsuperscript{130}

In addition, the dissent argued that the right of public employ-
ees to collectively bargain is a fundamental constitutional right which the legislature can only abridge upon a showing of a compelling state interest. Justice Kogan highlighted this assertion by stating that collective bargaining is a fundamental constitutional right whether or not the subject of bargaining implicates the legislative appropriations power. He reasoned that, because the state did not demonstrate a compelling state interest, the abridgment of the right to collectively bargain should not have been tolerated.

In the dissent's view, the most troubling aspect of the majority opinion was its practical ramification. Justice Kogan stated that the effect of the majority's decision would be to strip all public employees of any meaningful collective bargaining rights they previously possessed, thereby largely eradicating article I, section 6 as it applies to public employees. He stated he would hold “that, at the
very least, the legislature is bound to ensure that some mechanism exists by which negotiations with public employees are meaningful, such as the submission of a dispute to binding arbitration or renewed good-faith negotiation.”

He cautioned the majority that allowing legislative bodies to unilaterally impose conditions on negotiated agreements, without a showing of a compelling state interest, would render public sector bargaining meaningless. Justice Kogan then made it clear that some method of meaningful negotiations is required by article I, section 6. He went on to say that if the legislature failed to guarantee meaningful negotiations, then the courts would formulate a judicial remedy assuring that such negotiations would occur.

Justice Kogan then rejected the majority's argument that Florida Statutes, section 447.309(2) supports the unilateral alteration of negotiated benefits by the legislature. He concluded by stating that he would affirm the decision of the First District Court of Appeal, holding that “section 9.3.A(5) of the . . . General Appropriations Act of 1988 violates article I, section 6 of the Florida Constitution” as it applies to the collective bargaining agreements in question.

135. Id. at 424.
136. Id.
137. Id.
138. Florida P.B.A., 613 So. 2d at 424 (Kogan, J., dissenting). In stating this proposition the dissent cited to Dade County Classroom Teachers Ass'n v. Legislature of Fla., which expressly stated that the judiciary had the power to enact guidelines to effectuate the purpose of article I, § 6 of the state constitution. Id. (citing Dade County Classroom Teachers Ass’n, 269 So. 2d at 688).
139. Id. at 425 (Kogan, J., dissenting) (citing Fla. Stat. § 447.309(2) (1987)). Florida Statutes § 447.309(2) provides in pertinent part: “The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.” Fla. Stat. § 447.309(2) (1991). Justice Kogan argued that regardless of whether the actions in the instant case “constituted an unfair labor practice,” the “legislature clearly violated article I, § 6” of the Florida Constitution by unilaterally altering the leave policy in the negotiated agreements. Florida P.B.A., 613 So. 2d at 425 (Kogan, J., dissenting). He further stated that if Florida Statutes § 447.309(2) could be interpreted as condoning the unilateral alteration of the leave policy, then it should be considered inconsistent with article I, § 6, and struck down since the state constitution must prevail. Id.
141. Florida P.B.A., 613 So. 2d at 425 (Kogan, J., dissenting).
A Critical Look at the Majority Opinion

Disregard of Past Supreme Court Precedent

At the outset, the court in Florida P.B.A. cited Dade County Classroom Teachers’ Ass’n v. Ryan142 and its progeny143 to demonstrate the Florida Supreme Court's pledge to uphold the collective bargaining rights of public employees.144 Next, the majority declared limitations upon the holding in Ryan by demonstrating that Florida courts have recognized that there are differences between the public and private employee bargaining processes.145 The majority then concluded that due to these various differences, a public employee's constitutional collective bargaining rights cannot be coextensive with those of his or her private sector counterpart.146 In reaching this conclusion, the majority breaks with a long-standing body of Florida Supreme Court precedent. This precedent had continually reinforced the notion that the rights of public employees to collectively bargain are commensurate with the rights of private employees under article I, section 6.147 Although the majority's holding seems to be in direct conflict with several of its previous decisions, it did not explicitly overrule any of its prior holdings.148

In support of its contra-Ryan proposition that the collective bargaining rights of public employees cannot be identical with those of private employees, the majority cited United Teachers of Dade v. Dade County School Board,149 City of Tallahassee v. Public Employ-
ees Relations Commission,\textsuperscript{150} and Pinellas County Police Benevolent Ass'n v. Hillsborough County Aviation Authority.\textsuperscript{151} Contrary to the majority's suggestion, the holding in United Teachers of Dade does not support the notion that public employees are not guaranteed the same rights as private employees in the bargaining process.\textsuperscript{152} Instead, the court in United Teachers of Dade recognized that in determining whether an “award program” constituted “a wage,” it was dealing with a “unique” aspect of the public sector bargaining process.\textsuperscript{153} This unique scenario merely demonstrated that certain issues arising in public sector bargaining would not arise in private bargaining. Thus, contrary to the Florida P.B.A. majority's assertion, the holding in United Teachers of Dade does not support the proposition that public employees do not enjoy the same rights as private employees under article I, section 6 of the Florida Constitution.\textsuperscript{154} In fact, the court in United Teachers of Dade neither stated nor implied that public employees do not have the same collective bargaining rights as private sector employees. Consequently, the majority in Florida P.B.A. put a misplaced emphasis on the decision in United Teachers of Dade.

