

# FPELRA

*Florida Public Employer Labor Relations Association*

## **STICKY WICKETS: WHEN TREATING ONE WORKER'S ALLERGY SETS OFF ANOTHER'S**

By: [Steven Greenhouse](#) May 10, 2010

<http://www.nytimes.com/2010/05/11/us/11spice.html>

INDIANAPOLIS — It's a case of King Solomon meets the Americans With Disabilities Act. In her first week at a new job, Emily Kysel suffered an allergy attack so severe that she had to go home early one day. A co-worker was eating buffalo wings at her desk, and the wings contained paprika, to which Ms. Kysel, 24, has a rare and potentially fatal allergy.



She nearly died five years ago from eating chili, and since then her allergy has sent her to the emergency room five times and caused her to jab herself with an anti-allergy injection 11 times, sometimes from just inhaling paprika nearby. "It feels like someone poured acid down your throat," she said.

Fearing a fatal encounter with paprika, Ms. Kysel's parents and grandparents chipped in to buy her an allergy-detection dog, which works much like a narcotics-sniffing dog. After she had extensive talks with her employer, the City of Indianapolis, officials gave her permission to take the dog to work. The golden retriever, named Penny, cost her family \$10,000 — it jumps up on Ms. Kysel whenever it detects paprika.

On the first day Ms. Kysel took Penny to work, one of her co-workers suffered an asthma attack because she is allergic to dogs. That afternoon Ms. Kysel was stunned when her boss told her that she could no longer take the dog to work, or if she felt she could not report to work without Penny, she could go on indefinite unpaid leave.

She was ineligible for unemployment compensation because of the limbo she was put in.

Ms. Kysel filed a complaint with the [Equal Employment Opportunity Commission](#), asserting that her employer had discriminated against her by failing to accommodate her disability. Legal experts say her case raises tough questions about how to balance the sometimes clashing interests of co-workers with disabilities and how far employers need to go to make reasonable accommodations for workers under the Americans With Disabilities Act. "I was crestfallen, angry," Ms. Kysel said. "I thought I had jumped through all the hoops to get permission, but then it immediately felt they were favoring this other individual."

Greg Fehribach, a lawyer for the city, denied that Indianapolis had violated the law. He said Ms. Kysel's supervisors had gone far to accommodate her, holding a meeting where she explained her allergy to her co-workers, and barring employees from eating foods containing paprika at their desks. Several managers and co-workers have questioned the seriousness of Ms. Kysel's allergy — some see it as a quirky, almost laughable oddity. To buttress her case, two allergists wrote letters saying her allergy was life threatening.

While working for the city's Department of Code Enforcement, she had an attack because the tiny snack bar in her office building began serving paprika-laden pulled pork. One thing that galls Ms. Kysel is that the City of Indianapolis has barred her from using her service animal at work although it allows blind employees to have them. "I don't think I deserve preferential treatment over anyone," she said. "But I think I deserve equal treatment."

Christopher Kuczynski, assistant legal counsel for the Americans With Disabilities Act division of the equal-employment agency, declined to comment upon her case because it was pending. But in such situations, Mr. Kuczynski said, "what's important when you have two people with disabilities is you don't treat one as inherently more important than the other."

"What the employer has to do," he continued, "is work out some sort of balance between the accommodations needed."



## **PRESIDENT'S MESSAGE**

As the summer months approach you are all probably ecstatic at the thought that you may have to negotiate successor contracts for your municipality or governing agencies. During your preparations and negotiation sessions, keep in mind that you are not alone. Your FPELRA network is here to help you through this wonderful experience of successes and failures when dealing with another tight (if not tighter) budget year, and, oh by the way, the unions who can not understand that this process should be a collaborative effort.

If you need comparables, contract language, or just want to know what is happening in your region, please feel free to reach out to the membership for this valuable information. Remember our foundation is built on networking and friendship, and you should not feel alone during these trying times.

Review the lessons learned during our conferences and training programs; Collect local data on what is being proposed "next door"; Cost-out benefits; Remember any benefit changes add or delete costs (longevity, overtime, jury duty, incentive pay, etc.); Establish a timeline or road map to reach ratification; Establish a strong negotiation team which includes benefits, compensation and management input; Create a strategy and try to stick to the approach, but be ready for branching and sequels. Nothing is ever achieved if you are not willing to be flexible.

Prepare, prepare, prepare. That is the best advice that I can share with you. Remember to keep your counsel or governing body informed just in case you have to resolve the contract through the impasse process. Any questions please call an FPELRA professional.



