STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

SHAWN E. BEIGHTOL and ISAAC CASTINEIRA, Charging Parties, v. SCHOOL DISTRICT OF MIAMI-DADE COUNTY, FLORIDA, and UNITED TEACHERS OF DADE, LOCAL 1974, FEA, AFT, NEA, AFL-CIO, Respondents, v. LANNA F. ANDRÉ, et al., Intervenors.	:	Case Nos. CA-2016-008 CB-2016-009 FINAL ORDER Order Number: 17U-024 Date Issued: January 31, 2017

Thomas E. Elfers, Miami, and Craig J. Freger, Pembroke Pines, attorneys for charging parties.

Christopher F. Kurtz, James C. Crosland, and David C. Miller, Miami, attorneys for School District of Miami-Dade County, Florida.

Kathleen M. Phillips, Miami, attorney for United Teachers of Dade, Local 1974, FEA, AFT, NEA, AFL-CIO.

Lanna F. André, et al., intervenors representing themselves.

On March 9, 2016, Shawn Beightol and Isaac Castineira (Charging Parties) filed unfair labor practice charges against their employer, the School District of Miami-Dade County, Florida (School District), and their certified bargaining unit representative, the United Teachers of Dade, Local 1974, FEA, AFT, NEA, AFL-CIO (Union). The

Commission's General Counsel reviewed and dismissed the charges because the charges failed to allege a specific reference to Section 447.501, Florida Statutes. *See* § 447.503(1), Fla. Stat. (2016).[1] On April 4, the Charging Parties filed amended charges against the School District and the Union alleging that they violated Sections 447.501(1)(c) and (2)(c), Florida Statutes, respectively. These statutory provisions prohibit employers and unions from refusing to bargain collectively or failing to bargain in good faith. The Charging Parties alleged that the School District and the Union engaged in bad faith bargaining in violation of Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, with respect to the collective bargaining agreement that was ratified on September 9, 2015.

On April 8, the General Counsel dismissed the amended charges based on the Commission's long-standing precedent that individual employees lack the standing to allege violations of Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes. *Beightol v. School District of Miami-Dade County*, 42 FPER ¶ 300 (G.C. Summary Dismissal 2016). He noted that this precedent stems from the fact that individual employees are not the true parties in interest in the collective bargaining process, which occurs between the union certified to represent employees and their public employer. On April 21, the Charging Parties appealed the General Counsel's decision to the Commission.

On May 25, we issued a Notice of Sufficiency allowing the amended charges to proceed to hearing. We indicated that the determinative issue in the amended charges,

[1]All statutory references are to the 2016 edition of the Florida Statutes.

i.e., whether the parties collectively violated Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, by negotiating contractual provisions which allegedly violated Sections 1012.22(1)(c)1.b. and 1012.22(1)(c)4.a., Florida Statutes, was not addressed by the Commission or the courts previously. We concluded that the amended charges were sufficient to warrant a hearing on whether the Charging Parties had standing under Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes. In the event that standing was established, we further directed the hearing officer assigned to the case to proceed with determining whether there had been a violation of Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, as charged, and recommend an appropriate remedy.

After a procedural history unnecessary to repeat here, on September 16 and 23 and October 4, the hearing officer conducted an evidentiary hearing. On October 18, the hearing officer closed the record and informed the parties of their right to file post-hearing documents. The parties timely filed post-hearing documents. A copy of the transcript from the hearing was also filed with the Commission.

On December 2, the hearing officer issued an order recommending that the amended charges be dismissed. The hearing officer concluded that, while the facts in this case were novel, the Commission should not recede from its long-standing precedent holding that individual employees lack standing to allege violations of Section 447.501(1)(c) and (2)(c), Florida Statutes.

Following an attempt to amend the amended charges, which we denied by order on December 16, the Charging Parties filed one exception to the hearing officer's order.

On December 21, the Union and the School District filed a joint response to the exception.

Although this case presents a novel issue, in that the Charging Parties were attempting to show bad faith bargaining by both the public employer and the certified bargaining agent, the appropriate vehicle for bringing such a claim is not found in the statutes relied on by the Charging Parties. We agree with the hearing officer's well-reasoned analysis and legal conclusion. Since at least 1982, the Commission has held that the Section 447.501(1)(c), Florida Statutes, and its counterpart Section 447.501(2)(c), Florida Statutes, are "enactments intended to insure the performance of the mutual bargaining obligation imposed upon the public employer and the employees' collective bargaining representative." *Ritcey v. Palm Beach County School Board*, 8 FPER ¶ 13282 (1982). These provisions are also designed to insure the correlative obligation for the public employer and bargaining representative to bargain over matters arising under the collective bargaining agreement. *Ritcey,* 8 FPER at 500. Good faith bargaining is a "bilateral duty" between the parties to the collective bargaining agreement, and those entities are the real parties in interest when it comes to the filing of unfair labor practices involving good faith bargaining. *Id.* Essentially, Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, are intended to protect the real parties in interest, the employer and the labor organization, and not the individual bargaining unit employees.

The hearing officer correctly noted that both the Commission and the General Counsel have routinely dismissed cases where individual employees have alleged

violations of both Section 447.501(1)(c) and 447.501(2)(c), Florida Statutes. *See, e.g., Taylor v. International Association of Fire Fighters, Local 2546*, 40 FPER ¶ 55, *aff'g* 39 FPER ¶ 346 (G.C. Summary Dismissal 2013), *Amero, et al, v. City of Tampa*, 30 FPER ¶ 178, *aff'g* 30 FPER ¶ 130 (G.C. Summary Dismissal 2004); *Carroll v. City of Tampa*, 28 FPER ¶ 33039 (2001); *Taylor v. Columbia County School District*, 15 FPER ¶ 20048 (1988). The hearing officer also cited cases from other jurisdictions that are consistent with the Commission's precedent that public employees lack standing to bring bad faith bargaining charges under provisions similar to Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes. *See, e.g., Smith v. City of Inglewood*, 39 PERC ¶ 169 (2015); *Wayne County (Wayne County Community Mental Health Agency) v. AFSCME Local 1659 v. Jackson and Hardge*, 21 MPER ¶ 73 (2008); *Pattison v. Labor Relations Commission*, 30 Mass. App. Ct. 9 (1991).