The majority's reliance on City of Tallahassee and Pinellas County Police Benevolent Ass'n is also inappropriate. The decision in City of Tallahassee explicitly reaffirmed the holding in Ryan.\textsuperscript{155} In City of Tallahassee, the Florida Supreme Court recognized that public employees are entitled to the same collective bargaining rights as private employees.\textsuperscript{156} The only distinction between private and public collective bargaining recognized by the supreme court in City of Tallahassee focused upon necessary procedural variations between the two sectors.\textsuperscript{157} Contrary to the majority's allegation in Florida

\textsuperscript{150} 410 So. 2d at 490-91.
\textsuperscript{151} 347 So. 2d 801, 803 (Fla. 2d DCA 1977), disapproved sub nom., Hillsborough County Gtvl. Employees Ass'n, 522 So. 2d at 363.
\textsuperscript{152} United Teachers of Dade, 500 So. 2d at 512.
\textsuperscript{153} Id.
\textsuperscript{154} This reading of United Teachers of Dade is supported by the Third District Court of Appeal's decision in City of Miami v. Miami Lodge 20, 571 So. 2d 1309, 1316-17 n.9 (Fla. 3d DCA 1989) (stating the proposition that public and private employees are guaranteed the same rights under article I, § 6 of the Florida Constitution).
\textsuperscript{155} City of Tallahassee, 410 So. 2d at 490. See also Ryan, 225 So. 2d at 905.
\textsuperscript{156} 410 So. 2d at 490-91.
\textsuperscript{157} Id. at 491. The Florida Supreme Court noted that because the public and private sectors differed in many respects, there would necessarily be differences in the bargaining procedures utilized to implement the respective systems. Id. However the court
P.B.A., the majority in City of Tallahassee did not address any substantive differences between the public and private collective bargaining sectors. Therefore, the holding in City of Tallahassee does not support the majority's assertion that the collective bargaining rights of public employees cannot be coextensive with the collective bargaining rights of private employees.

The holding in Pinellas County Police Benevolent Ass'n was disapproved of by the Florida Supreme Court. In Hillsborough County Governmental Employees Ass'n, the Florida Supreme Court reasoned that article I, section 6, as part of the Declaration of Rights, guarantees public employees the right of effective collective bargaining. The court therefore held that a public employee's right to collectively bargain is a fundamental constitutional right subject to official abridgment only upon the showing of a compelling state interest. Consequently, in Hillsborough County Governmental Employees Ass'n, the Florida Supreme Court disapproved of Pinellas County Police Benevolent Ass'n to the extent that decision condoned abridgments of public employee collective bargaining rights without a showing of a compelling state interest. Therefore, even though the opinion in Pinellas County Police Benevolent Ass'n suggests that public employees are not entitled to the same collective bargaining rights as private employees, the Florida P.B.A. majority's reliance on it was inappropriate because that decision was disapproved.

The Reliance on Sister States

The court in Florida P.B.A. also approvingly cited several of the highest courts from other states. The majority cited cases from

noted that, despite these differences in procedure, the constitutional right of all employees to bargain collectively must not be abridged. Id.

158. Hillsborough County Govtl. Employees Ass'n v. Hillsborough County Aviation Auth., 522 So. 2d 358, 363 (Fla. 1988).
159. Id. at 362-63.
160. Id. at 363.
161. Id.
162. Id.
Connecticut,163 Washington,164 Pennsylvania,165 Illinois,166 Missouri,167 and New Jersey,168 all of which recognize certain distinctions between the public and private sectors with respect to collective bargaining. The majority cited from these jurisdictions to find support for substantive differences between public and private sector bargaining not cognizable under Florida law, which only recognizes procedural dissimilarities. Although universal distinctions between public and private sector collective bargaining exist, the majority’s dependence on its sister states presents several difficulties.

First, all of the states cited by the majority have different statutory collective bargaining laws. Thus, these decisions are out of context when applied to the facts of the instant case.169 The second and more important difficulty with the majority’s reliance on these decisions is that their application ignores the uniqueness of Florida’s

163. Florida P.B.A., 613 So. 2d at 417 (quoting United Teachers of Dade v. Dade County Sch. Bd., 500 So. 2d 508, 512 (Fla. 1986) (citing West Hartford Educ. Ass’n v. DeCourcy, 295 A.2d 526 (Conn. 1972), which stated that private sector view of wages, hours, and terms and conditions of employment cannot be wholly superimposed on the field of education)).

164. Id. (quoting United Teachers of Dade, 500 So. 2d at 512 (citing Spokane Educ. Ass’n v. Barnes, 517 P.2d 1362 (Wash. 1974), which stated that management control in the private sector is unlike the duty imposed upon management control in public education)).

165. Id. (quoting Pennsylvania Labor Relations Bd. v. State College Area Sch. Dist., 337 A.2d 262, 264-65 (Pa. 1975)).

166. Id. (citing Antry v. Illinois Educ. Labor Relations Bd., 552 N.E.2d 313 (Ill. App. Ct. 1990), which addressed the necessity of political activities by public employee union representatives in order to achieve what private unions can attain solely at the bargaining table).

167. Florida P.B.A., 613 So. 2d at 417 (citing City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. 1947), which held that Missouri’s collective bargaining provision did not apply to public employees).

168. Id. at 418 (citing Communications Workers v. Union County Welfare Bd., 315 A.2d 709, 715 (N.J. Super. Ct. App. Div. 1974), which delineated the differences in public and private collective bargaining which affected the interpretation of a statute which itself specifically differentiated between public and private employees in implementing the constitutional right to collectively bargain).

169. Although most state statutory collective bargaining laws are modeled after the National Labor Relations Act, there are several differences within each state statute which influence the various decisions from each state court. Consequently, it is difficult to extract principles from decisions in other states because most of these decisions are based on, or influenced by, the unique statutory scheme in each particular state. See generally Terry L. Leap, COLLECTIVE BARGAINING AND LABOR RELATIONS 654-72 (1991) for a compilation of the different collective bargaining laws in various states. See also 1 W. Gary Vause, Labor and Employment in Florida — Law, Policy and Practice pt. 4, § 16.2 (1989).
collective bargaining experience. Florida is only one of a few states that specifically endows all public employees with a constitutional right to collectively bargain, as opposed to most other states which only provide public employees with a statutory right to bargain. The significance of categorizing the right of collective bargaining as a fundamental, constitutional right is critical. With this constitutional status, collective bargaining rights are no longer strictly subordinate to legislative concerns. Instead, those rights are cloaked with a strict scrutiny protection. Thus, by virtue of this status, the judiciary has the power to safeguard collective bargaining rights from any attempted abridgments. Since the right is constitutional, the judiciary may prevent abridgments by individual entities, or more significantly, by equal branches of government, such as the legislature. This element of Florida's bargaining experience creates a unique bargaining atmosphere for public employees in this state.