## Welcome Our Newest Directors

FPELRA welcomed two new directors to the board immediately following the 2010 Annual Training Conference. By way of introduction, we offer the following biographical data for your information.

### Denise Perez

Denise Perez is the Human Resources Director for the City of Naples. She began working for the City in 1986 and held several positions within the Human Resources Department prior to her promotion to Director in 2002. Denise oversees the areas of recruitment/selection, labor relations, performance management, discipline, training & development, risk management, safety, benefits, and payroll. The City of Naples has approximately 450 employees.

Denise has been a member of FPELRA for over ten years and is also an active member with FPPA, IPMA-HR, SHRM, and HR Collier (the local chapter of SHRM). She is currently attending Barry University to complete her Bachelors degree in Human Resources Management and plans to graduate in May 2011.

Denise joins the FPELRA Board as a Director with a 2011 rotation date.

### Diosdado "Dio" Sanchez

Dio Sanchez has been employed by the City of Wilton Manors since February 14, 2000. He is currently the HR/ Risk Manager.

Mr. Sanchez is certified through the Florida Public Employers Labor Relations Association, the Florida Public Personnel Association, and the Insurance Institute of America as a Risk Manager for Public Entities.

Working for a smaller agency has provided him a diverse background in recruitment and retention, strategic human resource and labor relations planning, supervisory/ management development, establishing disciplined approaches to problem-solving, contract negotiations, labor disputes, and risk management.

Dio joins the FPELRA Board as a Director with a 2013 rotation date.



## UPCOMING LABOR RELATIONS PROFESSIONAL TRAINING MODULES

### "Impasse Hearing Simulation"

**Monday, July 26, 2010**

This module provides participants "hands on" experience in a simulated impasse hearing between the parties. Experience a Special Magistrate hearing and the final award. This module, will be conducted by professional trainers/ educators and attorneys specializing in labor law.

### "Grievance Handling & Arbitration Simulation"

**Tuesday, September 14, 2010**

This module focuses on maintenance issues of the collective bargaining agreement. It focuses on how to handle grievances and prepare for arbitration. Role-play your presentation and rebut opposing witnesses during a mock Arbitration Hearing! Finish the day receiving the Arbitrator's award and debriefing the case. FPELRA's Grievance Manual is included in the registration fee for this segment.



## PERC NEWS

The Commission announced that on April 15, 2010, Governor Crist reappointed Commissioner Jessica Varn for a third term on the Commission, expiring January 1, 2014.

The Commission also announced the retirement of Hearing Officer Jack Ruby effective April 30, 2010. Jack was a long-term staff member who originally came to work at the Commission as a hearing officer in May 1986. He had a wealth of labor and employment experience, having served at the National Labor Relations Board as a field representative and subsequently as an attorney.

## REGION I FPELRA MEETING

March 12, 2010

On Friday, Linda Gonzalez, SPHR, CPPT, Associate Director of Employee and Labor Relations at Jackson Health System and FPELRA Region 1 Coordinator, hosted a meeting for the Region I FPELRA members.

After a warm introduction, Arbitrator Scott Milinski explained how the creation of the Cooperative Association of Labor and Management (C.A.L.M.) in Fort Lauderdale a few years ago facilitated the conversation between the Unions and Management, and helped develop a system that was studied as a model of collaboration nationwide.

Peter Nyamora, SPHR, Senior Labor Relations Specialist at Jackson Health System skillfully and knowledgeably addressed the challenges of conducting a Reduction in Force process in a large organization with hundreds of classifications, and gave excellent tips on how to overcome problems encountered.

Finally, Roberto Campos-Marquetti, Esq., Senior Labor Relations Specialist at JHS offered great insight regarding the issue of Automatic Termination of Employees after their leave expires. He provided timely information about the provisions of the law and the protections afforded to employers and employees in matters of leave.

The informal setting and the continental breakfast allowed those in attendance to ask questions and exchange ideas and contact information with other Labor Relation professionals. The meeting received glowing reviews from the participants. Thanks to all the FPELRA members who participated in the program. Looking forward to the fall FPELRA Region I members meeting. Our congratulations to Linda Gonzalez for an excellent workshop.

### City Contribution to Retiree Health Insurance Premiums Not Status Quo Benefit

By Hearing Officer Jerry W. Chatham

*Communications Workers of America, Florida Police Benevolent Association, International Association of Firefighters, Local 2157 and Gator Lodge 67, Fraternal Order of Police v. City of Gainesville, Case Nos. CA-2009-002, 003, 004, and 005 (Fla. PERC Mar. 2, 2010).*

Four unfair labor practice charges were consolidated because they arose from the same alleged facts, a change in the city contribution to retired employee health care premiums. The hearing officer initially decided that the city was not obligated to bargain over health care benefits for current employees who would be retiring.