As these cases demonstrate, the Commission's longstanding ruling that individual employees lack standing to assert that an employer or union has violated its duty to bargain in good faith is consistent with decisions from other jurisdictions. The Charging Parties did not cite to any authority supporting their contention that they have standing to assert that an employer or union has violated their duty to bargain in good faith under Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes.

We agree with the hearing officer's determination that the real-party-in-interest rationale should not prevent bargaining unit employees from challenging a collective bargaining agreement (CBA) that they allege violates the law. In this regard, the

Charging Party's claim that the CBA violates the law is distinguishable from prior cases involving individual employees seeking standing under Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes. It is unlikely that a public employer and the union who jointly negotiated a CBA which violates the law would then challenge their agreement by filing an unfair labor practice charge with the Commission alleging bad faith bargaining.

However, as the hearing officer correctly noted there already exists a statutory mechanism under Chapter 447, Part II, Florida Statutes, that permits individual employees to raise such an argument. *See* § 447.501(1)(a) and 447.501(2)(a), Fla. Stat. Section 447.501(1)(a), Florida Statutes, prohibits public employers from interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under Chapter 447, Part II. Similarly, Section 447.501(2)(a), Florida Statutes, prohibits public employee organizations from interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under Chapter 447, Part II. The employee rights protected by these provisions are set forth in Section 447.301, Florida Statutes, and include the right to (1) participate in a labor organization of their own when choosing; (2) negotiate collectively through a certified bargaining agent with their public employer in the determination of the terms and conditions of their employment; and (3) engage in other concerted activities for collective bargaining or other mutual aid or protection.

In fact, the Commission recently resolved a case involving the same public employer and union where an individual employee had standing to allege a violation of

Section 447.501(2)(a), Florida Statutes. *See Alvarez v. United Teachers of Dade, Local 1974, FEA, AFT, NEA, AFL-CIO*, 43 FPER ¶ 164 (2016). Therefore, there is a statutory mechanism for individual employees to challenge perceived harm when an employer and union allegedly collude with each other and interfere with the individual employees' rights under Section 447.301, Florida Statutes. In the instant case, the Charging Parties failed to allege violations of Sections 447.501(1)(a) and 447.501(2)(a), Florida Statutes, against the Respondents until after the Charging Parties received the hearing officer's adverse ruling. We see no reason to disturb our long-settled jurisprudence holding that individual employees do not have standing to allege violations of Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes.[2]

We now turn to the Charging Parties' exception. Section 120.57(1)(k), Florida Statutes, requires exceptions to identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, and include appropriate and specific citations to the record. *See also* Fla. Admin. Code Rule 28-106.217(1). Although their filing is lengthy and contains several diverse arguments, the Charging Parties only reference a single exception and citation to the recommended order. The challenge is directed at the hearing officer's ultimate conclusion that they do not have standing to charge the School District and the Union with violating Section 447.501(1)(c) and 447.501(2)(c), Florida Statutes.

[2]Although neither the Charging Parties nor the Respondents raise the issue, we also agree with the hearing officer's resolution of the parties' requests for attorney's fees and costs.

In support of this exception, the Charging Parties reiterate and debate many of the same arguments that were discussed and rejected by the hearing officer. For example, they argue that a plain reading of Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, in conjunction with the language in Section 447.503, Florida Statutes, does not support the Commission's precedent. We disagree. While Section 447.503(1), Florida Statutes, has a general statement that unfair labor practices may be brought by an employer, employee, or employee organization, the specific language in Sections 447.501(1)(c) and 447.501(2)(c), Florida Statutes, addresses refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement that has been agreed upon. As noted above, these are legal interests that belong to the real parties in interest, i.e., the public employer or the certified bargaining agent. A plain reading of the statute supports the Commission's long-standing precedent.

The Charging Parties also argue the merits of their charges, which were not reached by the hearing officer because he resolved the case on the issue of standing. While we do not need to reach these arguments, we would note that to the extent that the Charging Parties are arguing that the Union and School District violated Section 1012.22, Florida Statutes, we previously resolved this claim against the Charging Parties' interest in the *Alvarez* case cited above. *See Alvarez*, 43 FPER ¶ 164 (concluding that the union did not violate its duty of fair representation because its agreement on salary schedules was consistent with the language in Section 1012.22, Florida Statutes). Therefore, we deny the Charging Parties' exception.

Having resolved the exception, and upon consideration of the entire record in this case, we conclude that the hearing officer's findings of fact are supported by competent substantial evidence received in a proceeding which satisfied the essential requirements of law. Accordingly, we adopt the hearing officer's findings of fact. § 120.57(1)(l), Fla. Stat. We also agree with the hearing officer's analysis of the dispositive legal issues and his conclusions of law. Therefore, the hearing officer's recommended order is incorporated within this order and the Charging Parties unfair labor practice charges are DISMISSED.

This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes, and the Florida Rules of Appellate Procedure.

It is so ordered.
POOLE, Chair, BAX and KISER, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on January 31, 2017.

BY: Barry Edwards
Clerk

/bjk