Even though Florida's bargaining situation is unique, the court in Florida P.B.A. only cited to one state that constitutionally guarantees the right of collective bargaining to public employees. The majority's use of precedent from the remaining five states was inappropriate because none of those states constitutionally guarantee collective bargaining for public employees. Recognizing that Florida's collective bargaining experience is distinctive, the Florida P.B.A. majority failed to place sufficient emphasis on Florida's unique situation when it applied precedent from these other jurisdictions.

172. If the right to collectively bargain were only statutory, as is the case with most states, then the legislature would have the power to determine the scope of that right without substantial interference from the judiciary. When that right is given constitutional status, the judiciary must safeguard against any impingement on that right; even if the actor is an equal branch of government.
174. See supra notes 163-68 and accompanying text for parenthetical explanations of the cases cited from these states.
Underfunding: An Inherent Limitation on Collective Bargaining or the Abridgment of a Constitutional Right?

After listing several differences between private and public collective bargaining, the Florida P.B.A. court noted that the legislature has exclusive control in the appropriations arena. In support of this proposition, the majority relied on article VII, section 1(c) of the Florida Constitution, which provides that the legislature has exclusive control over public funds through its appropriations power. In addition, the majority found statutory support in Florida Statutes, section 447.309(2), which provides that “[t]he collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.” The court then reasoned that the legislative right to appropriate funds is not a restriction on bargaining, “but an inherent limitation” on the bargaining process. It noted that this limitation results from the interaction between the nature of the public employee bargaining process and the separation of powers doctrine. From this premise, the majority concluded that due to concerns over the separation of powers doctrine, a public employee collective bargaining agreement must be subject to the legislative appropriations power. Otherwise, the executive branch could require expenditure of finances to fund negotiated agreements; an activity forbidden by article VII, section 1(c) of the Florida Constitution.

There are several difficulties with the majority’s approach to the

176. 613 So. 2d at 419-21.
177. Id.
178. See Fla. Const. art. VII, § 1(c). Although the Florida P.B.A. court did not actually cite to § 1(c), it refers to the legislature’s appropriations powers which are provided under that section. 613 So. 2d at 419-21.
180. Florida P.B.A., 613 So. 2d at 418-19 & n.6. See infra text accompanying notes 183-84.
182. Id. at 418-19. The majority cited to Chiles v. Children A, B, C, D, E, & F, 589 So. 2d 260 (Fla. 1991), and United Faculty of Florida v. Board of Regents, 365 So. 2d 1073 (Fla. 1st DCA 1979) to support the proposition that the legislature cannot delegate its appropriations power to the executive, and that therefore, the legislature could not be required to fund a collective bargaining agreement. Id.
aforementioned issues. First, note that whether the unilateral alteration of negotiated benefits by the legislature is denominated an “inherent limitation on the constitutional right to bargain,” or an “abridgment of the bargaining process,” the effect of the alteration remains the same. Either characterization alters the negotiated agreement and limits the right of the public employee to collectively bargain. The critical difference in these characterizations is reflected in their effect upon the public employee. If the legislature's unilateral alteration of benefits is characterized as an “inherent limitation on the constitutional right to bargain,” then public employees have no redress in attempting to regain lost benefits. This is because, as the majority suggested, the legislature's alteration is seen as a function of the legislature's appropriations power. If, however, the legislature's act is characterized as an “abridgment of the bargaining process,” then that action would contravene article I, section 6, and would be voided by the judiciary. While the former characterization contradicts the intent of article I, section 6, the latter furthers the purpose of this section by preserving the effectiveness of the public employee collective bargaining process. Therefore, notwithstanding the majority's concerns over the separation of powers doctrine, the court incorrectly classified the legislature's unilateral alteration of the negotiated agreement as an inherent limitation upon the bargaining process.

The majority also concluded that it was within the legislature's appropriations power to alter a negotiated agreement. The majority reasoned that once an agreement is underfunded, the legislature has the power to attach conditions which rationally relate to its appropriations, regardless of whether such condition altered the negotiated benefits within the agreement. In reaching this conclusion, the court in Florida P.B.A. did not acknowledge that when the legislature imposes conditions which unilaterally alter a negotiated

183. Id. at 420.
184. See generally Hillsborough County Govtl. Employees Ass'n v. Hillsborough County Aviation Auth., 522 So. 2d 358, 362 (Fla. 1988) (holding that the right to bargain collectively is a fundamental right subject to abridgment only “upon the showing of a compelling state interest”) (emphasis added).
187. Id. at 421.
188. Id.
agreement, it abridges the fundamental right to bargain collectively. It abridges that right because, by altering the negotiated benefits, the legislature deprives public employees of the gains brought about through the negotiation process and leaves the employee with little means of redress. Thus, this aspect of the majority's opinion seems to be in conflict with article I, section 6 of the Florida Constitution which prohibits abridgments of public employees' rights to collectively bargain.

In holding that the exercise of legislative power over appropriations was an “inherent limitation” on the right to collectively bargain and not an “abridgment” of that right, the court in Florida P.B.A. rejected the applicability of the holding in Hillsborough County Governmental Employees Ass'n v. Hillsborough County Aviation Authority. In Hillsborough County Governmental Employees Ass'n, the Florida Supreme Court recognized that the right to collectively bargain is a fundamental constitutional right and that any abridgment of that right is entitled to the strictest of judicial scrutiny. Thus, the holding in Hillsborough County Governmental Employees Ass'n does not tolerate abridgments of the public sector collective bargaining process without proof that the state is advancing a compelling state interest. The Florida Constitution requires the judiciary to uphold and protect both collective bargaining rights and the legislature's appropriations power. However, the majority does not extend the judicial protection mandated by the Florida Supreme