The Commission rejected that conclusion in an earlier order. On remand, the hearing officer concluded that the city violated the status quo in employee benefits by unilaterally changing its contribution. After carefully reviewing the record, the Commission rejected that recommendation because the evidence did not meet the Commission's three pronged test for a status quo benefit.

That is, whether the practice was unequivocal existed substantially unvaried for a significant period of time prior to the change, and could reasonably have been expected by the employees to have continued unchanged. The Commission reiterated that this test is disjunctive; each facet contains a separate requirement.

Here, the city had repeatedly stated in the controlling ordinances that the contribution was subject to change. In several other ways, such as employee handbooks and retiree publications, the city warned employees it might in the future contribute "none, some, or all of the costs of retiree and/or dependent coverage."

Thus, the hearing officer's conclusion that a status quo benefit had arisen based on the significant period of time the contribution rate had not changed was reversed and the charges were dismissed.

This decision has been appealed to the Florida First District Court of Appeal, Case No. 1D10-1616.



## NEW EXPOSURE FOR HR PROS UNDER FMLA

April 9, 2010 by Tim Gould

Heads up: A new court ruling says HR managers can be held individually liable for violating FMLA. That's right. A federal district court judge found in favor of an employee who sued three HR execs who'd allegedly conspired to find a reason to fire him after he requested Family and Medical Leave Act time off.

Bottom line: The ruling means HR execs could be on the hook – personally – for damages allowed under the FMLA. And those can include back pay, monetary loss from a denial of benefits, lost wages and attorneys' fees.

As if handling FMLA issues wasn't complicated enough. Now a judge ratchets up the stakes even higher. Here's a look at the details of the case:

A tool designer for a large auto parts supply company suffered a non-job related leg injury and was told he'd need surgery. His wife made several phone calls to the firm's HR department, explaining the need for FMLA leave and inquiring about short-term disability coverage.

Shortly after those conversations, three senior HR execs and another manager embarked on a "forensic" search of the employee's computer – looking for evidence that would justify his termination, thereby eliminating the need to offer him FMLA leave.

A few days later, the man was called in before the HR reps and another senior manager. He was told he was fired for having forwarded a pornographic e-mail to a co-worker about a year earlier. The employee filed suit, claiming the real reason he'd been fired was because he'd asked for FMLA leave and short-term disability benefits.

In the suit, he named not only the company, but the HR execs and the manager. The case covered only the question of whether the company reps could be held individually liable for the allegedly improper firing. The company argued the managers weren't liable, since they didn't "exercise control" over the employee's FMLA activities.

But the judge disagreed, saying, "Each of the defendants exercised control over" the employee in the decision to terminate him – in reaction to his FMLA request. The merits of the case – and any possible damages – will now be adjudicated in a new trial.

**Cite:** *Narodetsky v. Cardone Industries et al.*

## FOCUS ON MEMBER BENEFITS

### Networking

Connect with other professional colleagues in public sector labor relations and human resources throughout the State of Florida. This is invaluable as you connect with a mentor, tutor, sounding board, or just a listener! In any case, we'll help you carry the load.

### Annual Training Conference

Nowadays, it's imperative to maintain your cutting-edge knowledge in labor relations and human resources. In an ever-changing regulatory environment, FPELRA provides you a cost-effective way to receive timely and sage information on changes that occur with sometimes blinding speed. The conference also provides you with HRCI recertification hours.

### Labor Relations Training & Certification

Our four-module labor relations professional certification series provides an efficient way to glean Florida Public Sector specific knowledge that has been building since 1974. Each day-long module covers a different part of the labor relations process - the law, negotiations, impasse, grievance-handling & arbitration - all geared to the adult learner.

### FREE Arbitrator Award Histories

Offered free of charge on an as-needed basis. The Arbitrator's awards history assists you in determining your ranking prior to striking. E-mail your arbitration panel to [jsexton@ircgov.com](mailto:jsexton@ircgov.com) Please provide the type of case pending.

### FREE Job Postings in our Online Career Center

Our career center area allows any member's agency to post career opportunities in Labor Relations, general Human Resources and Executive Administration at no cost to the agency.

## EFCA Update

The union-friendly administration is not sitting still. This month, the NLRB invited amicus briefs in two groups of pending cases. One group relates to penalties assessed against businesses (no mention of penalties against unions, of course), and whether those penalties should be increased via the addition of compound interest.

