



Client Memorandum

To: Florida Pension Clients

From: Klausner, Kaufman, Jensen & Levinson

Date: 10/19/2017

Re: PERC decision: Remedy for improperly invoking Section 447.4095, Fla.Stat.

MEMORANDUM

The Florida Public Employees Relations Commission (“PERC”) recently confirmed the remedy for a successful unfair labor practice (“ULP”) arising out of a violation of Florida’s financial urgency statute, Section 447.4095.

Earlier this year, the Florida Supreme Court decided the case of *Headley v. City of Miami*, 215 So.3d 1 (Fla. 2017). Among other things, *Headley* held that unilateral modification of a collective bargaining agreement under Section 447.4095: (i) was only permissible *after* the parties have completed the requisite impasse resolution procedure; and (ii) required the employer to prove that funds are not available from “any other possible reasonable source.” Following the *Headley* decision, the case was remanded back to PERC to address the applicable remedy.

What is the remedy for the unlawful failure to follow the financial urgency procedures? What is the consequence if an employer unilateral changes wages, pensions, health insurance or other terms and conditions of employment by improperly invoking the financial urgency statute?

PERC has now confirmed that the parties should be returned to the *status quo ante* (“the way things were before”) on the day prior the effective date of the unlawful action. Returning the parties to the status quo ante is the traditional remedy under Chapter 447. In other words, PERC concluded that the remedy for a violation of the financial urgency statute is no different than any other unfair practice – returning the parties to the way things were before the unlawful act.