189. Id. at 418-19 & n.6.
190. Id. at 419 n.6 (citing Hillsborough County Gov'tl. Employees Ass'n, 522 So. 2d at 358). In Florida P.B.A., the dissent noted that footnote six of the majority opinion is in direct conflict with the holding in Hillsborough County Gov'tl. Employees Ass'n. Id. at 422-23 (Kogan, J., dissenting). In addition, the dissent also remarked that the majority, in footnote six, makes the argument that items in a negotiated agreement which require funding are subject to unilateral alteration, whereas those benefits not requiring funding, such as the proximity of a parking space to the door of an office building, are afforded strict scrutiny protection. Id. at 422. Justice Kogan then suggested the ironic effects of the majority's holding when he stated that, “[j]udges thus will be required to chastise the legislature for refusing to honor agreements about choice parking spaces, but must keep their judicial hands off of anything involving money — such as salaries, benefits, and leave.” Id.
191. 522 So. 2d at 362-63.
192. Id.
193. See Holley v. Adams, 238 So. 2d 401, 405 (Fla. 1970) (holding that to the extent that an appropriations act violates express or clearly implied matters of the constitution, “the act must fall . . . because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary”) (emphasis added) (citation omitted).
Court in *Hillsborough County Governmental Employees Ass'n* to public employee collective bargaining. As a result, the majority's opinion is in direct conflict with *Hillsborough County Governmental Employees Ass'n* because its decision allows the legislature's appropriations power to invalidate article I, section 6 in the absence of a compelling state interest.\(^{194}\) Moreover, Florida courts recognize established precedent authorizing judicial review of legislative action which abridges any constitutionally protected right.\(^{195}\) The existence of this precedent further leads to the conclusion that the majority in *Florida P.B.A.* should have reviewed the legislature's appropriations act using a strict scrutiny analysis.

In addition, Florida courts recognize a rule of constitutional construction providing that all provisions in the state constitution should be construed so that each provision is given effect.\(^{196}\) As the dissent correctly pointed out, the majority disregarded this precedent when it interpreted the legislative appropriations power to invalidate the right to collectively bargain.\(^ {197}\) Carried to its logical conclusion, the majority's holding would allow the legislature to unilaterally alter the terms of any negotiated agreement, provided that the legislature did not appropriate sufficient capital to fund the agreement. Although a semblance of bargaining remains, the material effect of the decision is that employees and their representatives must negotiate knowing that the legislature could alter their agreements in the event of underfunding. Instead of giving both constitutional provisions effect, the *Florida P.B.A.* majority disregarded public employee collective bargaining rights and effectively invalidated the concept of “meaningful collective bargaining” as it existed.

\(^{194}\) *Florida P.B.A.*, 613 So. 2d at 422 (Kogan, J., dissenting). Justice Kogan pointed out that the majority opinion in *Florida P.B.A.* and the holding in *Hillsborough County Gov't. Employees Ass'n* are in direct conflict. *Id.*

\(^{195}\) *See generally* Murray v. Lewis, 576 So. 2d 264 (Fla. 1990) (holding unconstitutional a legislative proviso attached to an appropriations act because the proviso altered an existing statute and therefore violated article III, § 12, of the Florida Constitution); Department of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982) (stating that ordinary citizens have standing to challenge the constitutionality of a proviso in a legislative appropriations act); Holley v. Adams, 238 So. 2d 401 (Fla. 1970) (holding that to the extent that an appropriations act violates express or clearly implied matters of the constitution, “the act must fall . . . because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary”) (emphasis added) (citation omitted).

\(^{196}\) *Florida P.B.A.*, 613 So. 2d at 422 (Kogan, J., dissenting) (citing Miami Shores Village v. Cowart, 108 So. 2d 468, 471 (Fla. 1958)).

\(^{197}\) *Id.* (citing Miami Shores Village v. Cowart, 108 So. 2d 468, 471 (Fla. 1958)).
prior to this decision.198

Misapplication of the
New Jersey Sufficient /
Insufficient Funding Approach

After establishing that the legislature has exclusive control in the area of appropriations, the majority recognized that the instant case was unique because the legislature did not merely underfund a collective bargaining agreement.199 Instead, it unilaterally altered negotiated benefits without first negotiating the changes.200 Upon making this finding, the majority applied a test borrowed from State v. State Troopers Fraternal Ass'n,201 a New Jersey Supreme Court decision. The most troubling aspect of the majority's opinion lies in their interpretation and application of this New Jersey Supreme Court case.

There are several problems with the Florida Supreme Court's application of the rationale in State Troopers Fraternal Ass'n into Florida's statutory collective bargaining scheme. First, the New Jersey case can be distinguished from Florida P.B.A. on several grounds. In State Troopers Fraternal Ass'n, the New Jersey Supreme Court reviewed an arbitrator's decision in order to determine whether the arbitrator exceeded the powers delegated to him when he interpreted certain provisions of a negotiated agreement.202 The New Jersey court based its holding on the interpretation of a condition in the collective bargaining agreement which stated that “[a]ll terms of this Agreement are subject to budgetary and/or legislative limitations or changes.”203 The court held that the arbitrator erred by disregarding the aforementioned condition, because the parties had intended on making all terms of the agreement expressly “subject to budgetary and/or legislative changes.”204 Thus, the New Jersey court expressly limited its holding to the interpretation of

198. See Plante v. Smathers, 372 So. 2d 933, 936 (Fla. 1979) (holding that “a constitutional provision is to be construed in such a manner as to make it meaningful”).
199. Florida P.B.A., 613 So. 2d at 419.
200. Id.
201. 453 A.2d 176 (N.J. 1982).
202. Id. at 177-78.
203. Id. at 178.
204. Id. at 180.
certain conditions in a particular bargaining agreement.\textsuperscript{205} Nowhere in its opinion did the New Jersey Supreme Court state that in \textit{all} collective bargaining agreements the legislature would be authorized to unilaterally alter negotiated benefits provided that it did not appropriate sufficient money to fund the agreement.