Over at the Office of Labor-Management Standards (OLMS), a public meeting was held to discuss possible changes to attorney and consultant reporting under section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA). More significant perhaps than the impact on consultants and labor attorneys is a change being considered that would impact "regular officers, supervisors and employees." Imagine the reporting nightmare if any company officer or employee were required to report when they spoke about unions during organizing campaigns, orientation meetings or even casual conversation.

An LRI representative attended the meeting, along with others from the business sector, to echo comments made by U.S. Chamber of Commerce's Michael Eastman,

"The statute was designed to provide disclosure when employers engage third parties to interact with and persuade employees because employees may not otherwise know such individuals are agents of the employer – this is not true in the case of the employer's supervisors, managers, and officers. The practical difficulties of accounting and reporting under the so-called split-income theory cannot be justified."

In another example of the devious way the administration is pursuing union objectives, an attempt is being made to add an amendment to a federal supplemental appropriations bill that would force every state or city government to collectively bargain with all "public safety employees," creating a federalized collective bargaining system.

Also on the legislative front, Senator Bob Casey, (D-Pa .) is promoting a bill to force the American taxpayers to bailout shaky union pension funds. Although the current price tag for this swindle stands at \$165 billion, the liability could essentially be unlimited because these pensions have to be paid out until the workers die. The egregious bill, while transferring mishandled union pension funds into the Pension Benefits Guarantee Corporation, still leaves the unions in charge of the plans! No other funds in the PBGC retain this kind of latitude.



## FOCUS ON MEMBER BENEFITS

### Publications

FPELRA offers "How to Bargain for Management in the Public Sector: Strategies and Tactics," "Managing the Grievance Procedure," and "A Supervisor's Labor Relations Guide" at a discount to our membership. These are structured in an easy to read, logical, step-by-step format to quickly educate your newest on-boarding in Florida Labor Relations.

### Contract Language Database

Our contract language database gives members access to labor contracts throughout the state. Research best language and innovative provisions in contracts covering law enforcement, fire rescue, white and blue collar, education and other career fields. Our contract database covers constitutional employers, taxing districts, municipalities, counties, and educational institutions of all levels.

### Forum

Our member-only, password protected forum provides a secure area for our membership to freely post their questions, thoughts, ideas, recommendations and respond to those posed by others. Neatly organized in themed discussion threads, the forum allows our members to securely discuss day-to-day issues.

### FPELRA Newsletter

A monthly roundup of interesting PERC labor cases and select media articles on labor & employee relations along with timely information on upcoming events and member news. Members are encouraged to submit arbitration decisions and media articles for inclusion. Submit arbitration decisions electronically in either Adobe PDF or MS Word format. The link to web-published media articles can be forwarded to [webmaster@fpelra.org](mailto:webmaster@fpelra.org). The newsletter benefits the membership by keeping our members abreast with developing issues throughout Florida and the nation.

## Positive Employee Relations

### Is Authentic Leadership Universal?

All positive employee relations environments require strong, authentic leaders. But is authentic leadership universal? Does it apply across different cultures? Let's say you're director with responsibility for a few million dollars of agency business. Part of the people you oversee are hourly employees with high-school education. They might think of you as a "stuffed shirt" — how do you effectively communicate with and coach them? Being "authentic" is the master key to relating, communicating and coaching in the workplace, no matter the environment. Here are 3 tips on authentic leadership:

1. It starts with a mirror. While nobody thinks of themselves as a "stuffed shirt" there are plenty of executives who see themselves as smarter or better than the average employee. They forget that leadership isn't something you get with a title or a degree — it happens when people choose to follow you. An authentic leader understands that if you aren't getting the results you want you don't blame the follower — you look yourself in the mirror and figure out what you are doing to contribute to the problem. Just that small change in mindset will transform your interactions with others.
2. Good leaders understand they have a toolbox with one tool — their conversations. If you are a leader you are no longer in a position to actually do the work. So your conversations are the only tool you have to accomplish your goals. If you can't connect with others through your conversations you will fail. So a good leader understands that they need to master the art of getting results through conversations. The fastest way to do that is by connecting to others in an authentic way. People quickly figure out whether you are "real" and even if you have power over them you won't have their full effort without an authentic relationship.
3. Authentic leadership is universal. It is interesting to watch leaders from other countries work here. The best ones learn to flex their style to work in a very different culture, and the ones who fail don't flex. The ones who succeed are the ones who are authentic and use the power of their conversations to build relationships and ultimately followers in their organization.

It is really important for leaders of any culture or background to be authentic. You can "fake it" for a while (although most people who think they are getting away by faking it usually are just fooling themselves). But to be successful long-term you must strive to have authentic, "real" relationships.

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