The court in \textit{Florida P.B.A.} failed to recognize that the New Jersey Supreme Court's holding was limited to the interpretation of a specific provision in a collective bargaining contract. Furthermore, the collective bargaining agreements in \textit{Florida P.B.A.} contained similar clauses subjecting the collective bargaining agreement to a subsequent alteration of its terms by the legislature.\textsuperscript{206} In analyzing these clauses, the majority in \textit{Florida P.B.A.} stated that they would be invalid under article I, section 6 of the Florida Constitution to the extent that they could be construed as forfeiting the right to bargain by subjecting the agreement to future legislative alteration.\textsuperscript{207} Thus, the majority rejected the very premise upon which the New Jersey court based its holding: that certain conditions in the collective bargaining contract subjected the negotiated agreement to unilateral legislative alteration.\textsuperscript{208}

Another problem with the application of the opinion in \textit{State Troopers Fraternal Ass'n} is that the New Jersey case was not decided within the framework of Florida's PERA. Instead, \textit{State Troopers Fraternal Ass'n} was decided within the framework of a completely different collective bargaining statutory scheme.\textsuperscript{209} Because of the disparity between the two bargaining schemes, the New Jersey decision cannot be supplanted on Florida's collective bargaining laws. PERA's statutory scheme contains specific provisions which deal primarily with the scenario presented by the instant case.\textsuperscript{210} New Jersey's collective bargaining scheme contains different statutory provisions and handles unilateral action by the legislative body in a different manner than Florida's PERA.\textsuperscript{211} Be

\textsuperscript{205} \textit{Id.}
\textsuperscript{206} \textit{Florida P.B.A.}, 613 So. 2d at 419 n.10. Footnote ten provides in pertinent part: "[T]o the extent these Savings Clauses could be construed as general provisions bargaining away the right to bargain, they are void under the Florida Constitution." \textit{Id.}
\textsuperscript{207} \textit{Id.}
\textsuperscript{208} \textit{Id.}
\textsuperscript{210} \textit{See FLA. STAT. §§ 447.309(2), 447.403(4)(d), 447.501(a), (c) (1991).}
\textsuperscript{211} For instance, in \textit{State Troopers Fraternal Ass'n}, the applicable statutory section
because the New Jersey bargaining scheme does not contain comparable statutory provisions, the Florida P.B.A. majority's application of the holding in State Troopers Fraternal Ass'n disregards several of PERA's applicable statutory requirements, and is therefore problematic.

Contradictions with PERA's Statutory Scheme

Although in most circumstances the benefits of a negotiated agreement cannot be unilaterally altered, PERA allows unilateral action, either by the public employer or the legislative body, in three distinct instances. The first two exceptions, a "clear and unmistakable waiver of the union's right to demand negotiations" and "exigent circumstances requiring immediate change," are not applicable in the instant case. The third exception provides for the unilateral alteration of negotiated benefits by the legislative body upon the exhaustion of all impasse procedures. This statutory section empowers the legislature, or legislative body, to unilaterally impose conditions on the collective bargaining agreements that would normally be the subject of negotiations. However, the legislature is limited because unilateral action may only be taken after all impasse procedures have been exhausted. Also, PERA only allows the legislature to impose conditions on those issues upon which the parties are at impasse. All three exceptions provide for unilateral action without immediate further bargaining. A unilateral imposition of terms, not within the confines of one of these three exceptions, results in an unfair labor practice under Florida Statutes,

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for police officers implemented binding interest arbitration in the impasse procedures. State Troopers Fraternal Ass’n, 453 A.2d at 176. Florida only allows binding arbitration in the grievance procedures under § 447.401 of the Florida Statutes and does not provide for interest arbitration during impasse. See Fla. Stat. §§ 447.401-.403 (1991).


213. Id. §§ 3.15-.20. These first instances, which provide defenses to unilateral action, are only applicable to actions by the public employer. Id. The focus in Florida P.B.A. was not on the actions of the public employer, but on the unilateral action taken by the legislature. Florida P.B.A., 613 So. 2d at 418.


215. Id.

216. Id.

217. Id.
section 447.501(1)(a) and (c). 218

In Florida P.B.A., the majority did not properly apply PERA's applicable statutory sections designed to deal with unilateral legislative action. Instead, the majority adopted the New Jersey court's holding because they interpreted the unilateral legislative alteration of benefits as a valid use of the legislature's appropriations power. 219

The difficulty with this approach is that PERA, as previously mentioned, only allows the legislature, or the legislative body, to unilaterally alter bargained-for public employee benefits after all impasse procedures have been exhausted. 220 For instance, a legislative body which, in its impasse resolution declarations, alters proposed benefits contained within the agreements that are not at impasse, commits an unfair labor practice under PERA. 221

In the instant case, the legislature took unilateral action on negotiated benefits that were never the subject of impasse procedures. PERA's statutory scheme does not sanction this form of unilateral legislative action. In fact, an argument can be made that such unilateral action is regarded as an unfair labor practice under PERA because such action amounts to a refusal by the legislature to bargain collectively. 222 As a result, the court in Florida P.B.A. sanctioned unilateral legislative action arguably regarded by PERA as an unfair labor practice by a legislative body. 223 Therefore, the majority's holding arguably contravenes PERA's statutory sections addressing unilateral legislative action and unfair labor practices.

218. See Vause, supra note 212, §§ 3.15-.20. See also Sarasota County Sch. Dist. v. Sarasota Classified/Teachers Ass'n, 614 So. 2d 1143 (Fla. 2d DCA 1993) (holding that the school board did not commit an unfair labor practice by unilaterally discontinuing the payment of step pay increases during the pendency of negotiations).


220. Fla. Stat. § 447.403(4)(d). See Vause, supra note 212, § 3.2 (citing Pasco County Sch. Bd. v. Public Employees Relations Comm'n, 353 So. 2d 108 (Fla. 1st DCA 1977)).


222. Florida Statutes § 447.501, titled “Unfair Labor Practices,” provides in pertinent part:

(1) Public employers or their agents or representatives are prohibited from:

(a) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part . . . .

(c) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit.


The supreme court also overlooked PERA's statutory section addressing legislative underfunding. In fact, the majority's application of New Jersey's funding test contradicts Florida Statutes, section 447.309(2). This section states that "if less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body." In the instant case, the majority argued that the legislature did not underfund the agreement. Instead, the court stated that the legislature ignored the governor's suggested funding recommendations, as it is allowed to do, and unilaterally altered several of the negotiated benefits. Moreover, in Florida P.B.A., the court stated that if this had been a situation in which the legislature did not appropriate sufficient funds, then section 447.309(2) would have required the governor to administer the collective bargaining agreement on the basis of the amount appropriated. The court then contradicted what it said by holding that where the legislature does not appropriate sufficient capital to finance a negotiated agreement, it may unilaterally alter the benefits of the negotiated agreement using its appropriations power. The majority's holding therefore makes legislative unilateral alteration of benefits contingent upon legislative underfunding. However, in contrast to the majority's holding, PERA requires the chief executive officer to administer the negotiated agreement based upon the amounts actually appropriated where legislative underfunding occurs.

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224. See supra note 12 for the text of § 447.309(2).
226. Florida P.B.A., 613 So. 2d at 420.
227. Id.
228. Id. at 420 n.7. The majority, in footnote seven, correctly stated the procedures to be followed under PERA when the legislature refuses to fund, or underfunds, a negotiated benefit. Id.
229. Id. at 421. The court contradicted the statement it made in footnote seven of the opinion. In the text to footnote seven, the court distinguished the facts in its case from the situation where the state refuses to fund or underfunds a benefit within a negotiated agreement. Id. at 419-20 & 7. Footnote seven of the opinion states that "[i]f less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body." Id. at 420 n.7.
230. Florida P.B.A., 613 So. 2d at 419.
The majority's opinion suggested that separation of powers concerns and the right of the legislature to attach conditions to its appropriations are the driving forces behind its holding. Interestingly enough, PERA's § 447.309(2) supports the majority's concerns for the separation of powers doctrine by allowing the legislative body to underfund an agreement without any fear of retribution in the form of an unfair labor practice charge.

232. FLA. CONST. art. III, § 12. Article III, § 12, provides in pertinent part that “[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.”

233. Department of Educ. v. Lewis, 416 So. 2d 455, 460 (Fla. 1982) (holding a legislative proviso unconstitutional because it did not directly and rationally relate to the appropriation of state funds, but instead was designed to further legislative objectives unrelated to state funding); Brown v. Firestone, 382 So. 2d 654, 663-64 (Fla. 1980) (holding certain legislative provisions invalid because they altered or amended existing law and were therefore in contravention of article III, § 12).

234. The appellees argued that Florida P.B.A. should not be analyzed strictly as an appropriation matter. Instead, they argued that § 9.3A(5) of the General Appropriations Act of 1988 violates article III, § 12 because the proviso language did not directly and rationally relate to the appropriation of state funds. As a result, the appellees argued that the legislative appropriation is unconstitutional and in conflict with Brown v. Firestone, 382 So. 2d 654 (Fla. 1980) and Department of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982). Brief for Appellees at 14 n.6, Florida P.B.A., (No. 77,842).

legislative appropriation.\textsuperscript{236} Therefore, the supreme court's holding allows the legislature, through an appropriation, to change or amend the required procedure which the legislature must follow once it has underfunded a negotiated agreement.

In addition, section 447.403(4)(d) allows the legislature, or a legislative body, to unilaterally alter a negotiated agreement \textit{only after} exhaustion of all impasse procedures.\textsuperscript{237} The holding in \textit{Florida P.B.A.}, on the other hand, allows the legislature to unilaterally alter a negotiated agreement simply upon a showing of legislative underfunding and without any regard as to whether the agreement ever reached the impasse process.\textsuperscript{238} Consequently, the majority's holding allows a legislative provision in an appropriation to change or amend the requirements needed for allowing unilateral alteration of an agreement by a legislative body.

Furthermore, the majority's holding also allows the legislature, through its appropriations power, to unilaterally alter a negotiated agreement and thereby authorizes the abridgment of the constitutional right to collectively bargain. Article I, section 6 does not authorize the legislature to abridge collective bargaining rights where underfunding of a negotiated agreement occurs.\textsuperscript{239} Thus, the majority is arguably amending article I, section 6 by authorizing the legislature to unilaterally alter a negotiated agreement upon a showing of legislative underfunding. Therefore, the holding in \textit{Florida P.B.A.} violates article III, section 12 because it allows the legislature, through a legislative proviso, to create or amend the aforementioned collective bargaining and constitutional laws in contravention of article III, section 12 and contrary to the Florida Supreme Court's holding in \textit{Brown v. Firestone}.\textsuperscript{240}

\textbf{Further Difficulties with the Sufficient/Insufficient Funding Approach}

The majority's application of the rationale in \textit{State v. State Troopers Fraternal Ass'n} acts in derogation of the constitutional
right to collectively bargain because it detracts from the effectiveness of article I, section 6. The dissent reasoned that public employees may bargain for several months over certain benefits, and actually reach a negotiated agreement, without ever knowing whether the agreed upon benefits will be implemented. This uncertainty removes a great deal of meaning and substance from the bargaining process. Prior to the decision in Florida P.B.A., although public employees could not require funding for their agreements, Florida Statutes section 447.309(2) required the public employer to renegotiate benefits that were underfunded by the legislative body. The majority considered ordering renewed negotiations after the legislature underfunded the agreement but decided that such a solution lacked precedent and would be administratively unfeasible. The majority also reasoned that renegotiations should not be required because such an approach would “eliminate the certainty of appropriations.” This argument ignores the more tenable solution involved in requiring renewed negotiations. In fact, prior to Florida P.B.A., the Public Employee Relations Commission required a legislative body to initiate renewed negotiations following the underfunding of a negotiated agreement. Such a solution would preserve PERA's purpose of ensuring meaningful and effective bargaining without requiring the legislature to fund the negotiated agreement.

With the application of this new funding test adopted by the majority, the legislature may unilaterally alter any benefit which reasonably and rationally relates to their appropriations power by simply underfunding the negotiated agreement. For instance, the

244. Florida P.B.A., 613 So. 2d at 420 n.8. The court argued that requiring renegotiations would be administratively unfeasible because doing so would also require the legislature to approve funding for the renegotiated bargaining agreement. The court was not willing to impose such an obligation on the legislature. Id.
245. Id.
246. See Holmes County Teachers' Ass'n v. Holmes County Sch. Bd., 9 FPER ¶ 14,207, at 396 (1983) (holding that although the legislative body could not be required to fund the negotiated agreement, the chief executive officer could be ordered to submit an amended budget request, and the legislative body could be ordered to return to the bargaining table to renegotiate the underfunded benefits).
court noted that the legislature could use its appropriations power to delete a requirement directing public employees to bring a physician's note when they are absent from work.247 The court explained that the legislature could alter this requirement because it "reasonably and rationally" affected the legislature's appropriations power.248 Under this rational basis test, an argument can be made that almost any possible benefit reasonably and rationally affects the legislature's appropriations power. Thus, the majority's opinion, in effect, allows the legislature, or the legislative body, to alter negotiated benefits and consequently abridge the right guaranteed by article I, section 6 simply by showing that a benefit reasonably and rationally affects the legislature's appropriations power. This result runs contrary to the decision in Hillsborough County Governmental Employees Ass'n249 because the majority is not requiring the legislature to demonstrate a compelling state interest before abridging the fundamental Constitutional right of collective bargaining, but instead is only subjecting the legislature's actions to a rational basis scrutiny.

A final difficulty with the majority opinion in Florida P.B.A. is that the court does not explain whether the decision is limited solely to situations in which the state legislature is the "legislative body."250 If the decision applies to all legislative bodies under PERA, then the possibility for abridgment of the constitutional right to bargain increases. For instance, the majority did not clarify whether its decision applies where the school board is both the public employer and the legislative body. In this situation, public employees are placed in the precarious position of bargaining with the school board in its role as both the public employer and the legislative body. Applying the majority's holding, the same school board would then have the power to unilaterally alter the negotiated agreement using its appropriation's power by simply underfunding the agree-

247. Florida P.B.A., 613 So. 2d at 420 n.9.
248. Id.
249. 522 So. 2d at 362-63.
250. Florida Statutes § 447.203(10) defines "Legislative body" as:
[The State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit.
Public Collective Bargaining

In addition, under PERA, the school board acting in both capacities would also have the power to unilaterally alter the terms of an agreement after exhaustion of all impasse procedures. 251

In fact, a recent opinion by the Second District Court of Appeal dealt with this exact scenario. In that case, the legislative body and the public employer were one and the same. 252 That court approvingly cited Florida P.B.A. without actually implementing the supreme court's holding pertaining to legislative funding. 253 Because the Second District Court of Appeal took the rationale in Florida P.B.A. and applied it to the scenario where the public body and the legislative body are the same entity, it seems more likely that the holding in Florida P.B.A. will not be limited to the scenario in which the state legislature is the legislative body. If the rule stated in Florida P.B.A. is applicable to situations in which the public employer and the legislative body are one and the same, then the rights guaranteed by article I, section 6 and the precedent set by the Ryan decision may be at risk of losing all viability. 254

A Decision Driven by Economic Realities?

Florida P.B.A. seems to reflect a new attitude by the Florida Supreme Court with respect to its treatment of public employee collective bargaining rights. However, it is possible that the majority may have abandoned its role as guardian of public employee collective bargaining rights because of more pressing economic and state fiscal concerns. How could the majority interfere with the legislature's appropriations power in the face of such a growing state and national deficit? It may be that the holding in Florida P.B.A. would have been different if the nation and Florida had a growing economy, instead of a growing deficit. The effect of operating within se-


252. Sarasota County Sch. Dist. v. Sarasota Classified/Teachers Ass'n, 614 So. 2d 1143 (Fla. 2d DCA 1993) (holding that § 447.309(2) authorizes the legislative body to underfund an agreement without being susceptible to an unfair labor practice charge).

253. Id. at 1148. See also School Bd. of Martin County v. Martin County Educ. Ass'n, 613 So. 2d 521 (Fla. 4th DCA 1993) (holding that during negotiations under a reopener provision in an existing collective bargaining contract, the school board, acting as both the legislative body and the public employer, could not be charged with an unfair labor practice for underfunding the contract because the board was protected by § 447.309(2)).

254. See supra notes 246-48 and accompanying text for more on this possible ramifications of the holding in Florida P.B.A.
vere fiscal constraints is that there is less money available for state and local government budgets. These fiscal limitations may have motivated the majority in their decision. In fact, these fiscal concerns may have influenced the majority to the extent that they did not realize the harmful effects engendered by their holding.

Effect of the Majority's Holding on the Future of Public Employee Collective Bargaining

State of Affairs Prior to Florida P.B.A.

From their inception, collective bargaining laws in Florida have been ineffective in supplying employees with the needed bargaining tools to effectively negotiate with the public employer. The constitutional revision in 1968 created the general right of collective bargaining for all public employees.255 However, public employees were still denied the right to strike.256 Since public employees were specifically precluded from striking, they needed some other method by which to ensure that they would have some leverage at the bargaining tables. PERA's statutory system attempted to equalize the bargaining scales by providing a system of third-party dispute resolution.

Although public employees are in a much better position than they were prior to the adoption of article I, section 6, these third-party dispute resolution mechanisms have not been as effective as public employees would like in supplying them with bargaining power.257 Part of the reason is that mediation is not binding on either party.258 Also, any recommendations made by the special master are not binding on the parties or the legislative body.259 Furthermore, any matter recommended by the special master and not accepted by the parties eventually comes before the legislative body in the form of a public hearing.260 At this stage the legislative body has

257. See Williams, supra note 65, for more on Williams' theory on the alternatives to the right to strike for public employees.
260. Id. § 447.403(4)(c).
the power to unilaterally alter impasse issues without resorting to further bargaining. 261 This power to unilaterally impose conditions exemplifies the bargaining disparity inherent within PERA's statutory system. Therefore, prior to the decision in Florida P.B.A., there existed an imbalance of power between employers and employees in the public sector. As a result, it has been difficult for the representatives of public employees to bargain effectively on behalf of their constituents.

Florida courts have recognized this inequality of bargaining disfavoring the public employee, and have repeatedly held that the collective bargaining rights of public employees must be commensurate with private sector bargaining rights under article I, section 6. 262 The courts first made this recognition in the Ryan decision and have continually upheld it ever since. 263 Hence, prior to the holding in Florida P.B.A., Florida courts have attempted to maintain integrity and meaning in public sector bargaining. Despite the judiciary's vigilant efforts, the realities have been that the system, working at its very best, still produces an atmosphere that severely curtails the bargaining efforts of public employees. PERA's structure for resolving impasses, coupled with the denial of the right to strike, exemplifies this inequality. Nevertheless, prior to the decision in Florida P.B.A., the judicial system stood as the solitary bastion guarding the collective bargaining rights guaranteed by article I, section 6.

The majority's opinion in Florida P.B.A. has injected an even greater imbalance of power into the public sector collective bargaining arena. As a direct result of this decision, public employees cannot be certain that they will obtain the benefits they bargained for during negotiations with their employers. This realization may have an extraordinary impact on the bargaining approach and strategies taken by public employees and their representatives. New bargaining strategies must be created in an effort to deal with the new uncertainty brought about by the majority's holding in Florida P.B.A. If the legislative body can unilaterally impose any conditions which rationally relate to legislative appropriations simply by

261. Id. § 447.403(4)(d).
262. See Ryan, 225 So. 2d at 903. See also Hillsborough County Gcttl. Employees Ass'n, 522 So. 2d at 358; City of Tallahassee, 410 So. 2d at 487; Dade County Classroom Teachers Ass'n, 269 So. 2d at 684.
263. See supra note 262 for a listing of these cases.
underfunding a collective bargaining agreement, then the unions representing public employees will have to adjust their bargaining techniques to deal with the new uncertainty involved in the negotiation process.

A New System of Continual Bargaining?

A probable consequence of the uncertainty engendered by the decision in *Florida P.B.A.* is that the nature of collective bargaining contracts will radically change, and a system of continual bargaining will replace the older and more stable system. Under the majority's holding, it is possible that the legislature could approve funding for the first fiscal year of a contract and disapprove funding in subsequent fiscal years. This possibility of subsequent underfunding will cause unions to implement new bargaining tactics. The unions may attempt to minimize the effects of possible underfunding in subsequent fiscal years by no longer agreeing to three-year collective bargaining contracts. In limiting the term of the contract, the unions would minimize the risk of not receiving the agreed upon benefits due to a unilateral alteration of the contract in the second or third fiscal year. In an effort to maximize their bargaining power, unions will only agree to one-year contracts and will fight ardently for both economic and non-economic benefits.

The likely result of a system where unions will only agree to one-year contracts is that the bargaining process could persist fruitlessly. Consequently, the status quo would be maintained, and public employees and management would operate on a day-to-day basis without the benefit of a new collective bargaining contract to resolve labor disputes. The union representatives would be less likely to make concessions since they would not be sure whether any of the benefits gained as a result of the concessions would later be subsequently altered by the legislature. In fact, the union representatives might decide to include clauses within the agreements making the ratification of the entire agreement contingent upon legislative funding. This contingent clause would protect public employees' interests by subjecting all the terms of the agreement to renewed negotiations in the event underfunding occurs. The likely effect of such new bargaining tactics by union representatives might be that many more issues would be bargained to impasse. Given the great amount of time involved in negotiating through impasse, many agreements
could be under negotiations for several months. This lengthy bargaining process, coupled with the unions' insistence on maintaining one-year contracts, would likely produce an environment of constant bargaining. By the time a new fiscal year commenced, negotiations from the previous year would still be at impasse. Consequently, both management and unions would tie up a great deal of their resources in the bargaining process. This type of system could be extremely unstable because the certainty of having a binding contract on each party would no longer exist. Also, given the continual nature of this bargaining system and the lack of resources available for bargaining, many gridlocks could naturally result. Thus, the majority's opinion in Florida P.B.A. will most likely produce a highly inefficient bargaining atmosphere in which management gridlocks persist, and the negotiating process continues, without the benefit of a negotiated contract to stabilize the working environment.

CONCLUSION — COLLECTIVE BEGGING?

The majority's holding in Florida P.B.A. shows a shift in the Florida Supreme Court from requiring that public employee bargaining be commensurate with private employee bargaining rights to an apparent sanctioning of the abridgment of those rights by the legislature. The likely effects of the majority opinion seem to reflect that the Florida Supreme Court can no longer afford to safeguard public employee bargaining rights as it was committed to doing in the past. This decision disempowers the public employee in the bar-

264. 1987-1993 PERC IMPASSE RESOLUTION ANN. REP. Based on statistics from the Public Employees Relations Commission, the average number of days from the appointment of a special master to the recommended decision of the special master, from 1987 to the present, is as follows:

These statistics reflect that, since 1987, the average length of time involved, beginning with the appointment of a special master and ending with the special master's recommended decision, has been approximately two and a half to three months. This time period does not reflect the amount of time that it takes to get from the declaration of impasse to the appointment of a special master. In addition, the amount of days it takes to get from the special master's recommended decision until final resolution by the legislative body is also not reflected in these statistics. Therefore, based on these statistics, this author concludes that negotiating through impasse usually takes several months.
gaining process because it allows the legislature to unilaterally alter any benefits which reasonably and rationally relate to the funding process by simply underfunding a collective bargaining agreement. The possible effects of this decision are disastrous for public employees and the public sector collective bargaining process because the legislative body and the public employer appear to hold most, if not all, of the power in the bargaining arena.

After the decision in *Florida P.B.A.*, public employees will not likely be on equal, or even similar, bargaining levels with their private sector counterparts. Not only will the public employee not be on equal footing with his private sector counterpart, but the end result will almost inevitably be that public employees will rarely realize any sort of meaningful concession by management; call it “good faith” bargaining or not. With the collective bargaining system working optimally, there remains an inherent imbalance of power working against public employees. Thus, the impact of *Florida P.B.A.* will be to exacerbate this imbalance and further tip the scales of power away from the public employee. A new system of continual and inefficient bargaining will most likely emerge. The end result will probably be to relegate public employees and their union representatives to a role of collective “begging,” not bargaining. This new bargaining atmosphere created by the majority’s decision may return public employees to their status before the 1968 revision of the constitution. If the possible effects of this decision are as disheartening as this author perceives them to be, then there is a good chance that within the next few years we will again begin to see the same unrest and disobedience that was shown by public employees prior to the creation of article I, section 6.

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